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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 22nd August, 2023*

+ **CRL.A. 927/2015**
 TEK CHAND Appellant
 Through: None
 Versus
 STATE OF U P & ORS. Respondents
 Through: Mr. Tarang Srivastava, APP for State
 Mr. Rakesh Tiku, Sr. Advocate with
 Ms. Arpan Wadhawan, Advocate for
 R-3 to 6.

+ **CRL.L.P. 707/2015 & CRL.M.A. 15906/2015**
 STATE (GOVT OF NCT OF DELHI) Petitioner
 Through: Mr. Tarang Srivastava, APP for State
 Versus
 SHOBHA RAM & ORS. Respondents
 Through: Mr. Rakesh Tiku, Sr. Advocate with
 Ms. Arpan Wadhawan, Advocate for
 R-1 to 4.

+ **CRL.L.P. 191/2020**
 STATE Petitioner
 Through: Mr. Tarang Srivastava, APP for State.
 Versus
 ASHOK YADAV Respondent
 Through: None.

**CORAM:**

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. CrI.A.927/2015 has been filed by the appellant Tek Chand (**Complainant in FIR**) under Section 372 of the Code of Criminal Procedure, 1973 (in short, "CrPC") against the impugned Judgment dated 30.04.2015 of the learned Additional Sessions Judge by which the respondent Nos. 2 to 6 namely Ashok (Proclaimed Offender), Shobha Ram, Yogesh, Rakesh and Rukamesh were acquitted for the offences under Sections 147, 148, 302, 452 & 506 of the Indian Penal Code, 1860 (in short, "IPC"). However, no-one has been pursuing the appeal on behalf of the appellant since last three dates. Today also, none appears on behalf of the appellant Tek Chand.

2. CrI.Leave Petition Nos.707/2015 and 191/2020 have been preferred by the State by which the State has sought leave to Appeal against the impugned Judgments dated 30.04.2015 and 28.11.2019 respectively, wherein the respondents namely Shobha Ram, Yogesh, Rakesh, Rukamesh (respondents in CrI.L.P.707/2015) and Ashok Yadav (respondent in CrI.L.P.191/2020) have been acquitted for the offences under Sections 147, 148, 149, 302, 452 & 506 IPC.

3. The **case of the prosecution in brief** is that on 16.06.1998 at about 6 AM, complainant Tek Chand along with his brothers Charan Singh, Rajbir Singh and other co-villagers were sitting in the *Gher* situated at village



Kuria Garhi, P.S.Masuri, District Ghaziabad when accused Ashok Pehlwan, Shobha Ram, Rakesh, Yogesh and Rukamesh, all sons of Jai Parkash and two unknown persons, came in two cars. They were armed with weapons. Ashok and Rakesh were having rifles and others were having revolvers and *Tamancha*. Ashok confronted the complainant and others that despite being relatives, they were helping the murderers of their father. Tek Chand and his brothers tried to clarify the position and claimed that there was some misunderstanding but accused Ashok and other persons did not trust them and started firing indiscriminately to murder them. In this firing, Charan Singh, Rajbir Singh and Mukesh died on the spot while others fled away to save their lives. Kiran Singh sustained injuries. Thereafter, all the accused persons left claiming that whoever is supporting their opposite side, shall face the same consequences.

4. Tek Chand made a complaint in the Police Station about the incident on the basis of which, FIR No. 157/98 was registered. The dead bodies were taken to the hospital where post-mortem was conducted. Investigation was carried out but the accused persons could not be arrested. The Charge Sheet was filed against the five accused persons namely Ashok, Shobha Ram, Yogesh, Rakesh and Rukamesh but the identity of the two other accused persons could not be established. Since the accused persons were not traceable, proceedings under Section 82 of the Cr.P.C. were carried out against them. The accused persons were arrested in another murder case and thereafter, were formally arrested in the present case in 2008.

5. While the investigation was in progress, on the application of the accused Ashok on 13.08.2009 to the State, the case was transferred to CBCID for further investigation. The CBCID, on the completion of



investigation, filed the charge sheet, however, during the pendency of the case, accused Ashok absconded and was declared Proclaimed Offender.

