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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL. A. No. 123 of 2017**

Between:-

**STATE OF NCT OF DELHI
THROUGH DCP (NORTH EAST)
NEW DELHI**

.....APPELLANT

*(Through: Shri Pradeep Gahlot, Additional Public Prosecutor
for the State.)*

AND

**FAIZAL RIYAZ
S/O SH. RIYAZUDDIN
R/O H.NO.1-99/ MURADI- ROAD, BATLA
HOUSE, JAMIA NAGAR, NEW DELHI**

.....RESPONDENT NO. 1

**SAIMA AZIZ
W/O FAIZAL RIYAZ
R/O H.NO.1-99, MURADI ROAD,
BATLA HOUSE, JAMIA NAGAR, NEW DELHI**

.....RESPONDENT NO. 2

(Through: Ms. Nidhi Mehra, for R-1 & R-2)

% Pronounced on : 20.01.2023

J U D G M E N T

1. The instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") is directed against the judgment of acquittal dated 11.11.2014 passed in Case No.82/2/14 by the learned Metropolitan Magistrate-10 (South-East), Saket Courts,

New Delhi, acquitting the accused/respondents in a case arising out of FIR No. 273/2008 under Sections 325/34 of the Indian Penal Code (in short "IPC"), 1860 registered at Police Station Jamia Nagar, Delhi.

2. Learned counsel appearing for the appellant states that the impugned judgment passed by the learned Metropolitan Magistrate (in short "learned MM") is perverse, erroneous and demonstrably not sustainable in the eyes of law; and is against the basic provision of law. He further submits that the order of learned MM is based on conjectures and surmises and as such cannot stand the scrutiny of law and thus, deserve to be quashed.

3. The case of the respondents is that the learned trial court has rightly concluded that the prosecution has failed to prove the case beyond a reasonable doubt. The reasonings given by the learned trial court are based on the sound legal principle that the accused cannot be convicted unless the prosecution proves the case beyond a reasonable doubt. In the instant case, he submits that the evidence has been created falsely to implicate the respondents and there is no reason to believe the prosecution story.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The case of the prosecution is that on 09.12.2008 at about 9:15 PM, the complainant along with her sister's husband Antesham had gone to visit the house of her maternal uncle Jiya-ul-Hassan at I-99 Muradi Road, Batla House, New Delhi for wishing Eid. The complainant was sitting along with her maternal uncle and aunt and was in a conversation, when, accused Nos.1 and 2 came from the first floor and started fighting with her. During those heated arguments, both the accused/respondent Nos.1 and 2 started abusing the complainant. Accused No.2 caught hold of the hair of the complainant

and respondent/accused No.1 hold her by her hand and caused injuries to her finger and pushed her towards the motorcycle parked in the gallery. Due to the same, the complainant suffered injuries on her hand. The respondent/accused No.2 even gave her beatings with fists and blows. In the mean meanwhile, when the complainant's sister's husband Antesham tried to rescue her from respondent/accused No. 1 and 2, the accused Nos. 1 and 2, pushed him out of the house. During the incident, many public persons gathered at the spot however, she reached back her house, whereupon she informed her husband about the incident. Thereafter she went to the Holy Family Hospital for medical aid.

6. Thereafter an, FIR was registered and the investigation was carried out, and on conclusion of the investigation, the chargesheet was filed and charges were framed against the accused/respondents on 13.05.2010 under Sections 325/334 of the IPC to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as eight witnesses. The prosecution evidence was closed on 27.07.2013 and subsequently, the statement of the accused/respondents under Section 313 of Cr.P.C. was recorded on 17.08.2013. The list of prosecution witnesses is as under: -

PARTICULAR	NAME	ROLE
PW-1	MS. SAIRA HAFIZ	COMPLAINANT
PW-2	SHRI SYED HAMID-ULLAH	HUSBAND OF THE COMPLAINANT
PW-3	SHRI ANTESHAM	BROTHER-IN-LAW
PW-4	HC JOGENDER SINGH	HEAD CONSTABLE
PW-5	HC RAJ KUMAR	HEAD CONSTABLE
PW-6	LADY CT. ANITA	CONSTABLE
PW-7	ASI HARPHOOL SINGH	ASSISTANT SUB-INSPECTOR
PW-8	SI BENGALI BABU	SUB-INSPECTOR

7. The learned MM after taking into consideration the entire material available on record acquitted the respondents/accused.

