



2024:DHC:5952



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Reserved on: 27th May, 2024****Pronounced on: 09th August, 2024**+ **CRL.A. 556/2003****AJAY SONDHI @ DIMPY**

..... Appellant

Through: Mr. Maninder Singh, Senior Advocate
with Ms. Simran Chawdhary and Mr.
Manoj Bhandari, Advocates alongwith
appellant in person.

Versus

STATE OF DELHI

..... Respondent

Through: Mr. Sunil Kumar Gautam, APP for the
State.
SI Ramniwas, PS Uttam Nagar.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973, (for short, 'CrPC'), has been filed assailing the judgment of conviction dated 21.07.2003 and order on sentence dated 22.07.2003 passed by Sh. P.C. Ranga, learned Additional Sessions Judge (for short, 'ASJ'), Delhi in S.C. No.

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52/2000 arising out of FIR No. 1071/99, under Section 307 of the Indian Penal Code, 1860, (for short, 'IPC'), registered at Police Station Uttam Nagar.

2. *Vide* the aforesaid impugned judgment of conviction and order on sentence, the appellant has been convicted for the offences punishable under Sections 308 and 324 of the IPC. The appellant has been sentenced to undergo rigorous imprisonment for a period of 2 years alongwith a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of 3 months for the offence punishable under Section 308 of the IPC. The appellant has also been sentenced to undergo rigorous imprisonment for a period of 1 year for the offence punishable under Section 324 of the IPC. Learned ASJ while passing the impugned order on sentence has also directed that both the sentences awarded to the present appellant shall run concurrently and benefit of Section 428 of the CrPC will also be given to the appellant.

BRIEF BACKGROUND

3. Brief facts, necessary for the disposal of the present appeal, are as follows:
- Sh. Raj Kumar @ Raju, the complainant/injured (hereinafter referred to as, 'PW-2'), was a television mechanic and a resident of Phase-V, Om Vihar, Uttam Nagar, Delhi and his friend, Sh. Jitender @ Bittoo (hereinafter referred to as 'PW-3'), the other injured person was also running a shop of cable in his neighbourhood.
 - On 30.10.1999, PW-3 fell ill because of some supernatural power (*upri hawa*). The complainant (PW-2) took his friend, PW-3, to a goddess temple (*Mata Mandir*), where the priest (*pujarin*) of the said temple



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performed a *jhada* on PW-3 to cure him and asked the latter to offer sweets (*prashad*) on a well.

- iii. In pursuance thereto, at around 08:00 PM, both PW-2 and PW-3 went to a well in a vacant plot and put *prashad* there. Subsequently, the appellant/accused, Ajay Sondhi @Dimpy came there and said that, “*totka kar rahey ho*”.
- iv. PW-2 and PW-3 denied the performing of any such *totka* however, the appellant got furious and said that, “*tera kaam tamaam kar deta huin*”. Thereafter, the appellant attacked PW-3 with a screw driver and when PW-2 tried to save PW-3, the appellant stabbed the screw driver in the chest of PW-2.
- v. Subsequently, the injured persons were taken to Nayyar hospital and thereafter, to DDU hospital and the information of this incident was given to Police Station Uttam Nagar *vide* DD No. 19A.
- vi. On receiving the information of the aforesaid incident, SI Kehar Singh, Investigating Officer alongwith police party reached the spot where the said incident had taken place. Then, he went to DDU hospital where he recorded the statement of the complainant (PW-2) on the basis on which FIR in the present case was registered.
- vii. Thereafter, the appellant was arrested on 31.10.1999 and after completion of the investigation in the present FIR, chargesheet for the offence punishable under Section 307 of the IPC was filed against the appellant. Subsequently, *vide* order on framing of charge dated 24.05.2000, the learned Trial Court, in addition to the charge of offence punishable under

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Section 307 of the IPC, had also framed charge for the offence punishable under Section 324 of the IPC against the appellant.

- viii. During the course of trial, the prosecution had examined as many as 10 witness to prove the guilt of the appellant; however, the latter in his statement under Section 313 of the CrPC has also narrated his version of the incident which is in contradiction to the case of the prosecution made against the appellant in respect of the role attributed to him. To refute the case of the prosecution and prove his innocence, the appellant has also led defence evidence and had examined 4 witnesses to support his case.
- ix. After the conclusion of trial, learned Trial Court, *vide* the impugned judgment of conviction dated 21.07.2003, has held the appellant guilty for causing injury in person to PW-2 by stabbing the screw driver in his chest and convicted him for the offence punishable under Section 308 of the IPC. The learned Trial Court also held the appellant guilty for causing injuries in person to PW-3 with a sharp weapon and convicted him for the offence punishable under Section 324 of the IPC and sentenced him accordingly.

APPELLANT'S VERSION OF THE INCIDENT

4. The appellant in his statement under Section 313 of the CrPC has also stated his version of the aforesaid incident which is as follows:

- i. The appellant has stated that on the date of alleged incident i.e., 30.10.1999, when he was in his home at H No. 91, Mohan Garden, he received an information that a fight is happening near H No.89, Mohan



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Garden, in which his father, Narender Nath Sondhi (hereinafter referred to as 'DW-4'), is also getting beaten up.

