

\$~2

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

Judgment Reserved on: 14th March, 2019
Judgment Pronounced on: 26th March, 2019

+ **CRL.LP. 827/2018**

SMT. GULZAR BEGUMAppellant
Through: Mr. Uday Kumar, Advocate

Versus

THE STATE OF NCT OF DELHI & ANR ...Respondent
Through: Mr. G.M. Farooqui, APP for State
with SI Rajender Singh,
PS Malviya Nagar

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J
CRL.M.A. 49520/2018 (Exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

CRL.M.A. 49521/2019 (Delay in filing)

This is an application under Section 5 of the Limitation Act, 1963 read with Section 482 Cr.P.C. seeking condonation of 326 days delay in filing the appeal. Learned counsel for the state has no objection if the delay is condoned.

For the reasons stated in the application, the delay in filing the present appeal is condoned. Application stands disposed of.

CRL. L. P. 827/2018

1. In view of the decision of the Hon'ble Supreme Court of India in the case *Mallikarjun Kodagali (Dead), represented through Legal Representatives vs. State of Karnataka & Ors.*, reported in *2018(14)SCALE32*, the victim is no longer required to apply for leave to appeal against the order of acquittal. Consequently, the present criminal leave petition is allowed. Registry is directed to register the present leave petition as appeal. Leave petition is disposed of.

CRL.A. /2019 (To be numbered)

1. No leave petition has been preferred by the state against the impugned order. On the request of learned counsel for the parties the appeal is set down for final hearing and disposal.
2. This appeal is arising out of the judgment dated 10.10.2017 passed by the learned Metropolitan Magistrate-02, South District, Saket Courts Complex, New Delhi in case FIR No. 1001/2014 registered at Police Station– Malviya Nagar, filed on behalf of the victim whereby the accused Danish (**'respondent no. 2 herein'**) was acquitted of the charges punishable under Section 323/341/506(II)/509 of the Indian Penal Code (hereinafter referred as **'IPC'**).
3. Brief facts of the case, as noticed by the learned Trial Court, are as under: -

“(i) On 11.08.2014 complainant Ms. Gulzar Begum along with her husband and daughter had lodged a complaint at PS: Malviya Nagar with regard to a quarrel taken place on 10.08.2014 in front of her residence i.e. H.No. 21A, opposite Gandhi Park, Malviya Nagar, New Delhi.

(ii) On the following facts and circumstances that accused Danish had wrongfully confined and restrained her and her daughter Zaheen Asraf by forcibly pushing her and inflicting simple injuries on them. The accused had also used abusive language while addressing the complainant and her daughter with the intent to insult and outrage their modesty and had threatened to kill her whole family.

(iii) Based on her statement recorded by HC/IO Zaffrudin Khan (PW-6) FIR No. 1001/2014 U/s 323/341/506(II)/509 IPC was registered at Police Station Malviya Nagar. After the completion of investigating, charge sheet was filed on 18.11.2014 and after committal, arguments on the point of charge were heard and charges U/s 323/341/506(II)/509 IPC were framed against the accused on 19.10.2015, to which he pleaded not guilty and claimed trial."

4. To bring home the guilt of the respondent, the prosecution has examined 6 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. wherein he denied the charges framed against him and claimed to be falsely implicated in the case because he has filed a complaint against Munazir Hussain and his wife on 16.07.2014 and chose not to lead any evidence in his defence.
5. After hearing the respective counsel and on appreciation of entire evidence available on record, the learned Trial Court acquitted the accused for the charged offences.
6. Mr. Uday Kumar, learned counsel appearing for the Petitioner contended that the impugned judgment dated 10.10.2017 is based on conjectures, surmises and the learned Trial court has failed to

acknowledge the testimony of PW-1 Gulzar Begum, PW-2 Noorul Ain, PW-5 Ms. Zaheen in the correct perspective and has given undue weightage to the minor discrepancies which have occurred in the testimonies of the prosecution witnesses, contrary to which all the testimonies are consistent and corroborative in nature and there are no major omissions and contradictions in the aforesaid testimonies. Counsel for the petitioner has lastly urged that the trial court has not correctly appreciated the facts and circumstances of the case; hence the impugned judgment is liable to be set aside.

