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

+ **CRL.L.P. 334/2017**

STATE

..... Petitioner

Through: Mrs Kusum Dhalla, APP for State.

versus

SANJAY

..... Respondent

Through Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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12.02.2020

CRL.M.A. 9125/2017

1. For the reasons stated in the application, the same is allowed. The delay of 129 days in filing the leave to appeal is condoned.
2. The application is disposed of.

CRL.L.P. 334/2017

3. The State has filed the present petition seeking leave to appeal against the judgment dated 13.10.2016 passed by the Additional Sessions Judge (ASJ) 03, North, Rohini Courts, Delhi, whereby the respondent was acquitted under Sections 186/353/333 of the IPC. The State contends that the Trial Court had erred in not appreciating that the testimonies of the witnesses were consistent and the medical witnesses corroborated the testimony of the witnesses.
4. The present case stems from FIR No. 364/2012, under Sections

186/353/333 of the IPC registered with PS KNK Marg, which was registered on the basis of the complaint by HC Raman Rao.

5. The case of the prosecution is that on 22.10.2012, HC Rama Rao was on duty on the divider road of Sector 15-16, Rohini, alongwith HC Krishnan. At about 3:45 pm, a Maruti Zen car bearing No. UP14K 9529 came from the side of Sector-18, Rohini and jumped the red light of Sector-15, Rohini near Bansal Bhawan and proceeded towards Sector-14, Rohini. HC Rama Rao signalled the driver to stop but he did not adhere and accelerated the said vehicle. Thereafter, HC Krishan chased the car on a government motorcycle and brought it back to Bansal Bhawan. When the car driver was asked to produce documents, the person sitting on the rear seat got down, started abusing and manhandling HC Rama Rao and pulled at the button of his shirt, which also broke. The said person twisted the ring finger of HC Rama Rao, due to which he sustained injuries. He disclosed his name as Sanjay (i.e. the respondent). Thereafter, HC Rama Rao and the respondent were taken to Baba Saheb Hospital, where they were medically examined.

6. Investigation was conducted and a charge sheet was filed. The Learned MM, after complying with the provisions of Section 207 of the CrPC, committed the case to the Sessions Court. Charges were framed against the respondent under Sections 186/353/333 of the IPC, to which he pleaded not guilty.

7. The Trial Court, on perusing the prosecution evidence, noted that there were many contradictions in the testimonies of the witnesses. According to PW2- HC Rama Rao (also the complainant), his statement (Ex.

PW2/B) was recorded by the IO on the spot. Whereas, the formal witnesses PW6-Ct Arun Kumar and PW7-SI Arun Dagar, had deposed that the statement of PW2 had been recorded in BSA Hospital.

8. The Trial Court noted that there were inconsistencies with reference to whether PW2-HC Rama Rao came back to the spot of the alleged incident after returning from the hospital and whether the site plan (Ex. PW 2/B) was prepared at PW2's instance. PW6- Ct Arun Kumar and PW7- SI Arun Dagar (also the IO) deposed that HC Rama Rao (PW2) came back to the spot of incident after being taken to the hospital and the site plan was prepared at the instance of PW2. PW2 deposed that the site plan was prepared at his instance, however, he did not make any statement with reference to returning to the alleged spot after coming back from the hospital. However, the Trial Court noted that PW2 had not deposed to the effect that the site plan was made at his instance.

9. The Trial Court noted that there were inconsistencies with reference to where the shirt of PW2- HC Rama Rao was seized and sealed. PW2-HC Rama Rao had deposed that his white shirt was seized by the IO, in the hospital. Whereas, PW6-Ct Arun Kumar deposed that the shirt of PW2 was seized at the spot of the incident after PW2 had come back from the hospital and that the seizure memo of the said white shirt was prepared in his presence; PW7-SI Arun Dagar deposed that the complainant (PW2) had produced his white coloured shirt at the spot of the incident. The same was seized and sealed by him. However, PW-5 had stated that the shirt was not sealed in his presence and the said white shirt had been sealed in the police station. The Trial Court held that such inconsistencies clearly show that the

proceedings, as told by the witnesses, had not taken place but had been manipulated.

10. The Trial Court also noted that there were inconsistencies with reference to important timings as cited by the formal witnesses. PW6-Ct Arun Kumar, had deposed that he was unaware of the time, at which he had reached the spot of the alleged incident. According to him, they had left the police station at about 12 noon. Whereas, according to PW2, he had deposed that he had informed the police about the alleged incident at around 3:45 pm. There was an inconsistency regarding the mode of travel from the police station to the spot of incident. PW6- Ct Arun Kumar had deposed that they had left on a motorcycle, and had later on called a car to the spot. Whereas, PW-7 deposed that they left the police station in a car at about 4:20 pm. There was also an inconsistency with reference to who had reached the spot before, IO or the PCR. PW2 had deposed that PCR had reached the spot and thereafter, the IO (PW7) had reached the spot along with a constable. According to the IO, he did not find any PCR there.

11. On the basis of the abovementioned contradictions in the testimonies of the police witnesses and the lack of public witnesses, the Trial Court held that the prosecution had failed to prove and establish the guilt of the accused person beyond reasonable doubt and had accordingly acquitted the respondent.

12. It does appear that the trial court has erred in holding that PW2 had not testified that the site plan was prepared at his instance as deposed by PW6 and PW7 and to this extent, their testimonies were inconsistent. An examination of the testimony of PW2 does indicate that he had, in fact,

stated that the site plan was made at his instance. However, the Trial Court cannot be faulted in noticing other inconsistencies in the testimonies of the witnesses. Therefore, notwithstanding that PW2 had testified that the site plan was prepared at his instance, the conclusion that the prosecution had failed to establish its case beyond reasonable doubt, cannot be faulted.

13. The decision of the Trial Court to acquit the respondent warrants no interference by this court. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 12, 2020

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