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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 681/2016
STATE

..... Petitioner

Through: Mr. Mukesh Kumar, APP with SI
 Sumer Chand

versus

AMZAD KHAN & ANR.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
02.01.2017

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Crl.M.A. No. 20259/2016

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

CRL.L.P. 681/2016 & Crl.M.A. No.20258/2016 (seeking condonation of 27 days delay in filing the leave petition)

1. I have heard learned counsel for the petitioner and since I am not inclined to issue notice in the leave petition, no useful purpose would be served in issuing notice in the delay application.
2. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 22.07.2016 passed by the ASJ-Central-03

in SC No.35/2015 arising out of FIR No.292/2014 under Section 323/341/308/34 IPC.

3. By the impugned judgment, the Trial Court has acquitted the respondent/ accused by giving the benefit of doubt to the accused. A perusal of the impugned judgment shows that the Trial Court has acquitted the accused primarily on account of several material contradictions emerging in the statement of the prosecution witnesses, particularly the complainant/PW-1 and the other witnesses.

4. The submission of learned counsel for the petitioner is that the complainant/PW-1 was a minor girl aged about 15 years. He further submits that the presence of the accused at the site of occurrence is not even in dispute. According to the petitioner, the contradictions taken note of in the impugned judgment on the basis of which the respondent being acquitted are not material.

5. Having heard learned counsel for the petitioner and perused the impugned judgment, I am of the view that the Trial Court has carefully marshalled and analysed the evidence before arriving at the impugned decision. There appears to be no patent error in the impugned judgment insofar as the appreciation of evidence is concerned.

6. The discussion in the impugned judgment with regard to the contradictions in the case of the prosecution reads as follows:

“22. Admittedly, the alleged incident took place on 25.06.2014 but the FIR was registered on 27.06.2014. The delay has not been explained by the prosecution satisfactorily. PW1, the complainant in her examination in chief claimed that on 27.06.2014 at the PS, her statement Ex. PW1/A was recorded but in her cross examination, she replied that at about 10.30 p.m., the police personnel from PS Nabi Karim had come to see

her at RML Hospital where her statement was recorded by the police. The so-called explanation that she was not feeling well and as such, she could not make a statement on 25.06.2014 is found mentioned in her statement Ex. PW1/A but same is missing from her deposition as such. Rather, she claimed that her statement was also recorded in RML Hospital by the police of PS Nabi Karim and as per MLC prepared at RML Hospital, she was admitted there on 25.06.2014 at about 10.30 p.m.. IO PW-10 has also given his explanation that the complainant was not feeling well and she stated that she would make her statement later on but the said version of the IO is also contradicted by the said deposition of the complainant as PW1 and the said MLC. Thus, I am of the considered opinion that the delay in lodging FIR has not been explained by any cogent reason giving rise to a doubt about the manipulation of the case coupled with other circumstances of the case.

23. The deposition of PW-1, the complainant Ruksar, is self contradictory in many respects. In her statement to the police on which the FIR was registered, Ex.PW1/A, she has not mentioned the fact that she became unconscious due to receiving injury by an iron rod given by the accused Amzad. In her examination in chief, the fact of her becoming unconscious is missing but in her cross examination, she deposed that when her brother in law had come, she was unconscious because the accused had hit her with iron rod and that was why, she could not tell as to who called the police nor she claimed that quarrel took place with her mother and brother in law in her presence. She did not know as to when the police had come. She replied that she regained consciousness in the RML Hospital at about 10.00 p.m. and as such, she did not know as to whether, she was taken to the hospital by her mother or the police or that she was firstly taken to Lady Hardinge Hospital.

24. Similarly, the version of the PW-2 Fahim is also self contradictory because in his examination in chief, he claimed that police at phone no.100 was called by his mother in law whereas in his cross examination dated 9.11.2015, he claimed

that he had called the PCR, which arrived after his call and that before he informed the PCR, his sister in law had already sustained injuries.

25. In the same manner, the deposition of PW3 Smt. Zannati is also self contradictory as in her examination in chief she claimed to have seen a quarrel going on between her daughter Ruksar and accused Amzad, Gudia and their family members and accused Amzad had accused injuries on the head of her daughter Ruksar, whereas in her cross examination, she specifically answered that no quarrel with her daughter Ruksar took place in her presence and the same had already been finished before she reached at the spot.

26. The said self contradictory depositions of the said three witnesses create a grave suspicion in the story of the prosecution.

