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

+ **CRL.L.P. 277/2018**

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Judgment reserved on: 04th April, 2019
Judgment pronounced on: _29th April, 2019

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr.G.M. Farooqui, APP for State with
SI Munna Kumar, PS Delhi Cantt.

versus

PRADEEP @ SONU & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Crl. M. A 7768/18 (Delay in Filing)

For the reasons stated in the application for condonation of delay 18 days in filing the present leave to appeal, the delay is condoned.

Application stands disposed of.

Crl. L. P. 277/18

1. By this petition under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter as 'Cr.P.C'), the State seeks leave to appeal against the judgment dated 15.12.2017 passed by the learned Additional Sessions Judge-03, South West District, Dwarka Courts, Delhi whereby the accused Nos. 1, 2, 4 & 6 were acquitted of the charge under Sections 394/395/120B/412/34 of the Indian Penal

Code, 1860 (hereinafter as 'IPC'), and accused No. 3 was acquitted of the charge under Sections 397/394/395/120B/412/34 of IPC and accused No.5 was acquitted of the charge under Sections 394/395/120B/34 of IPC in FIR No. 18/12 registered at Police Station Delhi Cantt, Delhi.

2. Brief facts of the case are as under:-

- i. *That on 17.01.2012, at about 6.30 pm, PW1 (Tejas Uday Methani) was going in the company's car bearing registration No. DL1N3591, which was being driven by PW5 (Nand Kishore) to company's garage. He was sitting besides the driver seat and a bag having Rs.9 lacs cash was kept on the back seat of the car.*
- ii. *Near Hanuman Temple, a motorcycle having two riders came and they stopped their motorcycle in front of their car and when his driver asked them as to why they were not driving properly, then one of them showed pistol like thing to PW5 and further they started beating him with fist and leg blows. Further when PW1 stepped out to stop them, another motorcycle came and its rider slapped him and further removed the bag lying on the back seat of the car and fled away. PW1 noted down the registration number of one of the motorcycles as DL8C3464.*
- iii. *An information was given to the PCR and the DD No. 33A at PS Delhi Cantt was recorded which resulted into registration of FIR No.18/2012 under Sections 394/395/397/120B/412/34 IPC registered at PS Delhi Cantt.*
- iv. *All the accused persons except accused Raj Kumar were arrested in another case bearing FIR No. 42/12 of PS Delhi Cantt and few of them also got recovered part of the robbed money. After their arrest in this case, some more money recovery of the robbed money, mobile phone and said bag was done from some of the accused persons. Further accused persons refused to participate in TIP proceedings.*

3. After the completion of investigation, charge sheet was filed and accused Nos. 1, 2, 4 & 6 were charged under Sections 394/395/120B/412/34 of IPC, accused No. 3 was charged under Sections 397/394/395/120B/412/34 of IPC and accused No.5 was charged under Sections 394/395/120B/34 of IPC. In order to bring home the guilt of the accused persons, the prosecution has examined 27 witnesses.
4. Statement of the accused persons was recorded under Section 313 of Cr.P.C wherein they stated that they had been falsely implicated in the present case and claimed to be innocent. They chose not to lead any evidence in their defence.
5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court acquitted the accused persons of the charged offences.
6. Mr. G.M. Farooqui, learned APP appearing for the State contended that the impugned judgment passed by the learned trial court is not sustainable in the eyes of law and is based on presumption, conjectures and surmises; that the learned Trial Court had erred in relying upon the minor contradictions pointed out in the evidence of the two eye witnesses, the small discrepancies do not affect the core of the prosecution case; that PW1 and PW5 being the eyewitnesses to the occurrence duly supported the case of the prosecution; that the recovery of the stolen items i.e. Rs. 9 lac, documents, mobile phones etc. was also affected from the accused persons, so the recovery of the robbed articles should be a sufficient ground for conviction; that the complainant has no enmity with the accused persons nor any

other reason to falsely implicate them in the present case thus the impugned judgment of acquittal calls to be set aside and the accused persons need to be convicted.

