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

+ CRL.L.P. 649/2016 and Crl.M.A. No. 19217/2016

STATE (GOVT OF NCT OF DELHI) Petitioner

Through: Mr. Mukesh Kumar, APP

versus

CHAMAN LAL & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

17.01.2017

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The State has preferred the present leave petition to seek leave to appeal against the judgment dated 19.05.2016 passed by the learned Metropolitan Magistrate - 04(SE), Saket Courts, in case titled, 'State Vs. Chaman Lal & Anr.', bearing case No. 625/2/12 having unique case ID No. 02406R0168042011 arising out of FIR No. 145/10 under Sections 325/341/34 IPC registered at police station Chittranjan Park. By the impugned judgment, the accused have been acquitted of the charges by the trial court.

A perusal of the impugned judgment shows that the trial court has marshalled the evidence led by the prosecution and after analysing the same pointed out several contradictions that has been found in the testimony of the prosecution witnesses raising a doubt with regard to the involvement of the accused in the commission of the offence. The contradictions which the trial court has found in the case of the prosecution are the following:

“i) Though, according to PW-6, on 15.06.2010, he along with both his sons PW-1 and PW-2 was residing at F78, Kalkaji New Delhi, however, according to PW-2 on the said date he was residing at L2, 119B, DDA Flats, Kalkaji. Thus, if the statement of PW-2 is to be believed, then PW-6 could not have been aware of the fact that PW-2 had not returned home till 10:00 PM on the date of alleged incident.

ii) There is contradiction in testimony of PW-1 and PW-6 on the one hand and of PW-2 on the other as to place of alleged beatings given by accused to complainant. Though, as per PW-1 and PW-6, beatings were given by accused to PW-1 at Jalebi Chowk, but as per PW-2 beatings were given by accused near Shivalik Apartments where they were having arguments in the first instance.

iii) As per PW-1, he refused to give the statement to the police on two occasions when the police visited him between 15.06.2010 and 22.06.2010 on the ground that his father had gone out of station and that he would give the statement after consulting him, whereas, as per PW-2 his father had been going to his office and returning home on a regular basis after the alleged incident.

iv) In his examination in chief, it was deposed by PW-1 that PCR van shifted him to Trauma Centre, AIIMS, however, during his cross examination he has deposed that the police persons had not gone to hospital with them. On the other hand, PW-2 deposed that he along with his father took the complainant to their residence and police did not accompany them to their residence. He also deposed that his father i.e. PW-6 was driving the car when they reached at their residence. PW-6, on the other hand deposed that he along with complainant and three police officials went to hospital.

v) According to complainant, he had come to know about the name of one of the accused viz., Chamanlal since the said accused while beating the complainant kept on saying “don't you know me. I am Chaman Gujjar”. Admittedly he was not knowing the accused before the date of incident, hence, how could the complainant have informed PW-8 i.e. the IO that

accused chaman lal was residing somewhere near Kalkaji Park as deposed by PW-8.

vi) As per MLC, the complainant was not found in casualty meaning thereby that he had left the hospital without permission, but the complainant has denied the said suggestion during his cross examination.

vii) PW-2 deposed that on the next day of the incident, he along with his father visited the police station, however, there is no explanation as to why the complaint was not given by them to the police on that day.”

The trial court has also found that the complaint in question was lodged belatedly since the incident is of 15.06.2010 whereas the complaint was made on 22.06.2010, though, DD entry was recorded on the date of the incident itself. The Trial Court also took note of the fact that the accused were allegedly not known to the complainant and the other witnesses. In spite of that, they were not subjected to judicial TIP. There was also contradiction found with regard to the manner in which the accused were arrested. PW 6 deposed that both the accused were arrested by the IO in his presence vide arrest memos Ex.PW6/A and Ex.PW6/B, whereas, as per the IO, only the complainant was present at the time of arrest of the accused persons and neither PW2 nor PW6 was present when the accused were arrested. The blood stained clothes of the victim PW1 were not seized nor the weapons of the offence i.e. the rod or lathis were seized. As per the version of PW1, he was beaten by the accused with lathis/sticks till they were broken. Even the broken pieces of the sticks/lathis had not been seized or produced in evidence. The police officer who had allegedly seen the accused ran away had also not been examined by the prosecution. Lastly, the doctor who had given the opinion on the MLC certifying the nature of

injuries as grievous has not been examined by the prosecution. As per the x-ray report, no fracture was seen on right elbow, forearm, thigh and leg. No x-ray film has been produced before the Court. The Trial Court, therefore, concluded that the nature of injuries was not proved to be grievous.

The submission of Mr. Mukesh Kumar, learned APP is that PW10 had proved the medical report of the injured. He submits that at times, the doctor who may have prepared the MLC may not be available at the time of leading evidence. He has also read the testimony of PW10 before the Court. The said testimony is only premised on the MLC prepared by the doctor who had examined PW1-the injured. At the highest, the same can only be of use to establish the fact that MLC had been prepared by the concerned doctor, however, as noticed by the Trial Court, there was nothing to conclude that this injury suffered by the injured PW1 were grievous since the x-ray report did not show fracture in the right elbow, forearm, thigh and leg and no x-ray film has been produced before the Court.

Having perused the impugned judgment, I am of the view that the view taken by the trial court is probable view and since two views may have been possible, I am not inclined to interfere in the impugned judgment.

For the aforesaid reasons, the petition is dismissed. The application seeking condonation of delay is also dismissed.

VIPIN SANGHI, J

JANUARY 17, 2017

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