- ii. That he immediately gave a phone call to the PCR from his residence and, thereafter, rushed to the spot of the incident. On reaching there, he found that 5-6 persons were fighting with PW-2/complainant and PW-3/complainant's friend, and in the said fight among these people, his father is also getting beaten.
- iii. No sooner he reached there, those 5-6 persons ran away from the spot and PW-2 and PW-3 also left thereafter. As per appellant's version, parents, and brother of PW-3 were also present at the spot.
- iv. The appellant claimed that neither he had any fight/quarrel with anyone and nor he has hit anyone and PW-2 and PW-3, were injured even before his arrival at the spot.
- v. The father of the appellant (DW-4) was hit on his head as well as on back side. Then, PCR reached the spot and apprised them that they have informed the local police.
- vi. Local police after reaching the spot, took the appellant and his father to the police station to record their statement. The appellant requested the police personnel to register an FIR against the assailants who had beaten his father, however, they did not listen to him and registered FIR against him and arrested him.
- vii. It is the case of the appellant that police had taken his specimens as well as specimens of PW-2 and PW-3 on 5-6 blank papers which were later converted into his disclosure statement (Ex. PW6/A) etc.

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- viii. The appellant has asserted that police had taken his personal search and taken him alongwith his father for their medical examination on the intervening night of 30.10.1999 - 31.10.1999 at around 02:40 AM. The appellant has also asserted that when he had reached the spot of the said incident, Surinder Singh, Ramdan Kalsi and Sohan Lal were also present there.
- ix. The appellant has also stated that he was selected for IMA (Indian Military Academy), Dehradun, however, on account of the pendency of the present FIR, he was not able to join the services and his career has been ruined because of the same.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ACCUSED

5. Learned Senior Counsel for the appellant/accused has raised the following contentions in support of the present appeal:

- i. That the appellant has falsely been implicated in the present case as the weapon i.e., screw driver, which has been used by the appellant to inflict injuries in person on the PW-2 and PW-3 has never been recovered from the appellant. To support this contention, attention of this Court has been drawn to the arrest memo and the personal search memo both dated 31.10.1999.
- ii. That no Test Identification Parade (TIP) has been conducted by the IO/PW-10 as the appellant was arrested from his home. Attention of this Court has been drawn to the testimony of the complainant/injured (PW-2) to show that the latter was not able to identify the appellant during his examination before the learned Trial Court and it is



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submitted that PW-2 identified the appellant only at the instance of the learned APP for the State when he pointed out towards the appellant. It is further submitted that the same has also been recorded by the learned Trial Court in its observation during examination of PW-2. Therefore, in view of the same, the complainant/PW-2 was making false assertions regarding the identity of the person who had inflicted injuries in person on the complainant and his friend and the IO/PW-10 ought to have conducted TIP so as to ascertain the identity of the real accused person and to ensure that the investigation carried out by him is in correct direction.

- iii. It is submitted that the appellant is the first person who had reported the happening of the said incident to the Police over a PCR call on 30.10.1999 at 08:00 PM in pursuance of which the police personnel had arrived at the spot, however, no efforts were made by the IO/PW-10 to verify the identity of the informant regarding the DD entry made on the basis of the information given by the appellant with respect to the beating given to his father (DW-4).
- iv. There are major inconsistencies and contradictions in the testimonies of the injured witnesses i.e., PW-2 and PW-3, in the present case with regard to the presence of the other persons who were present at the spot of the alleged incident and the persons who were actually involved in giving beatings to PW-2, PW-3 and DW-4.
- v. The IO/PW-10 has failed to record the statement of the relevant eye-witnesses under Section 161 of the CrPC during the course of

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investigation as he himself has admitted in his testimony that he might have met the brother and parents of Jitender @ Bittoo/PW-3, however, he did not record their statement as the same was not required/useful to carry the investigation of the present case. Attention of this Court has been drawn to the testimony of PW-10 to show the aforesaid admitted fact and it is submitted that an adverse inference on account of the same must be drawn against the prosecution for withholding the relevant witnesses to the incident.

- vi. Jitender @ Bittoo/PW-3 has turned hostile during his cross-examination thereby, casting aspersion over the identity of the person who had inflicted those injuries to him or the complainant/PW-2. Attention of this Court has also been drawn to Ex. PW-7/A, MLC of PW-3, wherein it mentioned that the latter was under the influence of alcohol on the date of the said incident.
- vii. Attention of this Court has been drawn to Ex. DW-1/B, MLC of the father of the appellant/DW-4 conducted on the intervening night of 30.10.1999 - 31.10.1999, and submitted that it is the appellant's father who had received injuries on head and shoulder and still the police has denied the request of the appellant to register FIR against the assailants and arrayed the appellant as main accused in the present case. Attention of this Court has also been drawn to Ex. DW-1/A to show that the appellant has also received injuries in person for which no explanation has been rendered by the prosecution.