6. Though the charges under Sections 147/148/302 IPC read with Sections 149/452 and 506 IPC were framed against all the five accused persons but the plea of all the accused were not recorded and Charges only bear signatures of accused Shobha Ram, Yogesh and Rukamesh who pleaded not guilty. Signatures of accused Ashok and Rakesh were not there. Subsequently accused Ashok absconded and was declared Proclaimed Offender but trial against accused Rakesh continued, therefore, charges were re-framed on 28.01.2015 to which, the accused persons pleaded not guilty and they all stated that they do not wish to recall any of the witnesses already examined.

7. The prosecution in support of its case, examined 26 witnesses, out of whom, the material witness was PW-1 Tek Chand i.e. the complainant who supported the case of the prosecution on all material aspects. PW-2 Dr.Bhargav conducted the post mortem on the dead body of Charan Singh.

8. PW-5 Inderjeet Singh was the eye witness who deposed about the entire incident and also that Rajbir Singh and Charan Singh were hit by bullets by accused persons because of which, they fell and died. He deposed that he along with others fled away from the spot in order to save their lives. While fleeing, Mukesh picked up a *danda* and hit on Maruti Car due to which, accused persons fired at Mukesh who fell and died on the spot. Kiran also sustained bullet injury. Thereafter, all the accused persons ran away. He thus, supported the case of the prosecution.

9. PW-20 Manoj, PW-21 Kundan, PW-22 Ram Karan and PW-23 Pappu were witnesses to *panchnama* of the dead bodies However, PW-23 was not



able to identify his signature on the *panchnama* and was declared hostile.

10. The statements of the accused persons were recorded under Section 313 CrPC where they denied all the allegations made against them.

11. The accused persons examined three witnesses, namely, DW-1/Anand Kumar Shukla, Dy.Jailor Sitapur, DW-2 Mijazi Lal, District Jailor Mujaffar Nagar Jail and DW-3 Retired Jailor Jaswant Singh respectively, in their defence.

12. The learned Additional Sessions Judge referred to the testimony of the eye witnesses namely PW-1 Tek Chand and PW-5 Inderjeet Singh who have deposed that all the five accused persons along with two more persons came in two cars at the scene of incident. They suspected that PW-1 Tek Chand and his brothers were supporting and assisting the murderers of their father Jai Parkash though Tek Chand and though his brothers tried to clarify that it was not the case, but no heed was given and the accused persons started firing indiscriminately. Though these witnesses had named the three accused namely Ashok, Shobha Ram and Yogesh present at the spot but they were not arrested from the spot.

13. The defence of the accused Ashok, Shobha Ram and Yogesh was that they were not present at the spot and in fact, the three were lodged in the jail. The jail record was produced by PW-13 Deputy S.P. Yogwender Singh and DW-3 the then Jailor of Mujjafar Nagar Jail who verified from the jail records, that accused Ashok, Shobha Ram and Yogesh were lodged in Mujjafar Nagar Jail on 14.06.1998 and were released on 23.06.1998, 26.06.1998, and 26.06.1998 respectively. As they were in judicial custody on the alleged date of incident, they could not have committed the offence. Thus, this fact reflects that the Respondent witnesses have deposed falsely



with regard to the accused persons.

14. Learned Additional Sessions Judge also referred to the testimony of PW-24 Constable Subhash Chand and PW-25 SI Shyam Bir Singh who further supported the evidence regarding the alibi of the accused persons. PW-24 Constable Subhash Chand deposed that accused Yogesh, Shobha Ram and Ashok were arrested by him in case under Sections 107/15/161 CrPC along with two other persons and were sent to Mujjafar Nagar Jail as recorded in DD No. 15 dated 14.06.1998 i.e. Ex PW PW24/A. This witness identified the accused Shobha Ram and Yogesh. PW-25 SI Shyam Bir Singh corroborated the testimony of PW-24 that the accused Yogesh and Shobha Ram along with two other persons were sent to jail on 14.06.1998 and also identified Yogesh and Shobha Ram. Accused Ashok could not be identified as he had absconded and was declared a Proclaimed Offender.