8. Section 325 of the IPC is reproduced herein below:

325. Punishment for voluntarily causing grievous hurt.— Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The essential ingredients of Section 325 of the IPC are as under:-

(1) Accused caused hurt. (2) Hurt was grievous as provided under Section 320, I.P.C. (3) Hurt was caused voluntarily.

9. Shri Antesham (PW-3), who went along with the complainant and is also the eyewitness of the aforesaid incident, deposed that on 09.12.2008, he along with the complainant went to the house of the maternal uncle and when they were sitting and talking, after some time accused No.2 Saima came and started quarrelling with the complainant and he tried to stop them. However, accused No. 1 also reached the spot and started quarrelling with the complainant because of which the complainant's finger was fractured. He took her to their house and after dropping PW-1/complainant, he left for his house and police recorded his statement. During his cross-examination, PW-3 admitted that accused No.1 had caught hold of the hand of the complainant and twisted the same because of which one finger of the complainant was fractured and during the quarrel complainant fell on the motorcycle but he did not remember whether accused No.2 had beaten complainant with fists and legs during the quarrel.

10. As per the statement of PW-2, who is the husband of PW-1, on 09.12.2008 at about 09:15 PM a quarrel took place between his wife and both the accused persons. He deposed that after reaching home,

the complainant the entire incident to him and also that she had sustained injuries. He further deposed that the complainant had received injuries on her left-hand finger and her clothes were torn and it was he who had taken her to the Holy Family Hospital where police came and recorded the statement of the complainant. Accused Faizal Riyaz was arrested *vide* memo Ex.PW2/A and accused Saima was arrested *vide* memo Ex.PW2/B and the personal search of accused Faizal was conducted *vide* memo Ex.PW2/C. During cross-examination, PW-2 stated that he had not made a call at 100 number as Police Station Jamia Nagar is near to their house. Further, he himself had not given any written complaint to the Police Station, while going to Holy Family Hospital with his wife. Also, he did not remember the exact time when his wife visited the house of her uncle prior to the incident but she used to often visit her uncle, and that she was called by her uncle in presence of PW-2.

11. PW-5 HC Raj Kumar deposed that on 14.12.2008 while he was posted at Police Station Jamia Nagar, he joined the investigation of the present case with ASI Bengali Babu and on that day he along with IO and the complainant, namely, Syed Hamid went to I-Block Muradi Road, Batla House where he pointed out towards accused Faizal Riyaz and thereafter accused Faizal Riyaz was apprehended and arrested *vide* memo Ex.PW2/A and his personal search was conducted *vide* memo Ex.PW2/C. Thereafter disclosure statement of accused Ex.PW5/A was recorded during the cross-examination by learned counsel for the accused. PW-5 stated that he reached the spot about 4:00-5:00 PM and no family member of the accused was present when Syed Hamid pointed out towards him and no identity proof was asked by the IO when accused was identified by Syed Hamid. Also, he did not remember the time during which he remained at the spot and that

local persons had gathered while the accused was apprehended however no public person was cited as a witness and all documents/written work was done at the spot.

12. PW-6 Lady Constable Anita deposed that on 17.12.2008 while she was posted at Police Station Jamia Nagar, she along with IO had arrested Saima Aziz *vide* memo Ex.PW2/B and her personal search was conducted *vide* memo Ex.PW6/A and her statement was recorded by the IO. During the cross-examination by learned counsel for the accused, PW-6 stated that accused Saima was arrested at about 05:45 PM on 17.12.2008 and she did not know the direction or entry or number of gates of the premises of the accused when she was arrested and also the floor number from where she was arrested. Further, she did not remember how many floors were there in the building/premises and whether there was any parking or not.

