

(2013) 10 DEL CK 0206
In the Delhi High Court
Case No : Criminal L.P. 235 of 2012

State of NCT of Delhi

APPELLANT

Vs

Surinder Singh

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 374(4)
Penal Code, 1860 (IPC) — Section 307

Citation : (2013) 10 DEL CK 0206

Hon'ble Judges : Reva Khetrapal, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Rajesh Mahajan, Addl. Standing Counsel and SI Somvir Singh, P.S. Malviya Nagar in Person, for the Appellant; Vikas Kumar, for the Respondent

Judgement

Pratibha Rani, J.—By this petition filed u/s 374(4) Cr.P.C., the State seeks leave to appeal against the judgment and order dated 03.10.2011 passed by the learned Addl. Sessions Judge-02 (SE), Saket Courts, New Delhi whereby the respondent/accused was acquitted of the offence punishable u/s 307 IPC and Section 27 of the Arms Act. Notice of the leave petition was issued to the respondent, who has entered appearance through his counsel.

2. Mr. Rajesh Mahajan, learned Addl. Standing Counsel for the State, while praying for leave to appeal against the acquittal of the respondent/accused by the learned Trial Court, referred to the statement of the injured (PW-5) Vivek Chhabra wherein he has detailed the manner in which the incident took place and he was shot at by the respondent who was apprehended by the police at the spot. Learned Addl. Standing Counsel further submitted that no doubt the other three witnesses, that is, PW-2 Saurav Batra, PW-3 Sahil Batra and PW-4 Nand Kishore have not fully supported the case of the prosecution, yet the time and place of the incident is not disputed and it is only the manner in which the incident has taken place that PWs 2 to 4 have not supported the prosecution version. He also submitted that PW-9 Mayank Lakhani, with whom the

respondent/accused was posted as Personal Security Officer (PSO), was not cited as a witness to the incident. Learned Addl. Standing Counsel further submitted that, while the learned Trial court did not grant the permission to the State to cross-examine PW-4 Nand Kishore who resiled from his earlier statement, PWs 2 & 3, namely, Saurav Batra and Sahil Batra have been cross-examined by the State. The mere fact that these witnesses have been declared hostile, the version of the hostile witnesses could not be on the identical lines to that of the injured. Thus, in the given facts on appreciation of evidence of material prosecution witnesses, the finding of the learned Trial Court and the reasoning given in para 12 of the impugned judgment is illegal and erroneous.

3. Mr. Vikas Kumar, learned counsel appearing for the respondent submitted that the injury being not on vital parts of the injured, even the basic ingredients of Section 307 IPC are not satisfied. He further submitted that the material independent eye witnesses have not supported the case of the prosecution. Hence, the impugned judgment passed by the learned Trial Court does not suffer from any illegality or perversity. Referring to the statement of PW-9 Mayank Lakhani, he further submitted that it was a case where in the scuffle an attempt was made to snatch the pistol from the respondent when the fight took place. Hence, the finding of the learned Trial Court acquitting the respondent/accused further proves his innocence.

4. We have considered the rival contentions of the learned Addl. Standing Counsel for the State as well as counsel for the respondent and have gone through the testimonies of the material witnesses. We find merit in the contention of the learned Addl. Standing Counsel for the State.

5. The legal position is well settled that leave to appeal can be granted to the State where it is shown that the conclusions arrived at by the Trial Court are perverse or there is mis-application of law or any legal principle. It is also settled law that the Appellate Court may not only overrule or otherwise disturb the finding of the Trial Court if there are substantial and compelling reasons for doing so.

6. Having heard the learned counsel for the parties and on going through the record, we are of the view that this is a fit case where leave to appeal ought to be granted to the State against the impugned judgment of the Trial Court. Accordingly, leave is granted.

7. Crl.L.P. 235/2012 stands disposed of.

Crl.A. _____/2013 (to be registered and numbered)

8. Registry is directed to register and number the appeal.

9. On behalf of respondent, it has been submitted that the respondent has remained on bail during trial and there is no chance of his absconding, hence pending decision of the appeal, respondent is ready and willing to abide by any condition imposed by the Court.

10. Looking into the facts and circumstances, the respondent is directed to furnish personal bond in the sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of the Registrar General of this Court within a period of two weeks.

11. List for hearing in the category of "Regular Matters" at its own turn. Copy of the order be dasti to the respondent for compliance.