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

+ CRL.L.P. 522/2018

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP with SI
Karamvir, PS Narela

versus

AZAD SINGH & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

09.08.2018

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Crl. M.A. No. 29657/2018

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

CRL.L.P. 522/2018 &Crl. M.A. No. 29656/2018

The state has preferred the aforesaid petition to seek leave to appeal against the judgment dated 21.03.2018 rendered by Ld. Additional Sessions Judge-04 (North), Rohini Courts, Delhi in sessions case no. 57485/2018 State v. Azad Singh arising out of FIR No. 107/2017 registered at PS Narela under Sections 307/201/34 IPC.

The Trial Court has acquitted the respondent accused by the impugned judgment. The Trial Court has doubted the case of the prosecution on several counts. The injured had claimed that upon being attacked by five persons including the accused, he had become unconscious on receiving injuries, and that he regained his consciousness in the hospital when the doctor inserted some instrument to measure the depth of the

wound. However, PW6- the in-charge PCR who reached the spot- after he received a call with regard to a person being injured in an accident, had stated that he made a call on the mobile number of the injured and spoke to him, who informed him about his (injured's) location being 20-30 feet away from the road. PW6 rescued the injured and took him to the hospital.

PW6 in his cross examination stated that for about 3-4 minutes he was with the injured while taking him to the hospital, and the injured had not talk about any attack on him, or about any assailants.

The Trial Court has doubted the story of the prosecution since there was a discrepancy in the statement of the injured and PW6. If the injured had fainted soon after the attack, how could he call, or answer the call of PW6, is not explained, since he claims to have regained consciousness only in the hospital. Secondly, how is it that the injured did not disclose the alleged attack he suffered and the names of the accused/ assailants to the police officer.

The other material witness examined by the prosecution was PW2, who claimed that while he was going in his own car he saw the motorcycle of the injured parked on the side of the road and recognised the same. He claimed that he was told that the rider of the said motorcycle had been shifted to Dr. B.R. Ambedkar Hospital in the ambulance. He claimed that when he reached the hospital, he communicated with the injured and was informed that five persons had attacked him including the respondents. The injured also made a similar statement with regard to the information given by him to PW2. On the basis of the information received by PW2, the Rukka was recorded and FIR registered wherein the two accused were named.

The Trial Court has doubted the case of the prosecution with regard to the presence of PW2, on the premise that only the shirt of the injured had been seized and not his trousers, and the trouser which was seized was attributed to PW2. The Trial Court has doubted that it was unlikely that the trouser of the injured would not be seized, and the trouser of PW2 would be seized in the hospital, but not his shirt, leading to a doubt that the trouser was, in fact, of the injured himself, and was claimed to be that of PW2 only to show his presence at the hospital.

The place of arrest of the accused— Azad Singh and the manner of his arrest is also doubted by the Trial Court vide Ex.PW16/DA. The accused persons had been interrogated in their village and enquiry about them were made from the villagers about their whereabouts. However, the arrest of the accused-Azad Singh has been shown to be from Bawana Chowk on the pointing out of a secret informer.

It has come on record that there was previous animosity between the injured and the accused in relation to some property dispute. Thus, the possibility of false implication on the accused cannot be ruled out.

In our view the aforesaid discrepancies in the case of the prosecution have rightly been cited by the Trial Court to acquit the accused.

In these circumstances, we find no merit in the present petition.

Dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

AUGUST 09, 2018

N.Khanna