7. I have heard the learned counsel for the State and perused the available material on record.
8. At the outset, I deem it appropriate to peruse the complaint filed by PW-1 (complainant) on the basis of which an FIR was registered whereby he had stated that *'he along with a driver was going to Palam area in an Accent car. He was sitting in the passenger seat of the said car and a black executive bag containing Rs. 9 lacs was kept on the back seat of the car. According to the complainant when he reached a little ahead of Hanuman Mandir one motorcycle driven by one boy and another seated at the back, stopped in front of the car, after which, the driver of the car stepped outside and reprimanded the two boys riding the motorcycle to drive it properly. The two boys got down from the motorcycle and said "tu humme gadi chalana sikhayega" and then took out a country made pistol and started beating the driver with blows and kicks, after which the complainant stepped out of the car and intervened to stop the commotion, another motorcyclist came and stopped at close proximity and slapped the complainant. When the complainant questioned as to why the rider was hitting him, the second motorcyclist opened the back door of the car and when the complainant tried to stop him, he slapped the complainant and removed the bag kept on the back seat of the car. Seeing the complainant getting beaten up the driver of the car came to help him but the boy with the country made pistol hit the driver on*

the head so he stopped there only. Meanwhile the second motorcyclist, who had stolen the bag containing money, escaped on his motorcycle and the other two boys who were hitting the driver, fled away on their motorcycle’.

9. PW-1 (complainant) during his examination in chief deposed that:

“On 17.01.2012 at about 6.30-7PM, I was going to workshop from office by Accent Car no. DL- IN-3591 which was being driven by driver Sh. Nand Kishore. I was sitting on the front left seat adjacent to the driver seat. I was having a black colour bag containing Rs. Nine Lacs and some documents and I had kept the said bag behind my seat on the floor of the car. That amount was meant for salary of the staff. one motorcycle came from right side and they made us to move towards left and ultimately the motorcycle stopped in front of our car. Two persons were sitting on the motorcycle. My driver got down from the car and asked those persons as to what manner they were driving the motorcycle. Both the persons got down from the motorcycle and told my driver that he would teach them how to drive and thereafter one of them took out a gun and after loading the same, they started beating my driver. I opened the door of the car and put one step out from the car and requested those persons to excuse the scolded me and asked me to sit in the car. In the meantime, another motorcycle came and stopped. I thought that the said motorcycle had come for my rescue them to intervene. One person who had come on second motorcycle came to me and hit me on my head. In enquired as to why he was beating me. He also asked me to sit in the car and also pushed me inside the car and he tried to close the door while my foot was out of the car. My driver tried to come near me but one of them hit the driver on his head with some object due to which blood started coming out. One of them tried to

open the rear door of the car behind me which I objected on which one person again beat and pushed me due to which I fell inside the car and he closed the door. Thereafter, one person took out the said bag from the car. I tried to save the bag by catching hold the same but they again beat and pushed me and thereafter, all those four boys alongwith two others (who had come during the incident by some vehicle, number of which I could not note down) ran away from there towards Palam alongwith bag by sitting on those two motorcycle. I had noted down the registration number of one motorcycle which was 3464. I asked the driver to chase those persons but when my driver tried to start the car, he found that they had taken away the keys of the car

I made a call on 100 number. Police came and my statement was recorded which is Ex PW1/A bears my signatures at point A. I also informed my employer. In the said bag, apart from currency of Rs. 9 lacs, documents, two mobile phones, salary sheets, letter heads and visiting cards etc were kept...”

10. From the perusal of the above statement and testimony of PW-1 (complainant), it is evident that there are various contradictions and discrepancies;

- a) the complainant had stated in the FIR, that the bag, which was stolen, was kept on the back seat of the car to the contrary in his examination-in-chief he improved upon his testimony and deposed that ‘I was having a black colour bag containing Rs. Nine Lacs and some documents and I had kept the said bag behind my seat on the floor of the car’.

- b) in the complaint he stated that there were 3 boys on two motorcycles, who committed the alleged offence, to the contrary in his examination-in-chief he improved upon his earlier statement and deposed that 'all those four boys alongwith two others (who had come during the incident by some vehicle, number of which I could not note down) ran away from there towards Palam'.
- c) In the complaint the complainant had stated that 'his driver was hit on the head', but there was no mention of blood coming out from the head, to the contrary, in the examination-in-chief he has deposed that 'one of them hit the driver on his head with some object due to which blood started coming out'.
- d) In the complaint there was no mention of the complainant being constantly pushed into the car but, in the examination-in-chief he improved upon his earlier statement and deposed that 'One person who had come on second motorcycle came to me and hit me on my head' he further had deposed that 'pushed me inside the car and he tried to close the door while my foot was out of the car' and that 'One of them tried to open the rear door of the car behind me which I objected on which one person again beat and pushed me due to which I fell inside the car and he closed the door'
- e) in the complaint the complainant stated about the robbery of money only, but in his examination-in-chief, he improved

upon his statement and deposed that 'In the said bag, apart from currency of Rs. 9 lacs, documents, two mobile phones, salary sheets, letter heads and visiting cards etc. were kept'