27. Now, coming to the material contradictions in the deposition of the PWs. PW1 has claimed her deposition that she became unconscious after receiving the iron rod injury given by the accused Amzad but PW2 Fahim did not talk about her unconsciousness in his deposition anywhere. Further, PW1 claimed in her cross examination that when she was in RML Hospital, at about 10.30 p.m. police had recorded her statement, whereas PW2 clearly denied the same by saying that on 25.06.2014 neither his nor the statements of her sister in law and mother in law was recorded by the police. PW2 Fahim for the first time in his deposition introduced a third accused namely, Salman in his examination in chief, whereas PW1 and PW3 are silent about it and they nowhere took the name of Salman as one of the assailants. Furthermore, the fact as to who called the police after the alleged incident has been deposed by the said three witnesses giving different versions. PW1 answered that she had not called the police and either her mother or brother in law had called the police. PW2 in his examination in chief claimed that his mother in law had called the police whereas in his cross examination dated 9.11.2015, he

claimed to have called the police by a phone call, yet PW3 has another story with regard to the said fact, who answered in her cross examination that one Pappi had called the police. Further contradiction is that PW1 claimed that she went to the PS straight after discharge from the hospital and her statement was not recorded at that time in the PS and she was referring to the date as 25.06.2014, whereas PW3 in her cross examination claimed that her daughter Ruksar remained admitted in RML Hospital for about one week and the papers regarding discharge were given from the hospital. PW1 claimed that she was not discharged from the hospital but she herself came out of the hospital and straightaway went to PS whereas PW3 claimed that PW1 remained in the hospital for one week and discharge papers were also given by the hospital. PW1, PW2 and PW3 claimed in their respective depositions that it was police of PCR, who removed the injured persons to the hospital, whereas the IO PW10 had specifically answered that the injured person was not shifted to the hospital by PCR. Although, PW1 and PW3 claimed that there was only one object i.e. weapon of offence in the hand of one accused i.e. Amzad whereas PW1 in his examination in chief clearly deposed that accused persons were having some objections in their hands by which they caused injuries and he was not sure if it was of wood or iron.

28. All the above said contradictions in the respective depositions of the alleged victims. Eye witnesses go to the root of the matter and created a reasonable doubt as to the truthfulness of the story.

29. Matter can be looked into from another angle. PW1 specifically claimed that on 25.06.2014 when she was in RML Hospital at about 10.30 p.m. police of PS Nabi Karim came there and her statement was also recorded. Admittedly, the said statement is not on the judicial record. PW1 in his cross examination claimed that he got a complaint typed on 26.06.2014 which was perhaps signed by her sister in law and mother in law and he had given the said complaint after being

typed by one Gupta. Again, this typed complaint is also not on the judicial record.

30. Admittedly, the iron rod with which the alleged injury was caused by the accused Amzad to PW1 was never produced before the court nor was shown to PW1, PW2 and PW3, so that they could have identified the same.

31. Last but not the least, the IO did not produce the MLCs of the accused and other persons, which were prepared on the same night intervening between 25.6.2014 and 26.6.2014 which were duly proved by the doctor PW7 which go to establish that accused Amzad Khan, one Mohd. Quamuddin, accused Gudia and one Wazibunisha also received injuries on their respective persons vide MLCs Ex. PW7/DA, Ex. PW7/DB, Ex. PW7/DC and Ex. PW7/DD. How the accused and the said persons and in what manner and circumstances, received injuries has not been explained by the prosecution or by the IO.”

7. From the aforesaid extract, it appears that, firstly, the prosecution could not explain the delay in registration of the FIR. The earliest statement of the complainant/PW-1, which she stated to have given to the police at RML Hospital was never produced. According to the prosecution, the complainant claimed that she was not physically well and she could not make a statement on the date of the occurrence i.e. 25.06.2014. However, this position was not substantiated by the medical record to say that she was not fit to make the statement.

8. During her cross examination, PW-1 claimed that she became unconscious on account of receiving an injury with an iron rod on her head. However, this position was not disclosed in her statement to the police, on the basis of which the FIR came to be registered. She did not state so even in her examination in chief.

9. There was contradiction in the statement of PW-2 as well with regard to the identity of the persons who had called the police by dialling number 100. PW-3 also contradicted herself. In her examination in chief, she claimed that she saw a quarrel going on between her daughter and the accused and their family members and that the accused had caused injury, whereas in her cross examination she specifically stated that no quarrel took place in her presence and that the same was already finished before she reached the spot.

10. As would be seen from the above extract, there are several other contradictions taken note of by the Trial Court. Pertinently, the accused were also injured in the incident. However, their MLC were not produced by the prosecution.

11. In the aforesaid circumstances, in my view, there is no reason to interfere with the impugned judgment. Dismissed.

VIPIN SANGHI, J

JANUARY 02, 2017

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