13. PW-8 SI Bengali Babu deposed that on 09.12.2008 while he was posted at Police Station Jamia Nagar on emergency duty from 08:00 PM to 08:00 AM, he received DD No.28A from the Holy Family Hospital regarding the admission of one Saira Hafiz at about 09:15 PM. Thereafter PW-8 along with one constable whose name he did not remember reached the Holy Family Hospital and received the M.L.C. of the injured and recorded the statement of the injured (Ex.PW1/A). Thereafter, he kept the DD entry pending and after receiving the report on MLC as grievous, prepared the *rukka* on 13.12.2008 (Ex.PW8/A) and prepared the site plan (Ex.PW1/B) at the instance of the complainant. Accused Faizal Riyaz was arrested on 14.12.2008 *vide* memo Ex.PW2/A and his personal search was conducted *vide* memo Ex.PW2/C. Accused Saima was arrested on 17.12.2008 *vide* memo Ex.PW2/B and her personal search was conducted *vide* memo Ex.PW6/A. During his cross-examination, PW-

8 stated that he along with Constable reached the Hospital at about 09:30 PM and received the MLC and during the period 09.12.2008 to 13.12.2008 had not inquired about the matter with the public persons or the neighbours of the locality regarding the aforesaid incident and had recorded the statement of the husband of the complainant at the Hospital on the same day. He further stated that the complainant had informed him that she had gone alone to the house of her maternal uncle to wish Eid festival. Also, that the house of the accused was constructed up to two and a half floors and he had not seized the motorcycle in question. The complainant received the injuries on her right hand and the result of the MLC was received on 13.12.2008. He admitted that the date 13.12.2008 was not mentioned on the MLC. He further admitted that he visited the house of the accused persons on 09.12.2008 and 13.12.2008 and had not prepared any note of any person who had refused to join the investigation.

14. No defence witness was examined on behalf of the accused persons.

15. In the present matter, despite the fact that the public gathered at the place of incident, not a single person has been examined as a witness by the prosecution, and, in fact, IO PW-8 stated during his cross-examination that he visited the house of the accused persons between 09.12.2008 and 13.12.2008 but did not enquire the matter from any public witness and had only recorded the statement of the complainant's husband, who was most likely the interested witness. Moreover, the only eye-witness apart from the complainant (PW-3), Antesham has also deposed in his statement that he does not remember if the complainant was even beaten by the accused persons with fists and legs and that he sustained any injury during the quarrel. The husband of the complainant mentioned that when she reached the

house, her clothes were torn, however, complainant/PW-1 or PW-3 have not mentioned the same anywhere.

16. The aforesaid facts cast a shadow on the story of the complainant and the same seems to be an afterthought as the complainant during the quarrel or immediately thereafter did not think of calling the police at 100 number or making the complaint immediately but chose to reach her house first. A perusal of the complaint made by the complainant shows that she has narrated the time of the incident everywhere as 09:15 PM, whereas the MLC of the witness shows that she had narrated the incident which had occurred at 10:00 PM. Therefore, in the present facts and circumstances, the prosecution has failed to prove its case beyond reasonable doubt against both the accused persons for the offence punishable under Sections 325/34 of the IPC.

17. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the

¹ 2008 9SCC475

² (2007)4 SCC415

trial court is 'perverse', it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

18. The Hon'ble Supreme Court in the matter of *Hakeem Khan & Ors. v. State of M.P.*³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision, it has been held that if the 'possible view' of the trial court is not agreeable to the High Court, even then such 'possible view' recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the verdict of the trial court cannot be interdicted and the High Court cannot be supplanted over the view of the trial court.

19. Having considered the aforesaid facts and circumstances, this court finds that the prosecution has not been able to successfully prove the charge beyond a reasonable doubt. On examination of the material available on record, this court is not inclined to take a different view other than the one already taken by the court below. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 20, 2023
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