

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

% Decided on: 13th April, 2018

+ **CRL.L.P. 229/2018**

DR. ALKA RAI

..... Petitioner

Represented by: Mr. J.K. Singh and Ms.
Madhulika Agarwal,
Advocates.

versus

STATE & ANR

..... Respondents

Represented by: Ms. Rajni Gupta, APP for State
with ASI Asad Raza, Pairvi
Officer, PS Dwarka, Sector-23.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 6658/2018 (Delay in refiling)

For the reasons stated in the application, delay of 32 days in refiling the leave to appeal petition is condoned.

Application is disposed of.

Crl.M.A. 6657/2018 (Delay in filing)

For the reasons stated in the application, delay of 936 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 229/2018

1. Aggrieved by the judgment dated 17th January, 2015, whereby the learned Additional Sessions Judge, while setting aside the judgment dated 27th March, 2014 and order of sentence of even date, acquitted the respondent for the offences punishable under Sections 289/338 IPC, petitioner has preferred the present leave petition.

2. Briefly stated, prosecution case is that on 28th February, 2008 at about 8:00 P.M. at Vidyut Apartment, Plot No. 2, Sector 12, Dwarka, New Delhi, Om Prakash (respondent No. 2 herein) knowingly or negligently omitted to take precautions regarding his dog which gave bite to Saumya Rai and she sustained grievous injury. Prosecution examined seven witnesses to substantiate its case. Saumya Rai, the injured was examined as PW-4 who deposed that on the day of incident she along with her mother was walking in the society premises. Om Prakash and his wife along with their pet dog were also walking when the dog attacked on her face, broke her one tooth and also inflicted injuries on her lower lip by putting legs on her face and blood was oozing out from her mouth. Om Prakash led defence evidence and examined himself as DW-1. Learned Metropolitan Magistrate convicted Om Prakash for the offence punishable under Sections 289/338 IPC on the basis of the testimony of Saumya Rai HC Pakheru Lal (PW-1) and Dr. Uday Kumar (PW-3).

3. Learned Additional Sessions Judge, while reversing the findings of the learned Metropolitan Magistrate, acquitted Om Prakash on the ground that the injury caused to Saumya Rai (PW-4) as shown by prosecution witnesses is highly improbable. If after seeing the dog, Saumya Rai was running not towards the dog then how could the dog put his paws on her face. As per the MLC Ex. PW-3/A, there was no nail mark or bite mark of the dog on the face or any other part of body of Saumya Rai. The learned Additional Sessions Judge also found it difficult to believe that Saumya Rai lost her teeth due to force of pet dog without falling on the ground. Furthermore, testimonies of material witnesses Dr. Alka Rai (PW-2) and Saumya Rai do not support the manner of injury as stated in the MLC.

Statement of Dr. Alka Rai fortifies the fact that she as well as other residents of the society had strained relationship with Om Prakash in regard to keeping pet dog in the society which casts doubt over her testimony as well as the testimony of Saumya Rai.

4. Findings of the learned Additional Sessions Judge, cannot be said to be without any basis. This Court concurs with the view expressed by the learned Additional Sessions Judge. The impugned judgment acquitting the respondent cannot be said to be perverse or illegal warranting interference of this Court and the view expressed by the Learned Additional Sessions Judge is a plausible view.

5. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 13, 2018

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