15. The learned Additional Sessions Judge, from the above testimony of the witnesses, accepted the plea of alibi and concluded that accused Shobha Ram and Yogesh were lodged in jail and not present at the spot on the day of incident i.e. 16.06.1998. Therefore, they could not have been the perpetrators of crime and be present at the scene of crime as claimed by PW-1 Tek Chand and PW-5 Inderjeet Singh.

16. The learned Additional Sessions Judge also noted that according to the prosecution, Kiran also sustained injury from fire arm as deposed by PW-1 Tek Chand and PW-5 Inderjeet Singh, but there is no medical evidence on record whatsoever showing any injury having sustained by Kiran. Moreover, there were two other eye witnesses Anil and Lillu but they along with Kiran, have not been examined by the prosecution for the reasons best known to them. Further, there is no recovery of weapon of



offence to link the accused persons with the commission of offence i.e. bullets recovered from bodies of deceased were fired from the fire arm.

17. In the absence of any such evidence, the entire case of the prosecution rests on the oral testimony of PW-1 and PW-5. However, from their testimony, the identity of the accused Ashok, Yogesh and Shobha Ram has been shown to be false as on the date of incident as the three accused were lodged in jail in Mujjafar Nagar. For the aforesaid reasons, benefit of doubt was given to the accused persons who were acquitted by the impugned judgment dated 30.04.2015.

18. Aggrieved by the said acquittal of the respondents, the leave to appeal has been preferred by the State.

19. **Submissions heard.**

20. The appellant has alleged that the accused were acquitted without proper appreciation of evidence by the Learned Trial Court, thereby giving them the benefit of the doubt and placing excessive importance on their plea of alibi.

21. On a perusal of the evidence, it is gathered that the entire case of the prosecution rests on the testimony of PW-1 Tek Chand and PW-5 Inderjeet Singh to establish the identity of the three accused. However, as observed in detail by the learned Additional Sessions Judge, the testimony of the prosecution witnesses namely PW-13 Deputy S.P. Yogwender Singh, PW-24 Constable Subhash Chand and PW-25 SI Shyam Bir Singh, and defence witness DW-3 Retired Jailor Jaswant Singh, it has been proved beyond reasonable doubt that on the said date, accused Yogesh, Shobha Ram and Ashok were lodged in jail and, could not have possibly been present at the scene of crime or be the perpetrators of crime.



22. Moreover, there was one injured Kiran but for unexplained reasons, he has neither been examined, nor any medical record has been placed on record to show that he was injured. Furthermore, there were two other eye witnesses namely Anil and Lillu who have also not been examined, thereby, creating serious doubt in the prosecution story. Further, we also note that no corroborative evidence could be collected by the State as no weapon of offence was recovered to connect the accused persons with the incident.

23. In view of the clinching evidence on record, as noted and observed hereinabove, the case in hand is glaring case of false implications of the respondents/accused but also a unlawful investigation conducted by Ghaziabad, UP police and CBID. The evidence placed on record clearly proves that respondents Ashok, Shobha Ram and Yogesh were in District Jail, Mujaffarnagar, UP on the date of alleged incident and no recovery of weapon was affected in this case. Thus, both the investigating agencies mechanically investigated the present FIR case pertaining to the year 1998, wherein respondents/accused were acquitted in the year 2015 and thus, faced ordeal of long trial and suffered loss of time, energy and reputation which cannot be compensated in terms of money or otherwise. The torment suffered by the respondents/accused cannot be compensated in terms of money or otherwise, however, in the considered opinion of this Court, interest of justice would be met if State of NCT of Delhi and State of UP are cautioned for conducting terrible investigation.

24. This Court also expresses displeasure against the prosecution for having preferred an appeal oblivious of no evidence at all on record against the respondents/accused. Even otherwise, we are constraint to note that we have come across a good number of cases where there is no merit, still



appeals are filed, which causes loss to the public ex-chequer and precious public time and money of the Courts is wasted. The prosecution is accordingly cautioned to be vigilant and fair while taking decision to file appeal against the judgment/order of acquittal.

25. We conclude that the respondents have been rightly and there is no merit in the appeals filed by the Complainant and the State. Accordingly, the petitions seeking leave to appeal are hereby dismissed.

26. The pending applications, if any, are also disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2023
akb/r