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

+ CRL.L.P. 369/2018

STATE (GNCT OF DELHI)

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State
SI Naveen Kumar, PS Crime Branch

versus

VICKY BAJAJ

..... Respondent

Through:

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

ORDER
29.05.2018

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Crl. M.A. No. 10679/2018

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

CRL.L.P. 369/2018 & Crl. M.A. No. 10678/2018

The State has preferred the present leave petition to seek leave to appeal against the judgment dated 03.02.2018 passed by the Learned ASJ/Pilot Court/North District, Rohini Courts: Delhi in Sessions Case No.315/2017 arising out of FIR No. 862/16, under Section 302/201/120B/34IPC, registered at P.S. Shahbad Dairy. The present leave to appeal is directed against that part of the judgment whereby the

accused No. 4— Vicky Bajaj was acquitted of the charge framed against him under Section 201IPC. So far as Vicky Bajaj is concerned, he was only charged under Section 201IPC.

A perusal of the impugned judgment shows that insofar as the recovery of the denim jacket at the instance of Vicky Bajaj is concerned, the same stands established. However, the Trial Court has observed that the said jacket could not be connected with the crime, namely, the murder of Jogender Singh, s/o Jain Narayan and Munesh, w/o Jitender. The discussion in this respect found in the impugned judgment in paragraph 501 reads as follows:

“So far as recovery is concerned keeping in view the testimony of PW-29 and PW51 the recovery is established. No doubt that no public witness was joined but Kartik himself is a public witness and he deposed about the recovery. But in my opinion simple recovery will not serve the purpose as the case of the prosecution was that this Jacket was of Jeet Dahiya which Vicky Bajaj cleaned or washed so that no blood could be detected on the same. Prosecution has failed to bring on record any evidence that this jacket was worn by Jeet Dahiya. In the CCTV footage also the witnesses has said that Jeet Dahiya was wearing Jacket but it has come in the testimony of PW-1 that the Jacket they (Jeet Dahiya and Vijay Dahiya) were wearing was of leather and not of denim. The jacket was also not shown to PW-1, PW-8 or PW-15 that Jeet Dahiya was found wearing this jacket either on 09.12.2016 showing that this jacket belong to Jeet Dahiya or on 10.12.2016 when Balvinder had seen him in the office or that Jeet Dahiya is found wearing this jacket in the CCTV footage hence, in my opinion the prosecution though proved the recovery of this jacket at the instance of Vicky Bajaj but at the same time failed to establish that this jacket is of Jeet Dahiya. The onus was on the prosecution to prove and establish this fact which the prosecution has failed.”

The aforesaid discussion shows that though the recovery of the denim jacket at the instance of the accused-Vicky Bajaj stands established, no evidence was led on behalf of the prosecution to establish that the same denim jacket was the one worn by the accused-Jeet Dahiya at the time of the commission of crime.

On this aspect, learned APP has not been able to point out any evidence in support of the case of the prosecution against the accused-Vicky Bajaj.

For the aforesaid reasons, we are not inclined to interfere with the impugned judgment insofar as the accused no. 4— Vicky Bajaj is concerned. The petition is, accordingly, dismissed. However, our judgment shall not come in the way of the other accused in respect of the appeal preferred by them.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 29, 2018

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