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

CNR No. DLHC013283662017

+ **CRL.L.P. 420/2017**

Date of Decision: **24.08.2026**

IN THE MATTER OF:

STATE

.....Petitioner

Through: Mr. Mukesh Kumar, APP for State.

versus

MOHD TAHIR & ORS

.....Respondents

Through: Respondents in person.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present application has been filed by the State assailing the judgment dated 31.03.2017 passed by the learned Special Judge (POCSO Act), Tis Hazari Courts, Delhi, in SC No.05/2013 arising out of FIR No.83/2012, P.S. Chandni Mahal, Delhi, whereby the respondents/accused were acquitted of the offences punishable under Sections 452/308/34 IPC.

2. Mr. Mukesh Kumar, learned counsel for the State submits that the impugned judgment of acquittal dated 31.03.2017 is illegal, improper and contrary to the evidence on record. It is further submitted that the learned Trial Court failed to properly appreciate the testimony of the injured/victim



and the corroborative medical and other evidence. Accordingly, the impugned judgment deserves to be set aside and the appeal be allowed.

3. The respondents are appearing in person. They submit that the dispute arose out of a property related issue between the parties, which was essentially a family dispute, and that the same has now been amicably settled between them. They further submit that, in view of the settlement, no dispute or grievance now remains between the parties.

4. I have considered the submissions made by learned counsel appearing for the State as well as the respondents who appear in person.

5. Before examining the rival submissions on merits, it would be apposite to advert to the settled principles governing the scope of interference in an appeal against an order of acquittal. Though the appellate Court possesses full power to re-appreciate the evidence and arrive at its own conclusions, such power is required to be exercised with due regard to the presumption of innocence, which stands reinforced by the order of acquittal. The appellate Court would ordinarily interfere only where the findings recorded by the Trial Court are shown to be manifestly erroneous, palpably wrong or demonstrably unsustainable

6. The Privy Council in ***Sheo Swarup v. King Emperor***,¹ in a formulation that continues to anchor this branch of the law, held that while the High Court possesses full power to review the evidence in an appeal from an order of acquittal as it does in an appeal from conviction, it must nonetheless always give proper weight and consideration to parameters produced hereinunder:-

“But in exercising the power conferred by the Code and before reaching

¹ 1934 SCC OnLine PC 42



its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:

- 1) The views/opinions of the trial judge as to the credibility of the witness;
- 2) The presumption of innocence in favour of the accused;
- 3) The right of the accused to the benefit of any doubt; and
- 4) The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.”

7. This formulation was reiterated by the Supreme Court in **M.G. Agarwal v. State of Maharashtra**,² and has since been consistently followed, most recently in **Siju Kurian v. State of Karnataka**,³ where the Supreme Court reaffirmed that these considerations are not mere formalities but substantive checks on appellate interference. Paragraph no. 16 of **M.G. Agarwal** (supra) is reproduced as under:-

“16. Section 423 (1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the

² 1963 SCR (2) 405

³ (2023) 14 SCC 63



High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The, King Emperor (1) and Nur Mohammad v. Emperor”

8. The general principles governing the exercise of this jurisdiction were authoritatively summarised by the Supreme Court in **Chandrappa v. State of Karnataka**,⁴ holding that “an appellate court has full power to review, reappreciate and reconsider the evidence upon which an order of acquittal is founded, and the Cr.P.C. places no restriction on the exercise of that power.” Expressions such as “substantial and compelling reasons,” “good and sufficient grounds” or “glaring mistakes” are not intended to curtail this power, but are, in the words of the Supreme Court, merely “flourishes of language” emphasising the appellate court’s reluctance to interfere. Paragraph 42 is reproduced as under:-

“42.From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge

(1)An appellate court has full power to review, reappreciated and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as, “substantiated and compelling reasons”,

⁴ (2007) 4 SCC 415



goof and sufficient grounds”, very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes” of “language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court.”

