

\$~46

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

+ **CRL.L.P. 663/2019**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State with  
SI Ankit Kumar, PS Madhu Vihar.

versus

PAWAN

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

%

**04.12.2019**

**CRL.M.A. 41769/2019**

1. Allowed, subject to all just exceptions.

**CRL.L.P. 663/2019**

2. The State has filed the present petition seeking leave to appeal against the judgement dated 06.09.2019 passed by the learned ASJ-03, Karkardooma Courts, Delhi, whereby the respondent was acquitted of the offences under Sections 394/398 of the IPC.

3. The State contends that the Trial Court had failed to appreciate that the sole eye witness (PW2 – also the complainant) had correctly identified the accused (respondent herein) as the person, who had inflicted injuries on the complainant. The complainant (PW2) had also been successful in properly explaining the incident and had fully supported the case of the

prosecution.

4. The case of the prosecution is that on 21.06.2015 at about 1:30 am, the complainant (PW2) had gone to the Madhu Vihar CNG Station to get his autorickshaw filled. When he reached the place opposite to the said CNG Station, he was approached by the accused (respondent herein) to drop him to Hedgewar Hospital, but PW2 stated that he wanted to fill CNG in his vehicle first. The respondent agreed and accepted the fare as demanded by him. It is alleged that the respondent was in an inebriated condition and after having covered some distance, he placed a knife-like object at the back of the complainant and asked him to take out and hand over all the money he had or otherwise, he would be killed. When the complainant tried to flee from the clutches of the respondent, it was alleged that the respondent stabbed the complainant on his right thigh and attempted to flee. The complainant raised an alarm and other auto drivers had apprehended the respondent. The complainant was, thereafter, taken to a hospital. On the basis of his statement a FIR was registered.

5. Thereafter, the respondent was arrested. However, the weapon of offence was not recovered in the present case. A site plan was prepared and the complainant was medically examined. A chargesheet was filed and charges under Sections 394/398 of the IPC were framed against the respondent. The prosecution examined nine witnesses to prove its case. The defence did not lead any evidence.

6. On examining the testimony of the complainant, who had deposed as PW2 before the Court, the Trial Court noted that there were several inconsistencies in his statement made to the police (Ex. PW2/A) and his

testimony before the Court. The Trial Court noted that in his statement to the police, the case of PW2 was that the respondent had come and asked him to go to Hedgewar Hospital. The respondent had agreed to the fare as demanded by him. PW2 insisted that he would first get CNG filled and then go to the said hospital. However, in his statement before the Trial Court, PW2 testified that the respondent came in front of his auto and asked him to go to Hedgewar Hospital at knife-point; he stated that he was scared.

7. In his statement to the police, PW2 stated that after covering some distance, the respondent had placed a knife-like object on his back and asked him to take out whatever money he had, otherwise he would kill him. When PW2 stepped out of the auto, the respondent placed the knife on his stomach and asked him to take out the money again. When PW2 tried to flee, he stabbed him on his right thigh. However, in his initial testimony before the the Court, PW2 stated that the respondent had pointed a knife on the right side of his vest while sitting in the back seat of the auto. PW2 had stopped the auto, taken the key and put the same inside his shirt. The respondent had insisted on going to Hedgewar Hospital; the respondent tried to snatch the key from the pocket of PW2 and during the scuffle, the respondent gave a knife blow to PW2 and blood started oozing out.

8. The Trial Court took note of the said inconsistencies and held that no explanation had been provided by the prosecution for the improvements in the story of PW2. Since there was only a short gap of four months from recording of the statement of PW2 (Ex. PW2/A) and his statement before the Court, the same could not be justified.

9. The Trial Court also held that the prosecution was remiss in not

producing the clothes of the injured before Court. The seizure memo also did not indicate whether the clothes worn by the injured (PW2) were blood soaked. The said piece of evidence was even more important in light of the fact that none of the prosecution witnesses had deposed regarding the presence of any blood on the site. As per PW2, blood had oozed from the injury which he had received. Had that been the case, the clothes worn by him would have been stained or there would have been a cut mark on his jeans. Since the clothes of the injured had not been produced, the Court held that it had been deprived of an important piece of evidence.

