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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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CRL. A. No. 835 of 2017**Between:-****STATE (NCT OF DELHI)****.....APPELLANT***(Through: Mr. Pradeep Gahalot, APP for State)***AND****ASHOK NAGAR****S/O SHRI PHOOL SINGH****.....RESPONDENT NO. 1****ARVIND NAGAR****S/O SHRI ASHOK NAGAR****.....RESPONDENT NO. 2****AJAY KUMAR****S/O SHRI TEJ SINGH****.....RESPONDENT NO. 3****ALL RESIDENTS OF
B-923, G.D. FARM,
MAYUR VIHAR III, DELHI.***(Through: Mr. Raman Sahney, Advocate)*

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Pronounced on : 18.01.2023

JUDGMENT

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") is directed against the judgment of acquittal dated 27.02.2015 passed by the learned Additional Sessions Judge East



District, Karkardooma Courts, Delhi in connection with FIR No. 295/2005 at PS DBG Road, Delhi for the offence punishable under Sections 308 of the Indian Penal Code, 1860 (In short “IPC”).

2. The prosecution case in brief is that on 07.07.2005 at about 7:30 AM., one Pankaj Kumar Sharma (‘complainant’) was present a little ahead of Bus Stand, Pocket A-1, Khoda Road. One Maruti car bearing registration No.DL-7C-7447 hit against him on account of which he fell down on the ground. Ashok Nagar (Accused No.1), Arvind Nagar (Accused No.2) and Ajay Kumar (Accused No.3) came out of the said Car. Accused No.2 caught hold of him while both the remaining accused persons who were armed with iron rods, attacked him and on account of which he sustained injuries on various part of his body including head injuries resulting in him becoming unconscious. He regained consciousness in the hospital. On the statement of injured, a case under Section 308/34 of the IPC was registered against the accused persons. During investigation, accused persons were arrested and upon completion of investigation chargesheet was filed against all the three accused persons to face trial for the offence under Section 308/34 of the IPC.

3. The respondents/accused persons pleaded not guilty. Charges were framed *vide* order dated 19.04.2007 under Section 308/34 of the IPC. The learned trial court after appreciating the entire evidence and material available on record acquitted the respondent/accused. Hence, the State is in this appeal.

4. The learned counsel for the State then made two broad submissions—firstly, that learned sessions court has ignored the testimony of the complainant who was examined as PW-4 and had identified all the accused persons in court as being the persons who had caused injuries to him. It is argued that the statement was corroborated by the medical evidence, provided in the testimonies of Dr. Sushil Kumar

i.e., PW-1, Dr. Rachna Jain *i.e.*, PW-8 and Dr. Ganesh *i.e.*, PW-9. Secondly, learned counsel has argued that the contradictions and discrepancies in the statements of the witnesses have been given undue weight, while ignoring the passage of time between incident taking place and the trial commencing, and the appreciation of the statements of the witnesses are thus bad in law, given they do not go to the root of the prosecution's case.

5. Learned counsel appearing on behalf of the respondents on the other hand opposed the prayer and submitted that the learned trial court has rightly come to a conclusion that the prosecution has failed to prove its case as the testimonies of the witnesses especially the complainant and his brother-in-law (PW-7) are not reliable and it will be unsafe to convict the accused persons. The complainant (PW-4) claimed that demand of payment of the dues for milk sale was the only reasons for the attack on the complainant, however, he failed to show that any such amount was due. The complainant stated that he was directly taken to the hospital from the place of incident, whereas, his brother-in-law (PW-7) deposed that he was taken to his house and then to the hospital, from the place of incident. There are various inconsistencies in the statements of the brother-in-law as the blood stains were not found on the spot as stated by him, the place of incident was incorrect as stated by the brother-in-law (PW-7) which proves that he did not visit the place of incident. There are material inconsistencies in the statement of the complainant and his brother-in-law.