7. I have heard the learned counsel for the petitioner and perused the material available on record.
8. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses, more particularly the testimonies of PW-1 Gulzar Begum, PW-2 Noorul Ain and PW-5 Ms. Zaheen, who has leveled the allegation against the accused Danish (respondent no. 2 herein). Smt. Gulzar Begum, the complainant, in this case, stepped into the witness box as PW-1 and deposed that:

“I am housewife. On 10.08.2014, I along with my husband Mohair, my daughter Shania were present at my home. I was residing at H.No. 121-A, First Floor, Hauz Rani, Malviya Nagar, New Delhi since 14 years from the incident and accused was residing on the second floor in said building, At that time I had parked my scooter in front of said building and accused removed my scooter. Thereafter, I stopped him and pulled down my scooter and started abusing me with filthy language and abuses that I cannot even

repeat and pushed me. Hearing the noise, my husband came down from first floor, accused also started abusing my husband. Thereafter my husband stopped him. At that time my daughter came out from my house and she was standing near the gate and accused pushed my daughter. Accused threatened me to kill me and my husband. Thereafter my husband called at 100 number and police reached the spot. Next day, I along with my husband went to the PS and police recorded my statement which is Ex.PW1/A bearing my signature at point A.”

9. Accordingly, as per the testimony of PW-1 Smt. Gulzar Begum, the quarrel began in front of her House No. 121-A, First Floor, Haus Rani, Malviya Nagar, wherein the accused was forcibly removing her scooter, which was parked by her in front of her building. On the intervention of the complainant, the accused person started abusing her with filthy language and purposely pushed her, with an intention of causing her injury. Consequently, on her hue and cry, her husband and her daughter had also arrived at the alleged place of the incident and on their arrival the accused person had also forcibly pushed her daughter and had threatened to kill them.
10. During her cross examination she deposed as under: -

“Vol. On the day of incidence was Roza Festival due to this I was unable for going the PS. It is correct that I had not got conducted the Medical Examination of myself. Vol. I sustained the injury on my right leg. I do not remember whether the day of incident was Roza festival or not. It is correct that I had told in my

chief examination me and my husband went to the PS for lodging the FIR. Vol. My daughter was also went to the PS with us. **It is correct that I had not mentioned anywhere in the FIR or any statement that the wife of accused was present at the spot. I did not filed any case against the wife of accused because she was female entity although she was present at the spot. It is correct that my husband did not get his statement recorded anywhere from the day of registration of the FIR till the trial was commenced. It is wrong to suggest that I along with my husband and my daughter with accused were present at the spot and accused did not pushed my daughter at Ist floor. It is correct to say that the parking place is not owned by me as it is a common place where anywhere of the resident of the apartment where I live or anybody could park their respective vehicles without taking permission from anyone.**

Vol. There is a fixed place for parking for accused and another residents where vehicles are parked. However on that day accused tried to park his vehicle by removing my already park vehicle and did not park at the place where accused used to park their vehicle. **It is correct to say that there is no such written mutual settlement/agreement with respect to the fixed place for parking the vehicles of the residents of the said building.** It is correct to say that the key of the lock of terrace was handed over to my husband as well as Mr. Nurulain and Mr. Saxena by the IO of the present case to make access on the terrace. It is wrong to suggest that since there is a dispute between my husband and the accused with respect to the terrace of the building, I registered this false and after thought criminal case against the accused at the

instigation of my husband. It is correct to say that I am well aware of the pendency cases in the court. It is wrong to suggest that no such evidence ever occurred between me, my husband and accused. It is wrong to suggest that I am deposing falsely with an ulterior motive to implicate the accused in this false and after thought criminal case. It is correct to say that I had not mentioned about any eye witness to the present incidence in my FIR, any statement given before the police or my examination in chief recorded before the honorable court as there was no eye witness present at the spot”

11. During her cross examination the complainant for the first time mentioned the presence of wife of the accused at the spot at the time of the commission of the alleged offence, which fact was neither mentioned in complaint nor did she mention her involvement in the FIR. She further in her cross examination admitted the fact that she was not the owner of the parking area and the same was used as a common place wherein any of the resident was allowed to park his/her vehicle.
12. The presence of the alleged eye witness i.e. PW-2 Sh. Noorul Ain, at the spot is itself doubtful because none of the aforesaid witness has deposed regarding the presence of PW-2 at the spot. Further, she has categorically deposed that injuries were inflicted on her right leg, but in her intial complaint vide Ex.1/A she has stated that, “*mai apna medical examination nahi karana chahti hun*”. The same fact is also corroborated with the cross examination of the Investigating officer Zaffrudin Khan (PW-6), wherein he has stated that “*I advised for*

conducting the medical examination of the complainant but she herself refused for the same". Therefore, the refusal to conduct medical examination leaves a suspicion on the story of the prosecution.

