

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

% *Decided on: 25th September, 2018*

+ **CRL.L.P. 683/2016**

STATE

.... Petitioner

Represented by: Ms. Rajni Gupta, APP for
the State with W/SI
Harjinder Kaur, PS
NDRS

Versus

MAYA DAHIYA

..... Respondent

Represented by: Mr. M.M. Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.20290/2016 (Delay)

For the reasons stated in the application delay of 110 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 683/2016

1. Aggrieved by the judgment dated 27th May, 2016 whereby the learned Metropolitan Magistrate acquitted the respondent Maya Dahiya for offence punishable under Section 325 IPC, the State has preferred the present leave petition.

2. Process of law was set into motion on receipt of a complaint on 100 number wherein Ashu Verma stated that on 14th August, 2008, when she and Maya Dahiya (respondent herein) were travelling in ladies coach

of Ballabgarh-New Delhi EMU Train, Maya Dahiya had beaten her by fist blows and kicks due to which she sustained grievous hurt on her right hand. When Maya Dahiya deboarded the train at Tilak Bridge, Ashu Verma and her mother chased Maya Dahiya and with the help of police, she was apprehended. Statement of Ashu Verma was recorded vide Ex.PW-2/A and after receiving her MLC, FIR No. 290/2008 was registered at PS NDRS for the offence punishable under Section 325 IPC. Maya Dahiya was arrested on 17th September, 2008. After the completion of investigation, charge sheet was filed.

3. Ashu Verma was examined as PW-2. During her cross-examination, she stated that Maya Dahiya not only started quarrelling with her but also abused her besides using physical force to vacate her seat by pushing her.

4. Saroj Verma (PW-3), mother of Ashu Verma deposed that she along with Ashu Verma was travelling from Mathura to Delhi and some passenger boarded the train from Faridabad. She asked them to vacate the seat. Maya Dahiya threatened them stating that she was working in police department and pushed her daughter violently from the seat. She further deposed in sync with Ashu Verma. During her cross-examination, she stated that no male member of the family was travelling with them on the day of the incident.

5. Seema (PW-5) deposed that she boarded the train from Palwal and took her seat in ladies compartment. When the train reached Ballabgarh, there was a lot of rush in the ladies compartment and one male person was also present in the compartment. She stated that one lady passenger requested the said male passenger to get down from the ladies

compartment and give the seat to some other lady passenger. The said male passenger refused to do so and the two lady passengers who were accompanying him started arguments with other lady passengers including her. Thereafter, the said male passenger and accompanying ladies passengers got up from their seats and stood near the gate of the train. Quarrel ensued between lady passengers and said persons and apart from that nothing happened in her presence as she had got down at Okhla Station. During her cross-examination, she denied the suggestion that Maya Dahiya had pushed Ashu Verma in ladies compartment and she sustained injury on her right hand and also she was an eye witness to the said incident.

6. Dr. Amit Verma (PW-7) deposed regarding the x-ray report Ex.PW-7/A of right wrist of Ashu Verma wherein he found fracture of proximal phalanx on little finger. However, he admitted that x-ray plate on record of the case does not show any fracture and x-ray of Ashu Verma was not conducted in his presence.

7. Supreme Court in the decision reported as (1992) 3 SCC 204 Madan Gopal Kakkad v. Naval Dubey observed:

“34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's

opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.”

8. From the X-Ray plate so exhibited no fracture having been found, Maya Dahiya could not have been convicted for offence punishable under Section 325 IPC.

9. There are vital improvements in the testimony of Ashu Verma (PW-2). She failed to explain as to why she did not use her mobile phone to make a complaint on 100 number and used the mobile phone of some other passenger. Furthermore, EMU train stopped on each and every station coming on the way and there were so many stations falling between Ballabgarh and Tilak bridge where Ashu Verma could have informed the police and got requisite medical help. Conduct of Ashu Verma defies the prudence of a reasonable human being in a given situation. Ashu Verma failed to explain how she got the name and profession of Maya Dahiya. Further, presence of father of Ashu Verma in the ladies compartment cannot be denied as Ashu Verma stated that her father read over statement Ex.PW-2/A to her and Seema (PW-5) also testified about the presence of a male passenger with two lady passengers in the ladies compartment which was the reason of argument among the lady passengers. Lastly, there are material improvements in the testimony of Saroj Verma (PW-3) and the prosecution case has not been supported by the sole independent witness that is Seema (PW-5).

10. Thus, Maya Dahiya cannot be convicted for offence punishable under Section 323 IPC as well in view of lacunas and inconsistencies in the testimony of the prosecution witnesses.

11. Findings of the learned Metropolitan Magistrate are based on the evidence on record and view formed is a plausible view. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

12. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 25, 2018
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