9. This Court had occasion to apply this framework in **State v. Ravi Kumar**,⁵ where leave to appeal against an acquittal was declined on the ground that the State had failed to demonstrate that the trial Court’s view was anything other than a plausible one, notwithstanding that certain individual observations of the trial court were themselves open to debate.

10. The Supreme Court’s decision in **Ramesh Babulal Doshi v. State of Gujarat**,⁶ supplies the analytical discipline that an appellate court must bring to this exercise. It requires the appellate court, before embarking upon any independent reappraisal of the evidence, to first pose a threshold question: do the findings of the trial court suffer from any of the recognised infirmities, namely, that the approach is vitiated by manifest error of law or fact, that it results in a miscarriage of justice, or that the conclusion is one that could not reasonably have been reached on the material on record.

11. Only if this threshold question is answered in the affirmative does the

⁵ MANU/DEOR/48163/2025

⁶ (1996) 9 SCC 225



appellate court proceed to reappraise the evidence and substitute its own conclusion; if it is answered in the negative, the acquittal must stand undisturbed, and however persuasively an alternative view might be constructed. Paragraph No. 7 of **Ramesh Babulal** (supra) is reproduced as under:

“7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.”

12. The Supreme Court in **Ghurey Lal v. State of Uttar Pradesh**,⁷ reinforced this position by holding that an appellate Court reviewing an acquittal must attach due weight to the trial Court's finding, because the presumption of innocence is “further strengthened” by it, and must reverse the acquittal only where there exist “very substantial and compelling reasons”.

⁷ (2008) 10 SCC 450



13. It is against this settled matrix of law that the submissions of the State must be tested, and it bears emphasis that the question before this Court at this stage is not whether an alternative view of the evidence is possible, but whether the view actually taken by the Trial Court is one that no reasonable court, applying its mind to the record, could have taken.

14. Applying the aforesaid principles, this Court is first required to examine whether the view taken by the learned Trial Court is palpably wrong, manifestly erroneous or demonstrably unsustainable.

15. The trial Court, while appreciating the evidence on record, has recorded its findings in paragraphs 17 to 19 of the impugned judgment. The said findings may be usefully extracted hereinbelow for appreciating the reasons which weighed with the learned Trial Court in extending the benefit of doubt to the respondents.

“17. Against the backdrop of these facts and circumstances, if the other aspects are looked into, then the credibility of the prosecution's case becomes doubtful. The first blow comes in the shape of delay in registration of the FIR, leaving scope for manipulation. The incident took place at 09.00 P.M. on 06.12.2010 whereas FIR came into existence after about 18 hours and that too, when the patient was fit for statement as he was removed to the hospital almost immediately after the incident although it remains shrouded in mystery as to whether the victim was removed to the hospital by the PCR or by PW-3 Mohd. Sharif. The victim has stated that police has recorded his statement at about 10 or 11 p.m. on 06.06.2012 whereas the Investigating Officer has stated that the statement of the victim was recorded on the next day i.e. 07.06.2012 and that is how the police has tried to explain the delay in the registration of the FIR. However, it is not reconcilable. PW-2 Mohd. Zahid has stated that he made a call to the police at 100 number and consequently police arrived there and took him to JPN Hospital whereas the other mainstay of the prosecution's case i.e. PW-3 Mohd. Sharif has stated in his examination in chief that police took PW-2 Mohd. Zahid to hospital, but in the cross examination, he made a turn around by saying that he took the injured to the hospital that too on a cycle rikshaw. According to the victim and PW-3 Mohd. Sharif, blood was coming out from the injuries sustained by the victim, but the blood



stained clothes, either of the victim or of PW-3 Mohd. Sharif, have not been seized by the police and there is no answer as to why it has not been whereas the circumstances reflect that blood must have fallen on the clothes of the victim and most likely on the clothes of PW-3 Mohd. Sharif as well if he took the victim to hospital. Investigating Officer has admitted that blood stains were there on the clothes which Mohd. Zahid was wearing, but in the same breath, he has taken a turn around and stated that no blood stains were found on the clothes of Mohd. Zahid. In the next line, he states that he had not seized the blood stained clothes of Mohd. Zahid and the reason given by him is that when he visited for this purpose, he could not find the clothes. There is no reason as to why he has not recorded any statement/supplementary statement of Mohd. Zahid in this context. Incidentally, PW-2 Mohd. Zahid, who was taken to hospital, has stated that the PCR van took him to the hospital in his cross examination very clearly and categorically and as pointed out and noted above PW-3 Mohd. Sharif has stated that he took the victim to the hospital in a cycle rikshaw. Evidently, both the things are not possible.