13. Ms. Zaheen (*daughter of the complainant*) stepped into the witness box as PW-5 and deposed that:

*"On 10.08.2014 at about 7.30pm, I was present at my home in room and at that time I was not well. That time I heard a voice of my mother that she said to somebody for not parking the vehicle. But I did not come out from my room at that time but just after 20-25 minutes I heard very big noise and I came out from my room. **My mother was told from balcony to not park the vehicle and I came from my room to the main gate of our flat.** When I came to the main gate then accused Danish was standing at the gate I front of my mother and was threatening her saying that he had many sources and he could do anything to harm us. When I saw all this I came forward and asked the accused why he was doing this. Then the accused staring abusing me and my mother and was using filthy language and was using expletives against us which I cannot even repeat. When I came forward the accused pushed me and was looking very aggressive and then his wife had to pull him away and take him upstairs. **Thereafter my father came and I saw that my father had sustained an injury on his leg and that is when I came to know about the entire incident which happened at the parking spot.** On the next day, I along with my father and mother went to the PS for getting FIR lodged. IO recorded my statement at PS Malviya Nagar U/ 161 Cr.P.C.*

Ex. PW5/A bearing my signature at point A which I admitted today before the court.

Earlier the accused had cordial relationship with my family. However one day accused started fighting with my father on the terrace and this happened a few months prior to the present incident and thereafter our relations with the accused turned sour.”

14. During her cross examination she deposed as under: -

“It is correct to say that my mother was present in the balcony when I heard her voice and not at the ground/floor parking place. The accused Danish came upstairs and had abused and threatened me and my mother both exactly at the main door of our flat situated at the 1st floor. I do not remember whether my mother sustained injury anywhere in the body. It is correct that no MLC of my injured father was conducted before me by the police officers. It is correct to say that I was well acknowledged and aware about the entire incident occurred and no part is let without my knowledge. I do not remember whether my father gave his statement before the police authority or the honorable court. It is wrong to suggest that the accused wanted to construct or make usage of the terrace in any manner what soever bounded by laws and the complainant and her husband as a strong objection for the same due to which this false and after thought criminal case was filed against the accused. It is correct that the incidence at ground floor was not toll place in my present. Vol. At that time I was inside my room. It is wrong to suggest that since the relations between the complainant and her husband and the accused turned sour this present false and after

thought criminal case was filed against the accused at the instigation of her father.”

15. A conjoint reading of testimonies of PW-1(Gulzar Begum) and PW-5 (Ms. Zaheen) would show that there are various contradictions in their statements. PW-1(Gulzar Begum) in her initial complaint vide Ex.PW1/A has categorically stated that the incident had occurred at the parking spot; to the contrary however PW-5 (Ms. Zaheen) during her cross examination deposed that her mother was standing in the balcony at the time of the quarrel. Further PW-5(Ms. Zaheen) deposed that accused Danish came upstairs and had abused and threatened her and her mother outside her flat on the first floor, contrary to which PW-1 (Gulzar Begum) deposed that *‘accused removed my scooter. Thereafter, I stopped him and pulled down my scooter and started abusing me with filthy language and abuses that I cannot even repeat and pushed me. Hearing the noise, my husband came down from first floor, accused also started abusing my husband. Thereafter my husband stopped him. At that time my daughter came out from my house and she was standing near the gate and accused pushed my daughter.’*
16. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidences on record have been held to be unworthy of acceptance because the same are found to be replete with infirmities and not supported with medical evidence. There are considerable inconsistencies and discrepancies in the statement of the witnesses,

which consequently creates reasonable doubt on the case of prosecution.

17. It is a settled law that while deciding an appeal filed by the complainant, in case two views are possible, the High Court must not interfere, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favors the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.
18. In ***Chandrappa v. State of Karnataka*** reported in (2007) 4 SCC 415, the Apex Court has culled out the following principles qua powers of the appellate Courts while dealing with an appeal against an order of acquittal:

"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, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
- 2. The Code of Criminal Procedure, 1873 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 of law.

3. Various expressions, such as, 'substantial and compelling reasons', 'good 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 should not disturb the finding of acquittal recorded by the trial Court."

19. In the case of ***State of Madhya Pradesh v. Dal Singh & Ors.***, reported at **2013 (8) SC 625**, the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of

acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant materials have been unjustifiably ignored, it would be a compelling reason for interference.

20. Keeping in view the aforesaid propositions, I see no compelling and substantial reason to interfere with an order of acquittal passed by the learned Trial Court in the present case and therefore, upon overall analysis, I am of the view that the present appeal being meritless deserves to be dismissed, as the prosecution has failed to disclose the true genesis of the crime and establish the charges against the accused punishable under the Indian Penal Code.
21. Accordingly, the present appeal stands dismissed.
22. Copy of this order be sent to the Trial Court.

MARCH 26, 2019
gr

SANGITA DHINGRA SEHGAL, J