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

+ **CRL.L.P. 722/2017**

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP with W/
Inspector Vipnesh, Police Station
Vijay Vihar, Delhi.

versus

JASWANT @ SADHU & ANR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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21.12.2017

Crl. M.A. No.20701/2017 (Exemption)

Exemption is allowed subject to all just exceptions. Application stands disposed of.

Crl. L.P. No. 722/2017 & Crl. M.A. No. 20700/2017 (Condonation of delay in filing the accompanying petition seeking criminal leave to appeal)

The aforesaid leave petition has been preferred belatedly to seek leave to appeal against the judgment dated 05.08.2017 delivered by the learned Additional Sessions Judge -02, (North) Rohini Courts, Delhi in case

No.57817/16 arising out of FIR No. 113/2010 at Police Station Vijay Vihar, under Section 307/34 of IPC. The two accused have been acquitted by the trial court on the ground that the testimony of complainant/injured/PW-5-Deepak was full of several contradictions, inconsistencies and improvements. The same was not found credible and reliable. Thus, the guilt of the accused was not established beyond reasonable doubt.

The case of the prosecution, in brief, was that on 31.03.2010 at about 10.10 PM, an information was received vide DD No.77B regarding the incident of stabbing to one person, near Deshi Sarab Ka Theka, Jai Durga Iron Store, Budh Vihar, Phase II, Delhi, and on receiving the DD, HC Rakesh alongwith Ct. Sanjay reached the spot, where they came to know that the injured has already been shifted to Sanjay Gandhi Memorial Hospital. The two injured persons, namely, Deepak and Dalip were found admitted vide MLC No.4553/2010 and 4500/2010. Their statements were recorded and on the basis of the statement of Deepak, the aforesaid FIR came to be registered.

The prime witness of the prosecution was Deepak (PW-5). In his complaint (Ex.PW-4/A), Deepak stated inter-alia, as follows:

“On 31.03.2010 he was going to Budh Bihar to meet his friend Anuj and at about 8.30 PM, he reached Rana Wali Gali, Budh Vihar Phase II, where he met with Sh. Dalip and Kamli where he along with them started taking liquor.

At about 9 PM Jaswant @ Sandhu came there and he had an altercation with him then he (Deepak) had beaten him (Jaswant @ Sadhu) and when Dalip tried to save

him, Dalip also got injured. Thereafter, Jaswant @ Sadhu left from there threatening him.

At about 9.30 PM, when he had reached in front of Durga Hardware, Jaswant @ Sadhu came there along with his two associates including one Jat Ram (@ Sandeep) and other to whom he did not know.

They surrounded him and Jaswant @ Sadhu assaulted him with a Chhura and Jat Ram also hit him on his head and other part of body with a hockey stick and the third boy also injured him with some sharp article.”

However, when he was examined as a witness before the court, he had a different story to tell. He, *inter alia*, stated as follows:

“On 31.03.2010, I was coming back to my home on my bike from the house of my friend. At about 8.30 PM when I reached Rana Wali Gali, Budh Vihar, Phase II, when I passed the gali, I noticed that Dalip and Kambli were taking the liquor in a vacate plot near Rana Wali Gali.

Accused persons called me. I got down from the bike. Accused Sadhu passed a comment upon me. Sadhu had come from back side. Accused Babu, brother of HIV and Jatram and Ranjeet, elder brother of Sadhu also came there and they dared me to stop there. I did not stay there and started to my house on my bike.

I was given the beatings by accused Jatram @ Sandeep by Hockey. Accused Sadhu @ Jaswant was having some sharp weapon and caused injuries to me with this weapon. When they were trying to give a blow to me, I tried to save myself.

Both the accused persons in the court had given beatings to me on all over my body including stomach, on face etc. I became unconscious. At that time, brother of accused Jaswant @ Sadhu namely Randhir was also

present who had caused injury to me.:

The trial court has appreciated the evidence in the case, particularly that of PW-5 and has set out in para 15, the several discrepancies, contradictions and omissions in the said statement to doubt the case of the prosecution premised on the complaint and testimony of the complainant PW-5. The contradictions/omissions, exaggerations and improvements have been tabulated in the impugned judgment, which read as follows:

S.No.	Complaint Ex. PW-4/A of Deepak	Testimony of PW5 Deepak	Discrepancies
1.	On 31.03.2010 he was <u>going to</u> Budh Vihar to meet his friend Anuj.	On 31.03.2010, I was coming back to my home on my bike from the house of my friend.	Contradiction.
2.	<u>At ;about 8.30 PM, he reached Rana Wali Gali, Budh Vihar, Phase II, where he met with Sh. Dalip and Kamil where he along with them started taking liquor.</u>	<u>At about 8.30 PM, when I reached Rana Wali Gali, Budh Vihar, Phase II, when I passed the Gali, I noticed that Dalip and Kambli were taking the liquor</u> in a vacate plot near Rana Wali Gali.	Contradiction
3.	<u>At about 9 PM Jaswant @ Sadhu came there and he had an altercation with him then he (Deepak) had beaten him (Jaswant @ Sadhu) and when Dalip tried to save him, Dalip also got injured. Thereafter, Jaswant @ Sadhu left from there threatening him.</u>		Omissions
4.	<u>At about 9.30 PM,</u>	Accused persons called	1. Contradiction

	when he had reached in front of Durga Hardware, <u>Jaswant @ Sadhu</u> came there along with his two associates including one <u>Jat Ram (@ Sandeep)</u> and other to whom he did not know.	me. I got down from the bike. Accused Sadhu passed a comment upon me. Sadhu had come from back side. <u>Accused Babu, brother of HIV and Jatram and Ranjeet, elder brother of Sadhu</u> also came here and they dared me to stop there. I did not stay there and started to my house on my bike.	2. Exaggerations. 3. Improvements on 1. Manner of occurrence 2. Number of assailants.
5.	They surrounded him and Jaswant @ Sadhu assaulted him with a Chhura and Jat Ram also hit him on his head and other part of body with a hockey stick and the third boy also injured him with some sharp article.	I was given the beatings by accused Jatram @ Sandeep by Hockey. Accused Sadhu @ Jaswant was having some sharp weapon and caused injuries to me with this weapon. When they were trying to give a blow to me, I tried to save myself. Both the accused persons in the court had given beatings to me on all over my body including stomach, on face etc.	1. Contradiction. 2. Exaggerations. 3. Improvements On 1. Manner of inflicting injuries 2. Number of assailants 3. The weapons used. 4. The part of the body aimed.
6.		I became unconscious. At that time, brother of accused Jaswant @ Sadhu namely <u>Randhir</u> was also present who had caused injury to me.	Omissions

The submission of Mr. Katyal is that there was no reason for the injured/complainant/PW-5 to falsely implicate the accused and to let go off the actual assailants.

The impugned judgment shows that there was past enmity between the injured and the accused, and both the victim and the accused had other cases against them. In view of the aforesaid, this submission of Mr. Katyal cannot be accepted. We find no reason to interfere with the impugned judgment.

Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

DECEMBER 21, 2017

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