11. Considering the numerous contradictions in the version led by PW-1 (complainant), the statement does not inspire confidence and is not worthy of credence so the same could not be the sole basis for conviction of the accused persons. At this stage, it is relevant to peruse the other material witness produced by the prosecution i.e PW-5 (Nand Kishore/eyewitness) who accompanied PW-1 (complainant) in the car. Being the eye witness to the whole incident, it is essential to examine his testimony. PW-5 (Nand Kishore/eyewitness) in his examination-in-chief deposed as under:

"At about 7.15 pm, when we reached Hanuman Mandir, Air Force Road, one motorcycle black colour came from back side and overtook our taxi and the rider parked his motorcycle bearing no. DL SC 3464 before our taxi. There were two persons. Both the persons got down from the motorcycle and came to me and started abusing. I immediately came out from my taxi and both the accused persons started beating me. One of them was having pistol. In the mean time, Mr.Tejas also came out from the taxi and he tried to intervene in the matter. At the same time, one another motorcycle also came from back side and there were two persons on the said motorcycle and the said motorcycle was also stopped near the taxi. When Tejas asked them to intervene in the matter but they also started beating Tejas. When I tried to rescue Mr.Tejas one of the accused hit my head with heavy iron object. At the same time, one ikon car also came from the back side and the driver stopped his car at the spot. Two persons came out from said car and they started the

motorcycle which were standing on spot. One accused took out the bag belongs to Mr.Tejas from the rear seat of the taxi. Thereafter all the accused persons fled away from the spot. Mr.Tejas asked me to chase accused persons but the key of my taxi was not found there. Perhaps the accused persons had taken away the key of my taxi...”

12. From the perusal of the statement of PW-5 (Nand Kishore/eyewitness), there are some glaring contradictions, which go to the root of the matter. PW-1 (Complainant) had deposed that ‘My driver got down from the car and asked those persons as to what manner they were driving the motorcycle. Both the persons got down from the motorcycle and told my driver that he would teach them how to drive and thereafter one of them took out a gun and after loading the same, they started beating my driver’ but PW-5 in his examination-in-chief deposed that ‘Both the persons got down from the motorcycle and came to me and started abusing. I immediately came out from my taxi and both the accused persons started beating me. One of them was having pistol’.

The chain of events does not seem to formalise the incident as it remains unclear as to who started the altercation. Moreover, PW-5 (Nand Kishore/eyewitness) in his examination-in-chief nowhere deposed that PW-1 (complainant) was being constantly pushed back into the car by the accused persons, or was hit on the head. Moreover, he failed to mention about his head injury from which blood was oozing.

13. From the above it is clear that not only the testimony of PW-1 (complainant) is contradictory to his own complaint, the versions of

the two eyewitnesses in so far as the involvement of the accused persons is concerned are also at variance.

14. Having examined the testimony of the material witnesses produced by the prosecution, the other evidence brought on record is the recovery of Rs. 50,000/- each, from the accused persons namely, Pradeep @ Sonu and Raj Kumar, recovery of amount of Rs. 1.60 lacs from accused Vicky, recovery of a black bag along with some documents from accused Vivek Verma @ Sonu, recovery of Rs. 74,000/- from accused Pradeep @ Sonu and recovery of a mobile phone along with Rs. 25,000/- from the accused Raju Thapa @ Rohit.
15. It is pertinent to note that no independent witnesses were joined at the time when the currency notes, documents and mobile phone was recovered. Be that as it may, even if the recovery of the currency notes, documents and mobile phone are taken into account, the same cannot form the basis of conviction of the accused persons as the material witnesses examined by the prosecution have failed to stand the test of cross-examination and various discrepancies have occurred in their testimonies.
16. The material witnesses examined by the prosecution failed to give a uniform story with regard to the chain of events as both the witnesses failed to disclose the number of persons who allegedly committed the offence and the exact role played by each of the accused persons in commission of the crime. In my view the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. Moreso, in case of in the case of *State of Madhya Pradesh Vs. Dal*

Singh & Ors., reported at JT 2013 (8) SC 625, the Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant material have been unjustifiably ignored, it would be a compelling reason for interference. In the case of *Rukia Begum Vs. State of Karnataka AIR 2011 SC 1585* the Apex Court has held that in case two views are possible and the trial court has taken the view favouring acquittal, the High Court should not disturb the finding.

17. Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450*, I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses.
18. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

APRIL 29, 2019 / SU