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

+ **CRL.L.P. 173/2016**

% ***Judgment dated 14th March, 2016***

STATE

..... Petitioner

Through : Ms.Aashaa Tiwari, APP for the State.

versus

SANDEEP

..... Respondent

Through : NEMO.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CRL.M.A. 4492/2016

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CRL.M.A. 4491/2016

3. By the present application, the petitioner seeks condonation of 53 days' delay in filing the present criminal leave to appeal petition.
4. Heard. For the reasons stated in the application and in the interest of justice, present application is allowed. Delay in filing the present criminal leave to appeal petition is condoned. Let criminal leave to appeal petition be taken on record.
5. Application stands disposed of.

CRL.L.P. 173/2016

6. Present criminal leave to appeal petition has been filed by the petitioner/State under Section 378(1) of the Code of Criminal Procedure

against the judgment dated 29.9.2015 passed by the learned Additional Sessions Judge FTC, Shahdara, Karkardooma Court, Delhi in Session's Case No. 30/2014 by which the respondent herein stands acquitted.

7. As per the case of the prosecution on 12.1.2014 a complaint was received by SI Kishan Pal Singh from the complainant, Vivek, vide Diary No.67-P. The IO contacted the complainant at his house and recorded his statement wherein it was stated that on 8.1.2014 at about 11.00 p.m. after having his dinner he was taking a walk in the galli when a boy named, Sandeep, who was under the influence of liquor, abused him. On his objecting, Sandeep gave him leg and fist blows, and also threatened that he would finish him. Thereafter Sandeep inflicted a blow on the left side of his abdomen with a knife used for cutting meat. MLC was collected and an FIR was registered under Section 307 of the Indian Penal Code (in short '*IPC*'). After the arrest of the respondent, he got recovered the knife, which was lying below the bed in his room.
8. To bring home the guilt against the respondent, the prosecution examined 8 witnesses in all. Statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure wherein the respondent claimed to be innocent and denied all prosecution charges. However, no evidence was led by the respondent in his defence.
9. The learned Trial Court, after scrutiny of the evidence found that the prosecution had utterly failed to prove its case against the respondent beyond reasonable doubt and accordingly, the respondent named Sandeep was acquitted under Section 307 of the IPC.
10. Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State opened her submissions by contending that the impugned judgment was erroneous in law, suffered from serious infirmities and the view taken by the learned Trial Court is contrary to the established principle of the law

laid down by the Hon'ble Apex Court.

11. Learned counsel for the State further argued that the learned Trial Court failed to appreciate that it is the quality of evidence which is of prime importance and not the quantity of evidence and in this regard all the testimonies were duly corroborated by other surrounding circumstances.
12. Counsel for the State submitted that the learned trial court has failed to take into consideration the settled principle of law that the statement of an injured person is to be placed at a higher pedestal than any other witness. It is further submitted that the injured had identified the respondent as the person, who had inflicted the knife blow on the left side of his abdomen. Counsel also contends that the judgment passed by the learned trial court is based on surmises and conjectures and, thus, cannot stand the scrutiny of law. It has also been submitted before us that the learned trial court has not appreciated the evidence of various witnesses and the testimony of the injured person finds support from the MLC, Exhibit PW-3/A, which shows "*1 inch incised wound at the abdomen wall (left side), two cms*". It has also been submitted that the delay in registration of the FIR, which raises a doubt about the case of the prosecution, stands fully explained.
13. Ms. Tiwari contended that the conclusion of the trial court that the spot of the incident could not be proved and the possibility that the complaint dated 12.1.2014 and the statement dated 13.1.2014 were made with a view to create jurisdiction of the Police Station Seema Puri is also without any evidence. She further placed reliance on the testimony of PW-3, Dr.Vivek Razdan from GTB Hospital, who had examined the injured, prepared the MLC and opined that the injuries sustained were grievous in nature.
14. We have heard learned counsel for the State and also carefully examined the judgment passed by the learned trial court trial Court as also the

testimonies of the witnesses, which were handed over in Court today. The trial court, in our view, has carefully analysed the testimonies on record and applied the correct law to the same.

15. In this case, the date of the incident is 8.1.2014 at about 11.00 p.m. According to the complainant, Sandeep had stabbed the complainant at about 11.00 p.m. with a view to kill him without any provocation as Sandeep was under the influence of liquor.
16. The star-witness in this case is PW-1, the injured person. According to this witness, the incident had taken place outside his house without any quarrel. The injured had given a complaint for the first time to the Police on 12.1.2014 and prior thereto he did not give any statement. It may be noticed that the trial court has given a specific finding that the complainant was hiding true facts from the Court.
17. It may also be noticed that while passing the impugned judgment, the trial court has also taken into consideration the statement made by PW-8. As per the statement, Exhibit PW-8/B, the incident took place near Satpal Dhaba, Shaheed Nagar, Ghaziabad, Uttar Pradesh, at 11.00 p.m., when the complainant had gone for dinner on 8.1.2014. Whereas in his complaint dated 12.1.2014, Exhibit PW-1/A, and the statement dated 13.1.2014, PW-1/B, the complainant has stated that the incident took place at 11.00 p.m. on 8.1.2014 while he was roaming around in the gali after taking his meal. The trial court has noticed that not only the place of the incidents in the two statements are different but surprisingly the IO had stated that no case was registered on 8/9.1.2014 neither the statement, Exhibit PW-8/B, bears any endorsement of the IO certifying any reason for not taking further action on the statement. For any reason, if as per the statement the jurisdiction was District Ghaziabad the IO could have forwarded the statements to the concerned Police Station for further action.

18. The trial court also noticed that the statement of PW-8 would also show that PW-8 visited the Dhaba only once when the Dhaba was closed but no effort was made to visit the said Dhaba again with regard to the incident, if any, having taken place outside the Dhaba. It may further be noticed that PW-8 has also testified that at the time of fresh statement recorded on 13.1.2014, PW-1, had stated the place of incident to be near Satpal Dhaba whereas in the statement dated 13.1.2014 Exbt. Pw1/B no such mention has been made, which creates a serious doubt with respect to the place of the incident. The testimony of the complainant, PW-1, also does not explain the delay in lodging the FIR and four days' unexplained delay in our view does not inspire confidence in the case of the prosecution.

19. In the case of ***Dilawar Singh v. State of Delhi***, 2007 CrL.L.J. 4709, it was held as under:

“In the criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.”

20. Additionally, we may note that as per the prosecution the knife was recovered from under the bed which was lying at the first floor of the room of the respondent herein but neither the recovery of the knife nor the arrest of the respondent herein stands proved. In fact, the said knife was not sent to the FSL to ascertain as to whether it contained any blood stains on it or not. Further, the opinion of the Doctor was also not sought to

ascertain as to whether the injuries as per the MLC were possible by the said knife. As far as the recovery of the knife is concerned, the same is also doubtful for the reason that it was recovered from the house of the respondent after more than a month from the date of the incident. It is highly improbable that a person after stabbing would keep the knife in his house under his bed even after the FIR stood registered.

21. The law with regard to dealing with a leave to appeal petition against acquittal is well settled. The Appellate Court cannot entertain a petition merely because another view is possible or that another view is more conceivable. (See *Sudershan Kumar Vs. State of H.P.*, reported in 2014 (14) SCALE 276)
22. Accordingly, for the reasons stated hereinabove, the reasoning given by the learned trial court and in view of the settled law, we find that there is no illegality and infirmity in the judgment rendered by the trial court, which would call for interference in these proceedings. Resultantly, there is no merit in the present petition and the same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

March 14th, 2015

msr