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

+ CRL.L.P. 634/2016
STATE

..... Petitioner

Through : Mr. Tarang Srivastava, APP with SI
Puneet Grewal PS Aman Vihar.

versus

SUNNY @ KALA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **14.03.2017**

Crl.M.A.18706/2016 (Delay)

For the reasons as stated in the application, delay is condoned.

Application is disposed of.

CRL.L.P. 634/2016

Petitioner seeks leave to appeal against the judgment dated 25th May, 2016 passed by Learned Additional Sessions Judge, Fast Track Court, North-West District, Rohini, New Delhi; whereby respondent has been acquitted of charges under Sections 392/506-II/397/411/34 IPC and Section 27 of the Arms Act.

On appreciation of evidence, which had come on record, trial court has concluded that prosecution case suffers from material contradictions and

inconsistencies which goes to the root of the matter and has shaken the foundation of the prosecution case. It has been noted that there is an inordinate delay in registering the FIR, which has remained unexplained. There was delay of about eight hours in registering the FIR. One of the witnesses claimed that he was present at the spot and police arrived there in his presence, but still his statement was not recorded almost for twenty days. As per the witnesses, CCTV camera was installed at Roop Chand Hospital, which was adjacent to DMS booth, where the incident took place, inasmuch as, CCTV footage was seen and seized but the same was not produced in Court nor was a part of judicial record.

I find the view taken by trial court to be a possible view, inasmuch as, same does not suffer from any infirmity. Admittedly, there is a delay of about 8 hours in registering the FIR, which has remained unexplained without any cogent reason. I also find that the statements of the witnesses are inconsistent.

As per PW-9 Rohit Kumar, he was present at his DMS booth on 19th August, 2014 at about 6:00 am, when respondent came in a Swift Dzire Car, forcibly entered his booth along with two other persons (whose identity could not be ascertained during the investigation) and robbed the mobile

phone, purse and cash amounting to ₹16,500/-. Respondent was armed with a pistol like object and he slapped him. While respondent and his associates were leaving, PW-8 Ravi came there and tried to apprehend them. All the three offenders threatened him also. However, FIR was registered in the afternoon. Interestingly, statement of PW-8 Ravi was not recorded immediately. His statement was recorded after about 20 days.

PW-8 has claimed that immediately after the incident, police was informed and PCR officials and local police officials had come to the spot in his presence and he stayed there for about 20-25 minutes. However, this statement of his is contrary to the statement of other witnesses, that is, PW-9 Rohit and his father PW-5 Bhupinder.

PW-5, Bhupinder has a different story to tell. He has stated that at about 12 o'clock, one person came to his tea stall and informed that a quarrel had taken place at the DMS dairy of his son. He immediately reached there and saw his son Rohit (PW-9) in a shocked state and his clothes in a torn condition. His son's cheeks were red apparently because someone had beaten him. His son then informed him about the incident. After coming to know about the incident, he informed the police by dialling 100 number. As per the DD No.40B Ex.PW-3/A, police learnt about the

incident at about 1:00 pm. This is contrary to the statement of PW-8, who has deposed that police was informed immediately and PCR and local police officials arrived at the spot immediately thereafter. PW-8 Ravi has not deposed about the arrival of PW-5 at the spot.

Delay in this case has remained unexplained and leads to manipulation and tutoring. Delay in recording the statement of PW-8 Ravi, though available at the relevant time for giving a statement, also leads to suspicion regarding manipulation.

PW-9 Rohit Kumar has deposed that police had also seized the CCTV footage from the hospital, which contained the movements of the accused persons, however in his cross examination, he contradicted himself and deposed that he did not tell about the CCTV to the police. He claimed that he had seen such a footage one or two days after the incident. PW-10 Ct. Sandeep, in his cross examination, admitted that CCTV cameras were found installed in the hospital situated adjacent to DMS booth but he did not remember whether CCTV camera had captured any such activity at the DMS booth. PW-12 ASI Suresh Kumar has admitted that complainant had revealed about the CCTV installation at Roop Chand Hospital. He also admitted that they had seen such CCTV footage and the same corroborated

the version of PW-8 Ravi. He claimed that CCTV footage was taken in possession by SI Harender Kumar. However, PW-13 SI Harender Kumar did not whisper even a single word about the CCTV footage.

For the foregoing reasons, I am of the view that trial court has rightly extended the benefit of doubt to respondent and has acquitted him.

Petition is dismissed.

A.K. PATHAK, J.

MARCH 14, 2017/dk