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

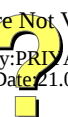
7. The prosecution has examined 10 witnesses to prove the charges against the respondents/accused persons, yet the prosecution case is essentially based on the testimony of the complainant (PW-4) and his brother-in-law (PW-7). Descriptions of witnesses are as under :-

PW	NAME	ROLE
PW-1	DR. SUSHIL KUMAR	DOCTOR
PW-2	SATPAL	INVESTIGATING OFFICER
PW-3	CHARAN DASS	HEAD CONSTABLE
PW-4	PANKAJ KUMAR	COMPLAINANT
PW-5	TEJ SINGH	CONSTABLE
PW-6	HARI KISHAN	CONSTABLE
PW-7	AMIT SHARMA	BROTHER-IN-LAW OF PW-4
PW-8	DR. RACHNA JAIN	ORTHO SURGEON
PW-9	GANESH	ORTHO SURGEON
PW-10	MAHENDER SINGH	INVESTIGATING OFFICER

8. The complainant (PW-4) deposed that in the year 2005, he used to run a milk dairy at B-778, Gharoli Dairy Farm. He stated that accused No. 1 used to threaten him as and when he demanded payment of milk and milk products which were supplied by him to the accused No. 1. The accused persons attacked the complainant and had beaten him with an iron rod resulting in the complainant falling unconscious. He sustained injuries and remained on bed for about 1.5 months. In his cross-examination, he has not mentioned anything in relation to demand of money. He has changed his stance numerous times with respect to selling milk or not during his examination-in-chief and cross-examination on 08.02.2010 and 14.07.2010 respectively. It has come in the cross-examination of the complainant that the accused was also in the business of sale of milk and milk products. It is rendered highly doubtful that accused side would buy milk from a competitor . He has further been inconsistent with respect to spot of the incident. He was unaware of whether any of his relative was residing at Khoda Colony. There have been various inconsistencies with regard to the chronology of events

explained by the complainant.

9. The material contradictions and omissions of PW-4 needs careful examination and which are as follows—(1) In his statement to the police Ex. PW3/A, he stated that the victim, used to supply milk to the accused Ashok Nagar, , and upon a demand for payment the accused used to threaten the victim. However in his cross-examination conducted on 14.07.2010 he stated that the accused were also engaged in the business of selling milk; had kept buffaloes for 4-5 years prior to the incident, and lastly stated while changing his stance completely that he was not aware whether the accused sold milk; (2) Further, he stated in his statement to the police Ex. PW3/A that he was hit by a car bearing the number plate DL-7C-7447. However in the court, he stated that the car had merely overtaken him; (3) PW-4 stated that when the alleged incident took place he was going from South to North, whereas the site-plan shows the incident point was not on the road going from South to North, but from West to East. Notably he stated that the incident point was shown by him to the police. PW-3, HC Charan Dass and PW-10, SI Mahender Singh, the second IO of the case, have remained silent on this point. Lastly, during cross-examination, when questioned as to whether there was any Taxi Stand, PWD office or a school near the incident spot, PW-4 was not able to respond satisfactorily. Notably, this was the route taken by PW-4 for his regular morning walks. This concludes the material contradictions and omissions in the evidence of PW-4. By the end of these depositions and statements, it can be safely concluded that PW-4 is not reliable witness relating to the factum of motive or reason for the accused to attack him. Moreover, it is clear that PW-4 has not been consistent while relating to the incident itself. The very cause of the injury relating to the car having hit PW-4 has not been consistently stated including that the place of incident is also disputed.



10. The material contradictions and omissions of PW-7, along with its inconsistency with the statements of PW-4 are as follows: (1) He stated that on 07.07.2005 he was residing at his sister's place in Delhi, that being the house of PW-4. However, in his cross examination dated 07.07.2005, he denied the suggestion that he stayed at Khoda Colony. PW-4 had stated in his testimony that he was unaware as to whether any of his relative were residing at Khoda Colony; (2) He further stated that after he had found PW-4 lying in an unconscious state at the incident spot, he had taken him to his house, from where he took him to the hospital, during this journey from his house to the hospital, PW-7 stated, that PW-4 had re-gained consciousness and had told him that the accused had beaten PW-4, however, PW-4 in his testimony had stated that he was directly taken to the hospital after the alleged incident took place, and regained consciousness only at the hospital; (3) He stated that the place of incident was in front of A-block flats, Mayur Vihar, Phase III, and he reached the spot at about 7:30-7:45 AM after a considerable time, and the road upon which the victim was from North to South, however, PW-4 had stated that he was at the place of incident between 7-7:30 AM, and further the site-plan shows the incident spot is not on the road mentioned by PW-7. The statements above, and the material contradictions and omissions within them lead to the conclusion that neither the chronology of events nor the spot or time of incident have been proved satisfactorily. Furthermore, PW-7 has explicitly contradicted the statements of PW-4, relating to whether PW-4 first went to his home or directly went to the hospital, and further whether he had regained consciousness prior to his statement at the hospital.

