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

+ CRL.L.P. 641/2016

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP

versus

DIVYANSHU

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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05.12.2016

Crl.M.A. No. 18972/2016

Exemption allowed, subject to all just exceptions. The application stands disposed of.

Crl.M.A. No. 18973/2016

For the reasons stated, the delay in re-filing is condoned. The application stands disposed of.

CRL.L.P. 641/2016 & Crl.M.A. No.18971/2016

The petitioner has preferred the present petition to seek leave to appeal against the judgment dated 23.04.2016 passed in case FIR No.51/2015 u/s 325 IPC registered at PS Old Delhi Railway Station. By the impugned judgment, the trial court has acquitted the respondent/ accused.

The submission of learned APP is that the trial court has overlooked the fact that the accused, who was the person sitting on the booking counter of railway tickets got up from the seat, came out and assaulted the victim leading to grievous injury.

The trial court has scrutinised the evidence recorded in the case and returned the finding that the offence as alleged against the accused has not been established beyond reasonable doubt. The discussion found in the impugned judgment reads as follows:

“14. Perusal of the testimony of the Investigating Officer PW8 ASI Manzoor Hassan further elucidates the lackadaisical manner in which the investigation of the instant case has been conducted in as much as he has deposed that he made the Site Plan Ex. PW8/B without the instance of anyone and the place of incident was pointed to him by the public persons orally whose statements he didn't even bother to record. Further, admittedly, the MLC Ex. PW7/A as well as XRay report Ex. PW6/A of the complainant were not collected by PW8 on the date of incident which means that the FIR was registered prior to obtaining MLC and X ray report of the complainant. The question that arises at this juncture is that in the absence of medical record or opinion regarding the alleged injury, on what basis PW8 registered the FIR under [section 325](#) IPC which provides for punishment for voluntarily causing grievous injury. Strangely, regarding this PW8 has very casually deposed that he noticed the position of the leg of the complainant and observed fracture in the same. Furthermore, on asking about the length of the danda with which the complainant was allegedly beaten up, the Investigating Officer has stated that it was about 4 to 4.5 feet and further stated that the measurement of said danda was done by guessing the same. It is pertinent to observe herein that the Investigating officer in the instant case has conducted the investigation in blatant disregard of simple norms and has even failed to make use of the common sense giving rise to numerous infirmities and lacunae in the prosecution's case.

The investigation must be precise and focused and must lead to the inevitable conclusion that the accused has committed the crime. If the investigating officer leaves glaring loopholes in the investigation, the defence would be fully entitled to exploit the lacunae.

15. Thirdly, there are several anomalies in the testimony of the complainant PW1. PW1 Riyaz Hussain in his complaint Ex.PW1/A has stated that the accused came out of the booking office with a danda in his hand and started beating PW1 with the said danda. In his deposition before the court he has further elaborated his allegations made in Ex.PW1/A by stating that the accused came out from the booking counter with a danda in his hand and hit him on his left foot with the danda. He has further stated that the accused gave several blows of the said danda on his left foot because of which he received injuries on his foot. What is being preached by PW1 Riyaz Hussain in his testimony is totally inconsistent with his MLC Ex.PW7/A and X Ray Report Ex.PW6/A wherein it has been recorded that PW1 had suffered a fracture in his left tibia and fibula i.e the lower leg and not the foot. Further, it is pertinent to note that PW9 Dr. Manish Chadha has stated in his cross examination that the nature of injuries suffered by PW1 is such that the possibility of the same being suffered due to fall on hard surface/ bricks cannot be ruled out. Another interesting detail observed by this court is that in his cross examination PW1 Riyaz Hussain has categorically stated that while the accused was giving him beatings with the danda the other two persons i.e PW2 Mohd. Adil and PW3 Subedar Jile Singh were standing away and did not try to stop the accused. On the same lines PW2 Mohd. Adil has also deposed that at the time of incident he was standing far away and therefore could not catch hold of the accused. As per my knowledge or understanding of the human nature, if a person is being beaten up by a stranger in front of his relatives and friends than the first instinct of those relatives or friends will be to save him instead of standing at a distance and watching the same unless they harbor a hidden dislike for the said person. Further in his testimony PW1 Riyaz Hussain has stated that he has no knowledge that if any government servant is not working according to law, one should go and make a complaint against him to the superior officer. Such a thoughtless deposition coming from a witness who himself is a government servant or to be more precise a police officer, hits right at

the credibility and veracity of the witness. In the light of abovenoted incongruities in the testimony of PW1 Riyaz Hussain, this court does not consider it prudent to place reliance on the testimony of PW1.

16. Furthermore, from combined reading of testimony of PW1 Riyaz Hussain, PW2 Mohd. Adil , PW3 Subedar Jile Singh and Ex.PW1/A it is clear that all three of them reached at Shahdara Railway Station at about 05:45 to 06:00 pm and the train through which PW3 had to go to Barot was scheduled at 06:00 pm. Further, PW8 Manzoor Hassan has stated in his cross examination that the construction material was lying near the place of incident and PW1 Riyaz Hussain has also stated in his complaint Ex.PW1/A that while the accused was beating him with the danda he fell down and received injuries. In the abovenoted conspectus of facts, the version of the accused that PW1 wanted a ticket without queue, using his official position, does not seem to be highly improbable because if the train was scheduled for 06:00 pm and there was heavy rush for tickets, PW3 would not have been able to board the train on time had he alongwith PW2 and PW1 kept standing in the long queue waiting for his turn for reservation of ticket. Further, PW9, Dr. Manish Chadha has deposed that it is possible to have suffered the alleged injury due to fall on hard surface/ bricks. Moreover, the contention of the Id. Counsel for accused that the Investigating officer and other police witnesses have favored the complainant as he was working as a constable in Delhi Police cannot be overlooked altogether.

17. Lastly, it is evident from the record that the medical examination of the accused was not got conducted by the IO despite the nature of allegations. It is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused”.

A reading of the aforesaid extract from the impugned judgment leaves no manner of doubt that the trial court has comprehensively marshalled the evidence. The view taken by the trial court cannot be said to be perverse or

one which could not have been arrived at by the trial court. The same is highly a probable view. I, therefore, find no merit in this petition. Dismissed.

VIPIN SANGHI, J

DECEMBER 05, 2016

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