

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

% Decided on: 1st February, 2017

+ **CRL.L.P. 61/2017**

STATE (GNCT OF DELHI)

..... Petitioner

Represented by: Mr. Hirein Sharma, APP with
SI Jitender Joshi, PS Aman
Vihar.

versus

FAKREY ALAM

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 1826/2017

For the reasons stated in the application, the delay of 180 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CrI.L.P. 61/2017

1. Fakrey Alam, the respondent herein was tried for offence punishable under Sections 509/506 IPC and vide the impugned judgment dated 29th April, 2016, acquitted by the learned Trial Court. The reasoning of the learned Trial Court for acquitting the respondent after discussing the evidence of the witnesses is as under:-

“6. In the present case, complainant did not remember the day, month and year when the incident occurred. She stated that the incident took place at her house. The said area is residential area. No public witness has been joined in the investigation. It is

not the case that no public was present at the spot. PW2 has stated that there were neighbors of the complainant present at the spot but none of the neighbors have been examined in the investigation by the IO for reasons best known to him.

7. *Moreover, there are various contradictions in the version of the complainant and the police witnesses which make their version full of doubt and thus, lack credit. In her complaint Ex.PW3/A she has stated time of incident as 8 pm in the evening whereas in her statement recorded as PW3, she deposed that the incident took place at 8 am when she was working in her house. PW2 Ct. Dharamveer stated to have accompanied the IO to the place of incident. He stated that at about 7.30 pm, one lady i.e. complainant came to the police station and gave her complaint on 20.01.2013. He stated the name of the IO as HC Satish. The incident took place at 8 pm as per complaint Ex.PW3/A. It is not clear how the complainant could reach the police station at 7.30 pm i.e. even prior to the incident taking place. This amounts to contradiction in the version of the complainant and the PW2. Moreover the name of the IO in this case is not HC Satish as stated by PW-2. The IO is ASI Satyaveer. PW-4 stated that he recorded the statement of the complainant on reaching the place of incident. Whereas PW2 Ct. Dharamveer stated that complainant came to the police station and gave her complaint. Hence, there is contradiction in the version of the police witnesses as well. The DD entry no.28PP relied upon by the prosecution is regarding a quarrel between husband and wife and not between neighbours. In the present case the accused is neighbour of the complainant. Thus, there are various lacana in the prosecution version which does not inspire confidence.”*

2. Learned APP for the State submits that merely because the complainant did not remember the date, month and year when the incident took place, the same would not belie her version. Further the statement of the complainant was sufficient and the same could not be ignored for want of corroboration by independent witnesses.

3. The complainant PW-3 in her deposition stated that she did not remember the date, month and year of the incident however Fakrey Alam, the respondent herein used to misbehave and abuse her in filthy language and also threatened to kill her. She further stated that he used to come in front of her house at office times and abuse her.

4. No doubt, merely because the complainant did not tell the date, month and year of the incident or there is no witness to corroborate, the testimony of the complainant could not be belied/discarded. But a perusal of the testimony of the complainant reveals that the same is vague and general in nature. Moreover, what words were used by the respondent which amounted to abuse in filthy language have not been stated.

5. In view of the evidence of the complainant which is vague and general in nature not describing the alleged offence committed by the respondent, the view expressed by the learned Trial Court that the prosecution has failed to prove the guilt of the respondent beyond reasonable doubt cannot be said to be a perverse view warranting interference. No case is made out for grant of leave to appeal.

6. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 01, 2017
‘v mittal’