10. The Trial Court also noted that there were inconsistencies between the testimonies of the prosecution witnesses regarding the attempts to locate the weapon of offence. PW4 (Ct Sukhram) had stated that they had searched for the knife within a periphery of twenty metres of the place of the incident and no efforts were made to search for the weapon after the date of the incident. Whereas PW9 (SI Sanjay Kumar) stated that he, along with PW4, had gone back to the spot again to search for the weapon, but the same could not be recovered. The Trial Court held that the said inconsistency, coupled with non-production of the clothes of the injured, raised suspicion on alleged usage of knife by the respondent.

11. The Trial Court noted that there were further inconsistencies with reference to the testimonies of the formal witnesses. PW3 (HC Rohtash Kumar) and PW4 (Ct Sukharam) had deposed that there were public persons present when the respondent had been apprehended. However, the IO (Sanjay Kumar – PW9) stated that no auto driver was present at the place where the respondent was standing. The Trial Court noted that the

deposition of the IO was not believable since the said CNG Station and the petrol pump near the spot remain functional round the clock and number of persons are always present there.

12. The Trial Court also noted that no public witnesses had been joined in the present case, despite the fact that the respondent had been apprehended by the public persons when the police had reached the spot. The Trial Court also took note of the fact that MLC (Ex. PW1/A) of PW2 was silent on the aspect if the injury could have been caused only by knife and not by any other object.

13. In view of the abovementioned inconsistencies, the Trial Court concluded that there was no cogent material to infer whether a knife-like object was used by the respondent. The complainant had himself not seen the knife when he had received a blow on his thigh. Further, no public persons had joined the investigation and the injuries on the injured (PW2) had not been explained by the prosecution. On the basis of the said findings, the Trial Court acquitted the respondent.

14. Ex. PW2/A has not been produced before this Court. However, it is denied that inconsistencies between PW2's statement as recorded by the Police and his testimony before the Court, as noted by the Trial Court in its order, do exist.

15. It was not PW2's case that he had been stopped by the respondent who had shown him a knife, or that he had agreed to take the respondent to Hedgewar Hospital under any fear. This version was stated to have come out for the first time in his testimony before the Trial Court. PW2's testimony cannot be believed, as it is highly improbable that a person who is under fear

for his life had insisted that he fill up CNG in his vehicle before proceeding further. In his statement before the police, PW2 had accepted that the respondent had agreed to pay the fare, as demanded by him. In view of the above, the doubts as to the case set up by the prosecution cannot be faulted.

16. It is also important to note that the knife in question allegedly used by the respondent had not been recovered, even though the respondent had been apprehended at the spot. However, in the facts of this case, where the respondent had been apprehended at the spot, absence of recovery of the knife is certainly a relevant factor in considering whether the respondent had used any knife at all. This is also important that PW2, in his cross-examination, had admitted that he had not seen the knife in the hands of the respondent after he had been apprehended. PW2 had also stated that he had not seen the knife in the hands of the respondent while he caused injury to him. He had reiterated that he had not seen the knife in the hands of the respondent when he had given him a blow. The Trial Court had noted that even the MLC was silent on the aspect whether the injury could have been caused only by a knife and not by any other object.

17. It is also clear from the evidence obtaining in the said case that there was a scuffle between the respondent and the complainant (PW2). Both of them had suffered injuries. The respondent in his statement, recorded under Section 313 of the Cr.P.C., also stated that there was a scuffle between him and PW2 on the issue of an unreasonable fare asked by him. He had stated that during the scuffle, the auto driver (PW2) as well as him had sustained injuries. He had complained that PW2 had also beaten him up.

18. Apart from PW2, there was no witness who had deposed to have seen

the knife in question. The initial complaint made by the complainant and his testimony before the Court raises serious doubts as to his narrative about the incident. In the circumstances, the Trial Court had discounted his testimony. There is no dispute that if PW2's testimony had been discounted; the prosecution's case must fail.

19. It is well settled that a decision of acquittal by a Trial Court would not be interfered with unless this Court finds compelling reasons to do so. The conclusion drawn by the Trial Court is a plausible one and this Court finds no compelling reason to interfere with the same.

20. The petition seeking leave to appeal against the impugned judgment is, accordingly, dismissed.

**DECEMBER 04, 2019**  
**RK**

**VIBHU BAKHRU, J**