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

DECIDED ON : 2nd SEPTEMBER, 2016

+ **CRL.A. 1007/2013**

VIVEK RATHORE @ SONU Appellant

Through : Mr.R.S.Bind, Advocate.

versus

SANJEET & ORS. Respondents

Through : Mr.Amit Gupta, APP.
Mr.N.K.Aggarwal, Advocate with
Ms.Sanjana Antil, Advocate for R5.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. The instant appeal has been preferred by the victim – Vivek Rathore @ Sonu under Section 372 Cr.P.C. to challenge the legality and correctness of a judgment dated 26.02.2013 of learned Addl. Sessions Judge in Sessions Case No.25/2012 arising out of FIR No.267/2011 PS Dabri by which the respondents were acquitted. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. The appellant had filed a complaint case under Section 200 Cr.P.C. against the respondents for inflicting injuries to him on 03.07.2011. By an order dated 05.08.2011, under Section 156(3) Cr.P.C. the learned Metropolitan Magistrate directed the SHO concerned to register an

FIR against the instant respondents under relevant provisions of law. Accordingly, FIR in question was lodged at PS Dabri. Statements of the witnesses conversant with the facts were recorded. The respondents were arrested. Upon completion of investigation, a charge-sheet was filed against the respondents for commission of offences punishable under Sections 308/342/506 IPC. The prosecution examined seven witnesses to establish its case. In 313 Cr.P.C. statements, the respondents declined their involvement in the crime and pleaded false implication. The Trial resulted in their acquittal. Being aggrieved and dissatisfied, the victim has preferred the instant appeal. It is relevant to note that the State did not challenge the respondents' acquittal.

3. The occurrence took place on 03.07.2011 at around 05.30 p.m. The appellant or his brother did not lodge any report with the police promptly. The victim was taken to DDU Hospital by his brother PW-6 (Dinesh). Arrival time recorded at DDU Hospital is 06.45 p.m. Admittedly, all the assailants were acquainted with the appellant prior to the occurrence; they were having friendly terms. Despite that, the appellant did not name any of them as assailants in the alleged history given to the concerned doctor at the time of medical examination. No plausible explanation has been offered by the victim for not disclosing the names of the perpetrators of the crime. MLC records that the victim had consumed alcohol. He did not explain as to where and when he had consumed liquor. No plausible explanation has been offered as to why the FIR was not lodged soon after the occurrence. A comprehensive complaint was given on 06.07.2011 to the Commissioner of Police. The complaint case was filed in the Court on 13.07.2011. Injuries on the victim's body were found superficial in nature.

PW-2 (Dr.Deep Shikha) stated that injuries No.1 to 3 in MLC (Ex.PW-2/A) were superficial in nature. Injury No.4 was simple in nature. The victim did not suffer any fracture. He was discharged from the hospital on the very same day.

4. The prosecution case is entirely based upon the sole testimony of the victim - PW-1 (Vivek Rathore @ Sonu). In his examination-in-chief, he deposed that on 03.07.2011 at about 05.30 p.m. when he was present on a plot of land adjacent to his house, accused Mukesh Kumar came to him and told that Vinay's father was calling him. He accompanied Mukesh Kumar. When they reached gali No.11, other accused along with their associates present there encircled him. Vinay took out a pistol and kept it on his right temple. Mukesh Kumar and Lalit Kumar were armed with dandas; Sanjeet and Sunny Sharma were having iron rods in their hands. All of them started beating him, as a result of which, he suffered injuries on his head and other body parts. Someone called his brother who arrived at the spot. He took him to DDU Hospital in his own car. After treatment, he was discharged from there.

5. In the cross-examination, the victim admitted that he was facing criminal proceedings in case FIR No.503/2008 under Section 325/34 IPC PS Dabri. He denied himself to be involved in case FIR No.186/2010 under Sections 384/506/34 IPC PS Bindapur and FIR No.243/2008 under Section 325/34 IPC. PW-7 (ASI Ali Ahmed Khan) posted as ASI at PS Dabri in the cross-examination admitted that FIR No.186/2010 PS Bindapur under Sections 384/506/34 IPC, FIR No.243/2008 under Sections 325/34 IPC PS Bindapur, FIR No.150/2009 under Sections 279/338 IPC PS Dabri and FIR No.503/2008 under Section 325/34 IPC PS Dabri were registered against the

victim - Vivek Rathore @ Sonu. Apparently, the appellant had criminal background. The victim denied in the cross-examination that he along with the respondents was kept in the Police Station during night on 03.07.2011 vide DD No.77B and on the next morning, a 'kalandra' under Sections 107/151 Cr.P.C. was registered and they all were produced before Sh.D.P.Yadav, Spl.Executive Magistrate, Dwarka. PW-7 (ASI Ali Ahmed Khan), however, in the cross-examination admitted that accused persons were kept in police custody and were produced on the next day before Spl. Executive Magistrate, Dwarka. He further disclosed that no quarrel had taken place between the injured and the accused on 09.07.2011. He further admitted that there was no material to lodge FIR under Section 308 IPC. He further admitted that no arm whatsoever was recovered from any of the respondents during his investigation.

6. In the cross-examination, the victim introduced an inconsistent and improved version that from gali No.3, he was taken on a motorcycle to gali No.19 in front of Vinay's house and there also he was given beatings. Admittedly, this fact did not find mention in the complaint lodged under Section 200 Cr.P.C. The victim did not given any specific motive of the accused persons to inflict injuries to him. He did not give specific and definite role to each of the assailants in causing injuries to him. No independent public witness was associated at any stage of investigation. It is unclear as to who had informed the victim's brother about the incident. Allegedly, Rajan and Pradeep, victim's neighbour had accompanied him to the hospital, however, none of them was examined. Victim's parents who had arrived at the spot were also not examined. It is unbelievable that the

victim after having suffered so many forceful blows at the hands of assailants five in number would sustain only injuries 'simple' in nature.

7. The victim did not disclose as to how and where Mukesh Kumar who had initially come to call him on the pretext that Vinay's father was remembering him, came into possession of the 'danda' when he was unarmed previously. The victim did not offer any explanation as to why he readily agreed to accompany Mukesh Kumar without enquiring as to why Vinay's father was calling him.

8. Trial Court has given cogent and detailed reasons for recording acquittal. The impugned judgment based upon fair appraisal of the evidence needs no intervention.

9. In the light of above discussion, the prosecution has failed to prove its case against the respondents beyond reasonable doubt. They deserve benefit of doubt. The acquittal recorded by the Trial Court cannot be faulted in the absence of any cogent and convincing evidence.

10. The appeal lacks merits and is dismissed.

11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

SEPTEMBER 02, 2016 / tr