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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 124/2019, CRL.M.A. 3037/2019 (Exemption)
STATE (GNCTD)

..... Petitioner

Through: Mr. G.M. Farooqui, APP for State.

versus

MOHD.AZAD SHAH

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **11.02.2019**

The petitioner seeks leave to appeal against the impugned order dated 28.11.2018 whereby the respondent was acquitted of charges under sections 379/328/34 IPC. The petitioner's case was that the respondent, along with one Raju administered intoxicating substance to the complainant and committed theft of his E-rickshaw. The alleged incident happened on 27.01.2018 at about 7.00 pm at Khanjhawla Road, when the respondent and his co-accused hired the complainant's E-rickshaw to go to Pooth Village. While on the way, one boy got off the E-rickshaw and brought three cups of tea. All three consumed the tea. However, Thereafter, the complainant became drowsy; the accused persons then pushed the complainant from the E-rickshaw and fled with it. The complainant reached his home the next day i.e. on 28.01.2018. The impugned order recorded that Ex. PW6/A revealed that PW-5 was taken to SGM hospital on 28.01.2018 and was in a drowsy state. In the medical Statement History, it was nowhere mentioned

that he was administered some intoxicating substance. In her testimony PW-6 deposed that PW-5 was drowsy at the time of the medical examination, however, she could not tell the reason for the drowsiness. A missing report' was lodged on 28.01.2018 at 12.30 pm. However, in his deposition, the complainant had stated the he was found from the road side on 28.01.2018 at 5.30 am.

On the point of administration of intoxication, the Trial Court recorded that PW-5 has never said that he was administered some intoxicating substance. PW-6 did state that PW-5 was drowsy at the time of the medical examination but she could not tell the reason for drowsiness. It further recorded that in the MLC (Ex. PW6/A), it was recorded that the victim was found on the road side as told by PW-3, however, as per PW-5/victim he was not found on the road side.

Regarding delay in registration of the FIR, the Court held that PW-5 made the statement and the FIR was lodged almost on the expiry of the third day from the time when the incident took place because a missing report was lodged on 28.01.2018 at 12.30 am and at 5.30 am a DD was recorded regarding admission of the victim in the hospital in a drowsy condition; on 30.01.2018 at about 5.30 pm, on the statement of the victim/PW-5 himself, the FIR was lodged.

The Trial Court found the prosecution case had many loopholes. He recorded that the statements of the complainant and his brother were not trustworthy. It reasoned as under:

“21. According to PW-5, the incident took place on 27.01.2018 at 7:00pm. A missing report of PW-5 Ex.PW-7/C was lodged on 28.01.2018 at 12;30am. On 28.01.2018, at 5:30 am, DD no.11 B was recorded

regarding admission of PW-5 in drowsy condition at SGM hospital vide MLC Ex.PW-6/A. On 30.01.2018, at about 5:30 pm, statement of PW-5 Ex.PW-5/A was recorded and on that basis, FIR Ex.PW-1/A was recorded at 5:30pm. Therefore, it can be held that PW-5 made the statement and the FIR was lodged almost on the expiry of third day from the time when the incident took place.

22. PW-3 in his testimony deposed that on 28.01.2018, at about 4:00am, PW-5 came back to the house giddily (unsteady) and was in semi conscious condition but was unable to speak. He along with the relative took PW-5 to PS Sultanpuri from where they along with Police had gone to the SGM Hospital for treatment of PW-5. Next day i.e. on 29.01.2018, the accused regained consciousness and then lodged the complaint with the police. In his cross examination, PW3 admitted that once PW-5 came back to the house, he was alone and deposed that PW-5 was discharged from the hospital on 29.01.2018. In view of the said testimony, it can be held that PW-5 after expiry of almost 9 hours from the time of incident at his own reached his house. However, this is contrary to the contents of the alleged history given in the MLC Ex. PW6/A that PW5 was found on the road side. Further, PW-3 though deposed that PW-5 was semi conscious but was unable to speak. However, MLC of PW-5 Ex.PW-6/A is completely silent to this effect. If PW-5 could reach his house all alone and was in semi conscious condition that time, then it cannot be believed that he was not in a position even to give some indication about the incident. Even the discharge summary of PW-5 is not on record. Further, even if it is presumed that due to his unconscious condition, PW-5 could not make the statement till 29.01.2018 when he was discharged from the hospital, then he could have made his statement from that time till 30.01.2018 at 5:30 pm when he made the statement.

23. To this effect, PW-5 deposed that once he regained little consciousness, he managed to reach his home. His said testimony is completely silent that that time, he was unable to speak and that at about 4-4:30pm, on 30.01.2018, he went to the police station and made his statement Ex.PW-5/A. In his cross examination, he showed his ignorance as to when he regained his consciousness, the time when he reached at his home, who removed him to the hospital, whether the police met him in the hospital and when he was discharged from the hospital. As mentioned above, MLC of PW-5 is completely silent that he was unconscious at the time of admission and the period for which he remained unconscious if at all he was. His testimony is completely silent as to why he has not made the statement even after his discharge from the hospital till 30.01.2018.

24. To this effect, PW-7 deposed that once he reached at the hospital on 28.01.2018, PW-3 stated that PW-5 would come to the police station to make his statement. His 'testimony is completely silent that he ever sought the opinion of the doctor as to fitness of PW-5 to make the statement or the doctor himself stated that PW-5 was not fit for the statement. His testimony is also silent as to whether he made any attempt to record the statement of PW-5 from him. He deposed that on 30.01.2018, PW-5 at his own came to the police station to make his statement. However, his testimony is completely silent as to what he did from 28.01.2018 till 30.01.2018 to record the statement of PW-5."

The evidence led by the prosecution is evidently not convincing enough to convict the accused. The reasoning and conclusion of the impugned order cannot be faulted.

The petition is without merits and it is accordingly dismissed.

NAJMI WAZIRI, J

FEBRUARY 11, 2019/acm