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

+ **CRL.L.P. 187/2017**

STATE

..... Petitioner

Through SI Satish Singh, P.S. Mayur Vihar.

versus

TANVEER

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.09.2019

VIBHU BAKHRU, J

1. The State has filed the present application seeking leave to appeal against a judgment dated 24.09.2016 (hereafter 'the impugned judgment'), whereby the respondent was acquitted of the offences under Sections 398/397/34 of the Indian Penal Code, 1860 (IPC). The Trial Court held that there were glaring discrepancies and inherent improbabilities in the testimony of PW-2 and thus, it held the same to be unreliable. The Trial Court held that the investigating agency failed to procure enough evidence to convict the accused. Another reason enunciated by the Trial Court was that there was an inexplicable delay in filing of the FIR. Moreover, a copy of the relevant DD (DD No. 6-A dated 15.10.2013) was also not placed on record. The complainant (who was examined as PW-2) did not consent for medical examination. This, according to the Trial Court, also cast a shadow of

doubt over the version of the prosecution.

2. It is the prosecution's case that the Trial Court has failed to appreciate that PW-2's testimony fully supports the version of the prosecution. It is contended that there is no reason for PW-2 to falsely implicate the accused since there was no enmity between PW-2 and the accused. The prosecution further contends that the Trial Court has ignored the explanation provided for the delay in filing of the FIR. It is also the case of the prosecution that the Trial Court has failed to appreciate the fact that the accused himself had refused to join Test Identification Parade (TIP) proceedings and the complainant had identified the accused in court. It is contended that the Trial Court also failed to appreciate that the *alibi* of the accused did not stand in view of the testimony of DW-1 (wife of the accused).

3. Sh. Ankur Gupta (PW-2 – the Complainant) had reported that on 14.10.2013, at about 11:15 p.m., he was driving his car bearing registration number DL-7CJ-2421 beneath Mayur Vihar Flyover, when he received a telephonic call on his mobile phone. It is alleged that he stopped his vehicle and stepped out to attend to the call. At that stage, one person came from behind him and put a knife on his neck and pushed him back inside his car. Thereafter, three more persons entered the said vehicle. The complainant alleged that the said persons took his gold chain, purse and mobile phone. The said persons then forced the complainant to assume a crouched position on the rear seat of the vehicle and drove around in the car for about two hours. It is stated that they stopped to purchase alcohol and consumed the same in

the said vehicle. Next, they stopped at an ATM but could not withdraw any cash. They also stopped at a petrol station and filled fuel in the said vehicle. The complainant was then thrown out of the said vehicle on National Highway – 24 and the accused fled from the spot with the said vehicle. Thereafter, the complainant gave a written statement to the police at around 4:30 a.m. on 15.10.2013. On the basis of the said complaint, FIR No. 360/2013 under Sections 392/397/34 of the IPC was registered with PS Mayur Vihar.

4. During the course of investigation, the Complainant claimed to have received information that the said vehicle was near Mandoli Jail. The concerned investigating officer reached the area and found the said vehicle. However, due to dust, chance prints could not be lifted from the said vehicle.

5. On 06.11.2013, vide DD No. 23 – B, information was received from PS Gazipur regarding the arrest of the accused (respondent herein) and that he had disclosed his involvement in the present case. The accused was then formally arrested on 19.11.2013 and was, thereafter, taken in police remand. He, allegedly, disclosed that three other persons – Ahsan, Sabir and Salman – had assisted him in the commission of the alleged offences. The Investigating Officer moved an application for judicial TIP, however, the accused refused to join the same. Pertinently, the other accused could not be arrested.

6. The Trial Court noted that the entire case of the prosecution was dependent upon the testimony of PW-2/the Complainant. He deposed

that his vehicle was first taken to a liquor vendor and thereafter, to a petrol pump and then to an ATM. However, there were no witnesses from either of the aforementioned three locations to substantiate the version of the prosecution. It is further observed in the impugned judgment that even if there were no witnesses at the liquor vend or at the ATM, there ought to have been a witness at the concerned petrol pump, since a petrol pump attendant is required to come quite close to the car for filling fuel; and the rear seat, where PW-2 claims he was confined, would be clearly visible to the attendant. Further, the Trial Court noted that the concerned investigating agency did not make any efforts to ascertain the location of the ATM from where the accused allegedly tried to withdraw money using the ATM card.

7. The Trial Court further noted that that the registration number of the TSR, in which PW-2 claims to have returned to his residence after being ejected from the vehicle at National Highway – 24, was not recorded by PW-2 and the driver of the said TSR was called as a witness. Further, the Trial Court held that the fact that ASI Mahmood Hasan – who had gone to the spot after receiving DD No. 6-A dated 15.10.2013 – did not place a copy of the said DD on record also created a doubt about the prosecution's version.

8. PW-2 had identified the accused in Court, as the accused had refused to join TIP proceedings. However, a close scrutiny of the record indicated that before judicial TIP could be held, the accused was sent to police custody (PC). The accused was arrested on 19.11.2013 and was sent to judicial custody on 20.11.2013. However,

even though TIP proceedings were scheduled for 27.11.2013, the said proceedings could not be concluded on that date since the accused was in PC remand. On 28.11.2013, another application was moved for TIP Proceedings and the same was fixed for 05.12.2013. On 30.11.2013, the investigating officer (PW-14) moved an application for one day PC remand of the accused. Thereafter, on 05.12.2013, TIP proceedings were conducted but the accused refused to be a part of the same on the ground that he had been shown to many police officials and public persons and his photographs were also taken.

9. The Trial Court has noted that it saw no reason for the one day of PC remand at that stage and the same could have been done after TIP proceedings were scheduled for 05.12.2013. This, according to the Trial Court, led to a strong suspicion that the accused was shown to witnesses before TIP proceedings were going to be conducted. Thus, the consequent identification of the accused by PW-2/the Complainant in Court was held to be insufficient to prove the identity of the accused.

10. Given the facts and circumstances of the case, the Trial Court acquitted the accused of the offences he was charged with.

11. In *Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450*, the Supreme Court had observed as under: -

“69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and

386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.”

12. In the present case, this Court is unable to find any substantial or compelling reason for overruling the decision of the Trial Court to acquit the respondent. The Trial Court has evaluated the evidence and its opinion that the prosecution has failed to meet the standard of proof (beyond reasonable doubt) required to convict the respondent, is a plausible one.

13. In view of the above, the present petition is dismissed.

VIBHU BAKHRU, J

SEPTEMBER 18, 2019

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