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

+ CRL.L.P. 288/2015

STATE

..... Petitioner

Through: Ms. Radhika Kolluri, APP

versus

RAMESH KUMAR & ANR

..... Respondent

Through: Mr. Sanjay Kumar Chhetry, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
09.08.2016

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I have heard learned APP for the State and learned counsel for the respondents. He states that respondent No. 2 Krishan has since passed away. He has tendered in Court the death certificate of Krishan which showed that he passed away on 10.10.2015.

Having heard learned counsels, since I am not inclined to grant bail, there is no purpose in dealing with the application seeking condonation of delay.

The State has preferred the present leave petition to assail the judgment dated 12.12.2014 passed by the learned Additional Sessions Judge (NDPS) North District, Rohini Courts, in SC No. 95/13 FIR No. 206/11, PS Bhalswa Dairy under Sections 308/323/325/452/506/34 IPC.

To begin with, there were three accused namely, the two accused in the present petition and the third-the second son of the respondent No. 1. During the pendency of trial, one of the sons of the respondent No. 1 passed away. The reasons given by the learned Additional Sessions Judge to acquit the respondent accused was that neither PW1 and PW2 who were the eye witnesses nor the injured/eye witnesses PW7 to PW9 deposed a single word about the injuries on the person of the accused Hari Chand (since deceased during trial), Ramesh Kumar and Sapna wife of Hari Chand.

The case of the prosecution was that the accused and a lady came with some 4/5 persons and started enquiring about Gulab Singh Rathore with whom Sanjay was employed as a Driver. Before he could speak a word, the complainant and Avdesh Rathore were assaulted by the accused persons and when Sunil tried to intervene, he was also beaten. Sapna (DW1), however, deposed that on the fateful day, she had gone to purchase grocery articles from a nearby shop. When DW1 was returning home after the purchase, Sanjay misbehaved with her by saying that he loved her and that she should accompany him and he caught her hand. She returned home and told the same to her husband and her father-in-law. According to her, when they stepped out of their house to complain against the injured, they found Sanjay Rathore standing in front of their house. She claimed that Sanjay Rathore came there with danda and Hari Chand, Ramesh and Sapna were injured by them.

The trial court found that the investigating officer SI Uday Singh acted in a partisan manner. Even though, the statement of Sapna was recorded by the same IO under Section 154 Cr.P.C. on the basis of which FIR No. 207 of 2011 was registered under Section 509/323/427/34 IPC

against the injured persons in the present FIR, he did not speak a single word about his recording the statement of Sapna and the consequent registration of the FIR in his testimony. The trial court observed that PW1, PW2, PW7, PW8, PW9 and PW11 concealed the genesis of the incident. As per MLC Ex.DW1/G, Ramesh Kumar-respondent No. 1 accused had sustained lacerated wound over left parietal occipital region, abrasion on left middle finger and tenderness over left side of thorax. As per MLC Ex.DW1/X, Hari Chand had tenderness and swelling over left forefinger. His wife, namely, Sapna, also had pain and swelling in right shoulder, tenderness and swelling in upper arm and tenderness over lower back as per MLC Ex.DW1/I. The complainant and the other injured in the present case have been examined in the hospital as the accused and Sapna have been examined, namely, BJRM Hospital. The name of the same IO Uday Singh was mentioned in all the MLCs yet he did not depose about the injuries sustained by the accused and Sapna. As aforesaid, he did not disclose about the statement of Sapna recorded by him which led to registration of FIR No. 207/11. In this background, the trial court invoked ***Jagdish Vs. State of Rajasthan*** AIR 1979 SC 1010 wherein the Supreme Court held that where serious injuries are found on the person of the accused as a matter of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution, the conditions required to be satisfied are;

- “(i) That the injuries on the person of the accused must be serious and severe and not superficial.
- (ii) That it must be shown that these injuries must have been

caused at the time of occurrence in question.”

To the same effect was the decision of the Supreme Court in *State of Rajasthan Vs. Shiv Charan*, Criminal Appeal No. 1425-26 of 2007, decided on 01.07.2013.

The trial court observed that the injuries suffered on both sides were superficial except in the case of injuries suffered by PW7 Sanjay and the accused Ramesh. Both the injuries were comparable. Whereas Sanjay had blood clots in nasal cavity, bruises and tenderness over left scapula region and abrasion over right shoulder region, as per his MLC Ex. PW14/B, accused Ramesh Kumar had lacerated wound of the size 5.0 x 0.5 cm over left prieto occipital region. Other two injuries were abrasion and tenderness over left side of thorax. No doubt, the nasal bone of PW7 Sanjay was found fractured. It is not in dispute that this was the only differentiating factor which classified the injury of PW7 Sanjay as grievous whereas that of Ramesh Kumar was not classified as grievous. The trial court also took into account the delay of 12 hours in registration of the FIR in question. Even though, the complainant and other injured were all conscious and oriented at BJRM Hospital, they refused to give their statements since they claimed to be suffering from severe pain. There was no evidence to show that they were not fit to make their statements. The statement of Sanjay was recorded with the police station only at 8/9.00 a.m. next day upon which the FIR came to be registered. Thirdly, the trial court also found the version of the prosecution with regard to arrest of the accused to be unbelievable for the reason that the accused and the injured were at the same hospital and at the same time i.e. on the night of 19/20.12.2011. The IO in both the cases was also the same and would, therefore, have been aware of the presence of the

accused in the present case in the same hospital at the relevant time.

The submission of learned APP is that the invocation of the decisions of the Supreme Court in *Jagdish* (supra) and *Shiv Charan* (supra) was misplaced for the reason that the conditions set out in the said decisions were not met in the present case. The injuries on the person of the accused were not serious and severe and they were superficial. I do not find any merit in this submission. Certainly, the injury suffered by Ramesh could not be said to be superficial. The purpose of laying down the aforesaid conditions by the Supreme Court is to rule out cases of self infliction of injuries after the incident by the accused so as to manufacture a defence.

In the present case, it is not in dispute that Sapna gave her statement on the basis of which FIR No. 207/2011 came to be registered, at about the same time, when the statement of the complainant in the present case were recorded. The injured as well as the accused in the present case and Sapna were also receiving treatment contemporaneously at the same time and at the same hospital to the knowledge of the Investigating Officer. The prosecution deliberately sought to cover up the cause of the injuries suffered by the accused and Sapna even though the IO was well aware of the same. The eye witness also did not speak about the incident which preceeded the incident which led to the suffering of injuries by the complainant and the other injured.

In these circumstances, I am of the view that the trial court was justified in placing reliance on *Jagdish* (supra) and *Shiv Charan* (supra). On the aspect of delay as well, there is no explanation as to why the complainant did not make his statement to the police at the hospital itself since he was conscious and oriented. I, therefore, find no merit in the

petition and the same is dismissed.

AUGUST 09, 2016
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VIPIN SANGHI, J