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

+ **Date of Decision: 23.02.2015**

% **Crl.L.P. No. 77/2015 & CRL MA No.2556/2015**

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms. Nishi Jain, APP along with SI
Roshan Lal, PS-Nangloi.

versus

SUNIL & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This petition has been preferred under Section 378(3) Cr PC to seek leave to appeal against the judgment dated 30.10.2014 passed by the learned Metropolitan Magistrate -03 (West), Tis Hazari Courts, Delhi in the case arising out FIR No.367/04 under Section 324 read with Section 34 I.P.C., P.S. Nangloi, titled *State v. Sunil Kumar & Anr.* The petitioner has also moved an application to seek condonation of four days delay in filing the petition.

2. By the impugned judgment, the learned MM has acquitted the two accused by giving them the benefit of doubt. The allegation against the accused persons were that on 30.04.2004 at about 10:45 a.m. at Gevra More bus stand, Rohtak Road, the accused persons in furtherance of their common intention voluntarily caused simple injury with a sharp object, i.e. blade to the complainant namely one Shaqib @ Pintoo, s/o Ali Hassan.

3. The case of the prosecution was that the accused Sajid was engaged to the sister of Shaqib (PW-1), but due to some reason the marriage was cancelled. This led to disputes and it was alleged that the accused Sajid started threatening Saqib on telephone. It was alleged that on 29/30.04.2004, PW-1 Shaqib had left his house at 9:30 a.m. for Nagloi bus stand from where he boarded a bus going towards Tikri border. It was alleged that the accused, along with two other persons, were also present in the bus. When the bus reached near Gevra More, the accused persons put knife behind him and asked him to get down from the bus. PW-1 got down from the bus and the accused Sajid along with the other co-accused persons slapped him and took into the jungle near Gevra More. There the accused persons attacked PW-1 on his back and chest with a blade. The co-accused and the Sajid caught held of PW-1, and the accused Sajid attacked PW-1 with a blade on his chest and back. PW-1 Shaqib saved himself and managed to escape from the spot and reached the ring road and came to his home. His father then informed the police about the incident, and the police came to the house of PW-1 and took him to SGM Hospital where he got medical treatment. Thereafter, the case was transferred to Nangloi. The statement of PW-1 was recorded, whereafter the accused were arrested.

4. The prosecution led the evidence of four witnesses, namely, PW-1 Shaqib – the injured; PW-2 ASI Ashok Kumar – to prove the FIR Ex. PW-2/A and endorsement on Rukka Ex. PW-2/B; PW-3 SI Radhey Shyam – who made an inquiry into the case, and; PW-4 Dr. Baljeet Singh – who proved and exhibited the MLC of the injured.

5. The submission of learned counsel for the petitioner is that the

impugned judgment is erroneous. She submits that the learned Magistrate has not correctly appreciated the evidence brought on record.

6. I have heard learned counsel and perused the impugned judgment. It is argued that the contradictions relied upon by the Trial Court are not material and that the core case of the prosecution stood established.

7. In my view, there is no perversity or error in the approach of the learned Magistrate in appreciating the evidence. Even according to the injured PW-1, there was enmity between his family and the accused Sajid. It was not the case of the prosecution that the accused boarded the same bus as the injured PW-1 with any pre-meditation or planning. While it was claimed that the accused had put a knife on the back of the injured PW-1 in a moving bus and asked him to get down from the bus, it appears doubtful that the said incident could have occurred in broad daylight in a moving public bus. Admittedly, the injured PW-1 did not raise any hue and cry in the bus and did not ask for any help.

8. There was also contradiction with regard to the place of incident. In the DD entry recorded at about 2:52 p.m. on 30.04.2004, the father of PW-1 had recorded the place of incident as – near Masjid Chowk, Gali No.3, Aman Vihar. However, in Ex PW-1/F – the site plan, the place where injuries were allegedly inflicted has been shown to be the bus stop, Gevera More, and not in any jungle nearby. The MLC Ex PW-4/D described the injuries as superficial. There was also contradiction in the case of the prosecution inasmuch, as, in the statement made to the police (Ex. PW-1/A), PW-1 had stated that he was de-boarded from the bus by the accused with

the help of his associates by catching hold of him, and not by putting a knife behind his back – as deposed by him before the Court. PW-1 also made improvement in his statement Ex PW-1/A (made to the police) with regard to the place of occurrence. In Ex PW-1/A, he had not stated that he was taken to the nearby jungle by the accused and his associates. However, in his deposition before the Court, he set up the story that he had been taken to the nearby jungle, i.e. near Gevra More. Admittedly, neither the weapon of offence, nor the blood stained shirt or any other clothing of the accused was seized.

9. In the light of the aforesaid contradictions, the finding returned by the learned Magistrate that the whole case of the prosecution story is so inherently contradictory as to material facts, that the Court was unable to find out the real truth, cannot be said to be either perverse or a misdirected in the matter of appreciation of evidence. The accused are deemed to be innocent unless proved guilty – the said presumption stands fortified by the impugned judgment. No material infirmity has been pointed out in the impugned judgment for this Court to take a different view. This Court would not entertain a petition merely because another view is possible.

10. Accordingly, the petition is dismissed. Since I am not inclined to issue notice on the leave petition, there is no purpose in issuing notice on the application seeking condonation of delay. The same is accordingly dismissed.

VIPIN SANGHI, J.

FEBRUARY 23, 2015 /sr