18. There is a reference of cross case, but the entire case is silent. The investigating Officer has, however, admitted about the existence of the cross case about which the Counsel for the accused has stated that the victim herein Mohd. Zahid was an accused in the cross case and he has been acquitted. This can be seen from the opening lines of the cross examination of the Investigating Officer examined as PW-10, that on the basis of the statement of accused Tahir a case FIR No. 84/2012 was registered against the victim herein i.e. Mohd. Zahid. The present case stems from FIR No. 83/2012 of the same police station, that is, Chandni Mahal. Ideally, both the cases arising out of the FIR No. 83 and 84 should have been tried and disposed of together. Nevertheless, that eventuality cannot be there now in view of what has been stated by the Counsel for the accused persons. PW-2 Mohd. Zahid in this context has specifically denied that Tahir has sustained injuries whereas the Investigating Officer has admitted this fact.

19. There are other inconsistencies in the testimony of the witnesses, for instance PW-2 Mohd. Zahid has stated that his family consisting his wife and two daughters, but at the time of the incident they were not present. On the other hand, PW-3 Mohd. Sharif, who happens to be the real brother of the accused Shahid Ali and who was having inimical terms with accused Shahid Ali, and has been examined by the prosecution in support of its case, has stated that wife and children of the victim were in the same room where the incident had taken place. The area of the room is about 8x7 and household articles, which were lying in their room were also scattered here and there. In such circumstances, either of the two is not stating correct facts. If the wife and children of the victim Mohd. Zahid were there in that very room



where the incident took place, they should have been made a witness .and if they were not there, then why PW-3 Mohd. Sharif stated about their presence. It shows that he is not a witness to the incident and corroboration to the testimony, the testimony of PW-2 Mohd. Zahid, which otherwise is not there in the testimony of PW-3 Mohd. Sharif is not available, if the victim was in possessions of the property in question, then at the time of incident i.e. 09.00 P.M., the other family members i.e. his wife and daughters are supposed to be present there. None of them is either a witness or injured, puts a question mark about the possession of the second floor by the victim.”

16. A perusal of the aforesaid findings would show that the trial Court principally found the prosecution case doubtful on account of the delay in registration of the FIR and the inconsistent versions regarding the time of recording of the statement of the injured and the manner in which he was removed to the hospital. The trial Court also noticed the non-seizure of the alleged blood stained clothes despite the prosecution version that the injured had suffered bleeding injuries.

17. The trial Court further took into consideration the existence of the cross-case arising out of the same occurrence and the conflicting evidence regarding the injuries sustained by accused Tahir. It also noticed the material inconsistency concerning the presence of the wife and daughters of the injured at the place of occurrence and the consequent doubt regarding the presence of PW-3 and the prosecution version concerning possession of the second floor.

18. The aforesaid reasoning demonstrates that the acquittal was not founded merely upon conjectures or surmises, but upon an appreciation of material inconsistencies and circumstances emerging from the prosecution evidence. The trial Court has assigned reasons for doubting the prosecution case and for extending the benefit of doubt to the respondents.

19. In the light of the settled principles governing an appeal against



acquittal, this Court is unable to hold that the view taken by the trial Court is palpably wrong, manifestly erroneous or demonstrably unsustainable. Even if another view may be possible on re-appreciation of the evidence, that by itself would not justify interference where the view taken by the trial Court is a reasonably possible view.

20. Accordingly, this Court finds no sufficient ground to interfere with the impugned judgment dated 31.03.2017.

21. The present application is, therefore, dismissed.

22. Pending application, if any, also stands disposed off.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 24, 2026

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