11. The brother-in-law of the complainant (PW-7) deposed that he found the complainant unconscious at the place of incident and rushed him to the hospital. His statement regarding the place of incident was

contradictory. He stated that PW-4 had told him the names of the assailants on way to the hospital, which were later contradicted by him as he claimed that 'on his way to the hospital' were not mentioned. PW-7 said that there were blood stains at the spot but PW-2 and IO/PW-10 have stated that no such blood stains were there when they visited the spot. PW-3/First IO did not care to see whether blood spots were there or not.

12. PW-7 and IO/PW-10 say that site plan was prepared at the instance of PW-7. However, PW-2 who was with the first IO/PW-3 has denied the said fact. He has rather stated that site plan was prepared by PW-3 and not by PW-10. PW-7 said that the spot of incident was in front of A-Block Flats and the said road was leading from North to South. However, in the site plan Ex.PWIO/A, the place of incident which is point 'A' is not on the road leading from North to South. Even PW-4/injured could not satisfactorily explain the place of incident. PW-4 also claims that he had shown the spot of incident to the police. However, strangely PW-3 and PW-10 both are silent on this aspect. PW-4 thus had not shown the spot of incident to the investigating officers.

13. Another major contradiction in the testimony of the complainant is that in the *tehrir*, he had stated that he was hit by car no. DL-7C, whereas, in witness box, he stated that the said car had merely overtaken him. Both of these statements have major contradictions. There was no recovery of the weapon *i.e.*, the iron rod. PW-4 had completely denied going to his house from the spot but he stood falsified from testimony of PW-7. The fact that—firstly, PW-4 had gone to his house before going to the hospital creates grave doubt about the veracity of his version. This gave PW-4 ample opportunity to deliberate over the allegations. Furthermore, the address on the MLC was in all probability told by PW-7 himself to the doctor otherwise the doctor could not have mentioned the said address, However, to wriggle out of the controversy regarding his address, PW-7

in his evidence flatly denied ever telling his address to the doctor. This not only cast aspersions on his presence at the spot, but also potentially makes his testimony unreliable.

14. It was argued by the learned counsel that the statements of PW-4 stand corroborated by PW-1, 8, and 9. The argument is without any merit. The statement of PW-1, 8, and 9 all made by doctors can only be corroborated insofar as it relates to the nature of injury. It was stated by them that it is possible that the injury so caused to the victim can be on account of an accident. This testimony may only act as corroboratory evidence to a testimony which is substantially consistent and is not in-itself riddled with contradictions and omissions. The testimony of PW-4 was not consistent relating to whether he was hit by a car or it merely overtook him. But even if it assumed that the statement of PW-4 to the extent that it is corroborated by PW-1, 8, and 9 are true, that still leaves a void relating to the facts not related with the testimony of the doctors, the place of incidence, chronology of events, discrepancies relating to motive, are all facts and circumstances which remain disproved.

15. The contradictions and omissions thus made in the case of the prosecution relate to motive, site of incidence, chronology of events, cause of injury, and time of incident, any of which cannot be considered as being minor discrepancies. All the aforementioned are at the heart of the issue and require adjudication. The learned ASJ has rightly relied on the judgment of the Hon'ble Supreme Court in the matters of ***Bakhshish Singh v. State of Punjab & Anr¹***, which ruled that minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story if it is otherwise found credit-worthy. This court neither finds the contradictions to be minor nor the case of the prosecution trustworthy. There are omissions and contradictions intra-se between the statements of

material witnesses, and inter-se contradictions that go to the heart of the matter. This court is thus not inclined to interfere with the judgment of the learned ASJ.

16. The judgment dated 27.02.2015 of the learned Additional Session Judge indicates that having considered the entire available material he has found that the evidence led by prosecution was not sufficient to prove that the offence took place. Therefore, the respondents/accused persons were acquitted.

17. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*² while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*³ 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 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 Supreme Court in the matter of *Hakeem Khan & Ors. v. State of M.P.*⁴ has again considered the powers of the appellate court for interference 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

² 2008 9SCC475

³ (2007)4 SCC415

⁴ (2017)5 SCC715

is not agreeable for 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, verdict of the trial court cannot be interdicted and the High Court cannot supplant its own view over that 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 reasonable doubt and the appellant deserves the benefit of doubt. On examination of the material available on record, this court is not inclined to take a different view other than the view which has already been taken by the learned trial court. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 18, 2023/C'sha