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

+ CRL.L.P. 687/2017

STATE

..... Petitioner

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State

versus

SAJID & ORS

..... Respondents

Through: Mr. Mohit Bhandari, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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03.04.2018

We have heard the learned counsel and proceed to dispose of the present writ petition. The State has preferred this leave petition to seek leave to assail the judgment dated 01.08.2017 passed by the learned Additional Sessions Judge – FTC, E Court, Shahadra, Karkardooma Court, Delhi in sessions Case No.03/2014, arising out of FIR No. 195/12, under Sections 307/323/341/34 IPC and 27 Arms Act, registered at Police Station – M.S. Park, Delhi.

By the impugned judgment, the respondents/accused have been acquitted by the trial court by holding that the prosecution has failed to prove its case beyond reasonable doubt. The gist of the case of the prosecution was that the injured/ complainant/ PW-1 – Gabbar is a vegetable seller who puts his *rehri* in Shahdara, Sabji Mandi. On 11.10.2012 at about 10-10.30 AM, while sitting near his *rehri*, he saw the accused Sajid who is

also a vegetable seller in Shahdra Mandi giving beatings to one rickshaw puller. He intervened and tried to save the rickshaw puller, upon which accused Sajid started quarrelling with him. In the meanwhile, accused Haroon also came there and started abusing him and thereafter, asked the accused Sajid '*Maro Isko Jo Hoga Dekha Jayega*'. The other vegetable vendors intervened and got the matter pacified. PW-1 stated that he went to his house. Thereafter, at about 1 – 1 ½ hour, his brother Mohd. Raffi called him and asked him to bring money for payment of material/vegetables purchased by them. PW-1 claimed that he took Rs.28,800/- from his house and started towards Shri Ram Nagar. At about 10.30 AM, when he reached near Shri Ram Nagar, Lal Bag, Railway Quarter No. TT-47, accused Sajid, Haroon and Rashid came from behind on red colour Pulsar motor-cycle, which was being driven by accused Haroon. Accused Sajid got down from motor-cycle and gave him fist blows. The other two accused also got down from motor-cycle. Accused Sajid caught him from his collar and accused Haroon slapped him. Accused Rashid took out a pistol. However, he advised accused Haroon and Sajid to leave him after giving 2-3 fist blows. PW-1 stated that he pushed Sajid and started running away. Accused Haroon snatched the pistol from Rashid and fired upon him. The bullet hit his right leg and thereafter, all the three accused ran away on their motor-cycle. After sometime, the police came to the spot and PW-1 was taken to GTB hospital, where his statement was recorded.

The trial court has acquitted the accused in view of the serious contradictions found in the statement of PW-1 and lack of independent evidence to support the case of the prosecution.

The testimony of PW-1 i.e. complainant was not corroborated by any of the prosecution witnesses including PW-5, who was not an eye-witness to the incident. The contradictions in the statement of PW-1 have been discussed in the impugned judgment. We may extract the relevant portion from the same which reads as follow : -

“25. Complainant in his first statement given to the police has deposed that one vegetable vendor had put his rehri in front of the thia of accused Sajid, upon which accused Sajid quarrelled and asked him to remove his rehri. In the court, he however, deposed that on 11.10.2012 at about 10/10.30am, while he was sitting near his Rehri, he saw accused Sajid who is also a vegetable seller in Shahdara Mandi giving beatings to one Rickshaw puller. He deposed that he does not know on what ground quarrel had taken place between accused Sajid and Rickshaw Puller. He further deposed in his testimony before the court that when he intervened and tried to save the Rickshaw puller upon which accused Sajid started quarrelling with him. In the meanwhile accused Haroon also came there and started abusing him and thereafter, asked accused Sajid, “Maaro Isko Jo Hoga Dekha Jayega.” There is no mention of uttering of these words by accused Haroon in the first statement of complainant. These words have for the first time been introduced while complainant came to depose before the court. In the first statement he deposed that accused Rashid came in i10 Car, however, while deposing in the court he did not mention the fact of accused Rashid’s coming to Shahdara Subzi Mandi in i10 Car. He admitted this fact only when suggested by Ld. Addl. PP and stated that accused Rashid had come in an Alto Car and not in i10 Car. Complainant did not of his own speak anything about as to what happened with Rs.28,800/- and it was only in the cross-examination by Ld. Defence Counsel that he stated that Rs.28,800/- were also taken by the accused persons, which version of complainant seems to be quite unbelievable since he had not mentioned anything about taking of Rs.28,800/- by accused persons in his first statement as well as in his testimony before the court of his own. Further, no

recovery of alleged looted amount has been effected from any of the accused, which could have supported the improved version of complainant.

Complainant deposed that at about 10:30 am, when he reached near Shri Ram Nagar, Lal Bag, Railway Quarter No. TT-47, accused Sajid, Haroon and Rashid came from behind on red colour pulsar motor-cycle, which was being driven by accused Haroon. Accused Sajid got down from motor-cycle and gave him fist blows. Accused Haroon and Rashid also got down from motor-cycle. Accused Sajid caught him from his collar and accused Haroon slapped him. Accused Rashid took out a pistol, however he advised accused Haroon and Sajid to leave him after giving 2-3 fist blows. He further deposed that he pushed Sajid and started running away. Accused Haroon snatched the pistol from Rashid and fired upon him. However, in his cross-examination by Ld. Addl. PP he denied that he had stated to the police in his statement that all the accused stopped his way and that accused Haroon slapped him after getting down from motor-cycle and accused Sajid gave him fist blows. He denied that accused Haroon told Rashid to shoot him and thereafter, he snatched katta from Rashid and tried to fire upon him. Thus, complainant himself has contradicted his version and seems to be totally confused at some point of time. The testimony of complainant also does not inspire confidence since complainant in his cross-examination even admitted that IO met him on 10.07.2014 (the date when his examination in chief was recorded) and that on that day he deposed whatever was told to him by the IO, which admission on the part of complainant, creates a doubt on the truthfulness of this witness and vitiates his entire deposition.”

Pertinently, the defence taken by the accused was that there was already a case registered under Section 307 IPC against the cousins of the complainant – Babbar, PW-1, who has asked the accused to get the matter settled or he would falsely implicate them all. They have also claimed that the complainant was asking for Rs.2 lakhs.

In view of the aforesaid contradictions pointed out by the learned Additional Sessions Judge in the impugned judgment and the fact that there was no eye-witness or other independent evidence to corroborate the version of the complainant/ PW-1, as also the fact that there was no recovery made of the weapon of offence, we are of the view that the impugned judgment does not call for interference by us at the stage.

The leave petition is accordingly dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

APRIL 03, 2018

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