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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 454/2018 & CrI. M.A. No.28132/2018

STATE

..... Petitioner

Through: Mr. Amit Gupta, Additional Public
Prosecutor for the State with SI Manmeet
Singh, P.S. Ranjeet Nagar.

Versus

RAMU

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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20.07.2018

This petition seeks leave to impugn an order dated 11.04.2018 acquitting the respondent for offence under sections 392/397/34 IPC. The Trial Court had reasoned as under:-

“22. On perusal of record It reveals that there are material contradictions in the statement of witnesses when these testimonies are tested in persuasion of the documents placed on record. As per document Ex.PW3/A it reveals when accused Ramu and co-accused Shanker (now deceased) had ran away from the spot after committing the offence both the accused were caught hold by the person of Gujrati Mohalla Katputli Colony, Delhi and when co-accused Shanker (now deceased) starting inflicting injury on his skull (head) with a blade then the people of Gujrati Mohalla Katputli Colony, Delhi and complainant had set free both the accused persons. But on perusal of MLC of co-accused Shanker (now deceased) Ex.PW5/A it reveals that there was no sharp edge injury on the skull of Shanker (now deceased) and there are some abrasions

on the skull, There is one another fact in the statement Ex.PW3/A which gives rise to doubt to the case of prosecution regarding connectivity of accused Ramu with the alleged offence. In the statement Ex.PW3/A it reveals that the persons of Gujrati Mohalla, Katputli Colony, Delhi knows accused Ramu then the doubt arose as to why the investigating officer has not approach the persons of Gujrati Mohalla, Katputli Colony to know regarding the residence address of accused Ramu because persons of Gujrati Mohalla, Katputli Colony knows accused Ramu and then definitely they may also know the address of accused Ramu. The complainant himself has come to know regarding the name and the vicinity where accused Ramu was residing. The PW3 / complainant has deposed in his cross examination that 5-6 persons had reached at the spot when call was made for commission of offence. On the other hand, 10 of the case deposed that only he and one Constable along with him had gone at the spot. There is also variation of time of reaching of 10 at the spot as 10 deposed that he had reached at the spot at 5:15 AM while he deposed in his examination in chief that call was made at about 5:55 which creates doubt regarding the recording of statement of complainant at the spot and completing the documentation at the spot.

23. So far as the fact of arrest of accused Ramu is concerned. The PW4 has deposed in his examination in chief that accused Ramu was arrested on the basis of disclosure statement of accused Shanker (now deceased). But the disclosure statement Ex. PW3/F of accused Shanker (now deceased) does not disclosed the fact that he could get arrest accused Ramu or disclosed his address. The document prepared in the presence of complainant/ PW3 is also doubtful as witness deposed that he does not remember whether the document prepared were blank or not. It has come on record that the public persons were also present when both the accused persons were arrested. But they have not been joined in investigation.

24. So far as the recovery of one saria from the possession of

accused Ramu is concerned, As per prosecution, the saria was recovered from the dub of the pant of accused Ramu. It reveals from the examination of 10 that the rod which was 1ft and 2 1/2 inch of length then it is not possible to keep the rod in pant's dub because it will skip from the dub without any support.

25. So far as recovery of Rs.500/- from the accused Ramu is concerned, As per the story of prosecution and document Ex.PW5/B, the accused Ramu is a drug/smack addict and in that circumstances it is not believable that a drug addict will keep Rs.500/- with him since morning till late evening instead of spending the same. Moreover, at the time of recovery of Rs.500/- the number of note was not mentioned by the 10 in the recovery memo Ex PW3/G. The site plan of arrest of accused Ramu was not prepared by the 10 which is also a dent in the prosecution case.

26. So, keeping in view the facts as brought on record a doubt has been created whether accused Ramu has committed the alleged offence with which he has been charged. The settled preposition of law is that 100 culprits may escort free instead of conviction of an innocent person. When a doubt has come regarding the fact whether offence has been committed by an accused or not in that circumstances the benefit of doubt must go in favour of accused. Accordingly, the accused Ramu is acquitted for the offence U/s 392/397 IPG by giving him the benefit of doubt.”

From the aforesaid, what emanates is that there is discrepancy in the prosecution's case about the time of the alleged incident i.e. either it was 5:15 a.m. or at 5.55 a.m. as per the complainant or the Investigating Officer concerned, respectively. Furthermore, the accused is supposed to have been caught hold by 4-5 residents at Gujarati Mohalla, however, he was let off since he started inflicting injuries upon his own head. But if he was known

to the persons who had so caught him, they all would have also known as to where he had resided in the said locality. However, this version conflicts with the prosecution's own evidence that the accused was caught by the Investigating Officer and a Constable, at mohalla. There is further discrepancy in the prosecution's case inasmuch as the respondent is stated to have been caught on a disclosure made by Shanker (since deceased). However, the impugned order pertinently notes that in his statement, Shanker had never stated that the respondent had been caught at his behest. Therefore, there is clear break in the chain of events to link the accused.

Lastly, the impugned order records and rightly, so that the ustura – barber's scalpel - the weapon of assault, was never found and the Court disbelieved the charge that a foot long iron rod with a width of 2 1/2 inches could be kept in the inseam of a trouser. If that was so, then an especially fashioned "inseamed trouser" would have been produced in evidence.

In view of the above, the Court finds no plausible reason for allowing the leave petition. It is dismissed. The pending application also stands dismissed.

NAJMI WAZIRI, J.

JULY 20, 2018

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