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

+ **CRL.L.P. 361/2017**

STATE NCT OF DELHI

..... Petitioner

Represented by: Mr. Ashok K. Garg, APP for
State.

versus

ASHISH @ CHHOTU & ORS

..... Respondents

Represented by: Mr. Kamlesh K. Mishra,
Advocate for respondent Nos. 1
and 2.
Mr. Rahul Maurya, Advocate
for respondent No.3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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06.09.2018

CrI. M.A. No. 10355/2017 (Delay)

1. For the reasons stated in the application, delay of 92 days in filing the leave to appeal petition is condoned.
2. Application is disposed of.

CRL.L.P. 361/2017

1. Though purportedly a reply affidavit on behalf of respondent No.1 has been placed on record however, the contents of the reply affidavit are of an affidavit accompanying an application where there is neither an accompanying application nor a petition. The so called reply affidavit which is not even attested by the oath commissioner and thus not being a reply affidavit is taken off the record.

2. Aggrieved by the judgment dated 19th December, 2016 whereby the Learned Additional Sessions Judge acquitted the respondents for the offences punishable under Sections 323/394/397/450/34 IPC, the State has preferred the present leave to appeal petition.

3. Process of law was set into motion on 15th March, 2009 on receipt of information regarding robbery. Aforesaid information was recorded vide DD No. 23A (Ex.PW-4/A). HC Anirudh went to the house of the complainant/caller but she was not present there. On enquiry, he came to know that complainant was taken to Dr. Hedgewar Hospital. He went to the hospital and collected her MLC but her statement could not be recorded. On 21st March, 2009, complainant Bimla came to the police station and got her statement recorded wherein she alleged that on 15th March, 2009, when she was at her house, at about 9:00 P.M., four persons namely Sonu, Chhotu, Ravi and Monu, who were her neighbours, came and forcibly entered her house. They damaged her household articles and also gave her beatings as a result of which there were injuries on her eye, nose and other parts of the body. They took away articles from her shop, jewellery and cash. On the basis of the aforesaid information, FIR No. 122/2009 was registered at PS Anand Vihar for the offences punishable under Sections 323/380/452/34 IPC. Ashish @ Chhotu, Ravi and Sonu were arrested. After completion of investigation, charge sheet was filed. Charge was framed.

4. Bimla was examined as PW-1 in Court wherein she deposed that on 15th March, 2009, she had purchased a gold chain, ear rings and anklets worth ₹66,000/-. At about 4:00 P.M., Shobha came to her house and asked her to show the ornaments. Bimla showed the ornaments to Shobha. At about 9:00 P.M., sons of Shobha namely Ashish @ Chhotu, Ravi and Sonu

forcibly entered her house with muffled face, however, Bimla recognized them. Thereafter, Monu also entered the house. All of them were having knives and they gave her beatings and inflicted injuries on her eyes with punch. One of her neighbour Guddi came to her rescue but Guddi was also beaten up by these persons. Shatrugan, brother-in-law of Bimla, who was also present in the house, was given beatings by the aforementioned persons. These persons took her ornaments and cash and fled away.

5. Learned Trial Court acquitted the respondents on the ground that there were material inconsistencies in the narration of the incident. Bimla, on one hand, stated that Keshu Shah (PW-2), Jaimala (PW-5), Shatrugan (PW-8) and her daughter Parvati were present in the house at the time of the incident. However, Bimla contradicted herself by stating that Parvati was not present in the house and she did not come to her house on the day of incident. Statement of Bimla was recorded twice in Court, first time on 29th October, 2013 and then on 23rd October, 2015. In her complaint, she stated that she was sitting outside her house, when the respondents came to her house. In her first testimony, she stated that the respondents forcibly entered her house and in her second deposition, she stated that she did not stop the respondents because they were known to her and Keshu, her son, was present inside the house.

6. Further Keshu deposed that Bimla had just arrived from the jewellery shop, however, Bimla stated that she had come back from the jewellery around 5:00-6:00 P.M. and after showing the jewellery to the mother of the respondents, she was sitting at her shop just before the incident. There are further contradictions in the testimonies of Bimla, Keshu and Jaimala. Shatrugan deposed that he saw 10-12 public persons standing at the gate of

Bimla but none of the public persons tried to apprehend the respondents. Bimla stated there were four rooms and two tenants had occupied two rooms but Keshu stated that there was only one room and rest was open land.

7. There were discrepancies with respect to the person who made the call to the police. Bimla stated that someone had made the call to the police but she was not the one. Later on, she stated that her children made the call to police which is contradicted by the testimony of Keshu who stated that his mother made the call to the police at 100 number.

8. Findings of the learned Additional Sessions Judge based on the evidence on record being plausible, in view of the material contradictions in the statement of the complainant, the impugned judgment acquitting the respondents cannot be said to be perverse warranting interference of this Court.

9. Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

SEPTEMBER 06, 2018

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