

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

% Decided on: 12th February, 2018

+ **CRL.L.P. 23/2017**

STATE

..... Petitioner

Represented by: Mr. Amit Gupta, APP for State
with SI Rajender Singh, PS
Malviya Nagar.

versus

WASIM @ SONU

..... Respondent

Represented by: Mr. Khalil A. Ansari,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition State seeks leave to appeal against the judgment dated 29th July, 2016 acquitting the respondent for offences punishable under Sections 394/397 IPC.

2. FIR No. 77/2015 under Sections 394/397 IPC was registered at PS Malviya Nagar, New Delhi on the statement of Mohd. Sahil (PW-2) who stated that he was studying in 10th standard and residing with his parents. On 13th January, 2015, at around 10.00 PM his father gave him a note of ₹1,000/- and asked him to bring articles from the shop. According to Mohd. Sahil, respondent who was residing in the neighbourhood on seeing the money in his hand tried to snatch the same. When he did not give the note to Wasim, he started beating him and injured his right side of the neck with the help of a blade. On hearing the cries his brother Shajeb (PW-7) came and took him to the hospital. Though in his examination-in-chief Mohd. Sahil stated as per his version in the FIR however, in cross-examination he

admitted that his two friends were present when respondent robbed him and gave him the blow of the blade and that his brother and brother's friend was at a distance and came later. He further stated that at the time of incident, Wasim was under the influence of liquor.

3. According to Shajeb (PW-7) the brother of the injured, he was sitting on his motorcycle with his friend when he noticed Wasim @ Sonu coming under the influence of liquor moving his hands in different directions. His mother called him inside the house and when he reached the chowk he noticed Wasim returning alone from his house and his brother was also coming out of the house. Then, he saw Wasim started grappling his brother. He reached the spot when Wasim ran away. Then, they took Mohd. Sahil to the hospital at Malviya Nagar.

4. Mohd. Amir who appeared as PW-6 gave another version that Wasim @ Sonu was under the influence of liquor and his mother was taking him to her house. According to him when Mohd. Sahil was coming out from his house to purchase grocery Wasim also reached there and an altercation took place and Shajeb tried to free Sahil and as his blood was oozing out he took him to the hospital.

5. Learned Trial Court noted that the injury was a lacerated wound and not an incised wound by a blade and though Shajeb witnessed the incident he did not state about the injury inflicted by respondent. Though Shajeb and Mohd. Amir claimed that they separated the accused from the injured, however, as per the injured both came after five minutes when the accused had already run away after snatching ₹1,000/-. Further no opinion was rendered by the doctor opining that the injury on Sahil could be caused by use of blade. Admittedly the respondent was in an inebriated condition and

was held by his mother who was taking him inside the house. This part of the categorical testimony of the witnesses does not reconcile to the subsequent events. Further neither ₹1,000/- nor the blade was recovered from the respondent despite he being arrested from his house immediately after the incident. Moreover, as per Shajeb, after the police found the respondent they went to Police Station Malviya Nagar and then to Trauma Centre, whereas as per injured they went to the Hospital directly.

6. Considering the overall contradictory testimonies of the witnesses, the learned Trial Court acquitted the respondent. This Court also having considered the version of the witnesses which have inherent contradictions therein is of the opinion that the view expressed by the learned Trial Court is a plausible view, thus warrants no interference.

7. Leave to appeal is declined.

8. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 12, 2018

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