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viii. The timing of arrest of the appellant has been in doubt as per the arrest memo, Ex. PW-3/A, wherein the timing of arrest is shown as 08:10 AM on 31.10.1999. Attention of this Court has been drawn to the statement of PW-6, the Constable accompanying IO/PW-10 to arrest the appellant, who has stated that the appellant was arrested at the time of recording of his statement in the police station on the night of 30.10.1999 at around 01:30-02:00 AM. It is also pointed out that the arrest memo was not filed by the prosecution alongwith the other documents accompanying the chargesheet filed, however, the same was placed on record from the police file at the time of the cross-examination of the IO/PW-10.

SUBMISSIONS ON BEHALF OF THE STATE/RESPONDENT

6. Learned APP for the State submitted that the learned Trial Court has passed the impugned judgment of conviction after due application of mind and correct appreciation of the facts and circumstances of the present case and the same is not to be interfered. He further submitted that the appellant has been convicted in the present case on the basis of the clinching evidence i.e., MLCs of the injured persons, disclosure statement made by the appellant and testimonies of the injured persons.

7. It is the case of the prosecution that the role and presence of the appellant at the spot of incident during the occurrence of the said incident has been proved as per the testimony of the injured witnesses i.e., PW-2 and PW-3 and the appellant has not been able to dispel the same before the learned Trial Court even by leading defence evidence.

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8. Learned APP for the State further submitted that the learned Trial Court has rightly discarded the testimony of the defence witness, Sohan Lal/DW-2, with regard to his presence at the spot of the incident as the same was not in correspondence with the statement of the appellant under Section 313 of the CrPC. Moreover, the conduct of DW-2 was also not inspiring confidence with regard to his presence at the crime spot. He has also urged that despite the fact that DW-4, was bleeding, on account of having allegedly received injuries on shoulder and head, he was not taken to hospital and to the contrary his son insisted on waiting for the arrival of PCR instead of taking him to hospital. He pointed out that this conduct of the appellant shows that injury, if any, being caused to his father was superficial in nature as the same has not been reflected in the MLC of DW-4.

9. Learned APP further submitted that DW-4 has also not been able to mention the name of any person who might have caused injuries to him and the statement of the appellant under Section 313 of the CrPC also corroborates this aspect. He pointed out that DW-4 has not been able to identify the person who might have hit him and no suggestion pertaining to the identity of the assailant has been put to the IO/PW-10 or the injured witnesses.

ANALYSIS AND FINDINGS

10. The entire prosecution case against the appellant hinges on the testimonies of PW-2 and PW-3. The learned Trial Court while convicting the appellant has held that the PW-2 and PW-3, despite certain contradictions in their testimonies, have clearly stated that the present appellant was responsible for the injuries inflicted to them by an alleged screw driver.



11. Before this Court proceeds to examine the aforesaid evidence of PW-2 and PW-3, it is important to note that the case of the prosecution is that on the date of alleged incident i.e., 30.10.1999, PW-2 had taken his friend PW-3 to a temple as he was ill due to the influence of some super natural power and the said Priest/*mata (pujarin)* asked them to offer some sweet (*prashad*). It is alleged that subsequent thereto at about 8:00 P.M., PW-2 and PW-3 went to a vacant plot, where the incident is stated to have taken place, and offered *prashad* there. It is the case of the prosecution that the appellant came there and said '*totka kar rahey ho*' and when PW-2 and PW-3 denied the same, the appellant got furious and said that '*tera kaam tamaam kar deta huin*' and then, thereafter, appellant attacked PW-3 with a screw driver and when PW-2 tried to save the former, the appellant stabbed PW-2 on his chest.

12. It is the admitted case of the prosecution that the appellant has no previous enmity with PW-2 or PW-3. It is also not the case of the prosecution that the appellant was known to PW-3 from before.

ANALYSIS OF TESTIMONY OF PW-2

- In his examination-in-chief, PW-2 has supported his statement, under Section 161 of the CrPC, made before the police and stated that on the said date of incident, i.e., 30.11.1999, he alongwith PW-3, PW-3's parents and priest/*mata* of the temple were present at the spot of the incident and were offering Pooja where the appellant reached and asked them as to what they were doing there.
- It is further alleged that the appellant abused and asked them as to whether they are doing some mischief. On being asked so, PW-2 told him that they



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are only doing pooja for the betterment of PW-3. Then, the appellant took out the screw driver, which was already in his possession and hit PW-3 on the left thigh and when PW-2 tried to intervene and save PW-3, the appellant stabbed him on his chest. He further stated that he was discharged from the hospital in the next morning.

- In his cross-examination, PW-2 has again admitted that there were 5-6 persons alongwith them including the parents of PW-3, priest/*mata* of the temple and the injuries which the PW-2 and PW-3 had received were in the presence of the said persons. He has further admitted in the cross-examination that, besides the appellant, there were 5-6 persons whom he does not identify.
- He further admitted that father of PW-3 was also present at the place of occurrence. He has denied the fact that he has any knowledge regarding injuries being received by father of the appellant/DW-4 at the place of occurrence.
- He further denied the suggestion to the affect that he and PW-3 were drinking at that time and were quarrelling with the other persons and the police were called at the spot by the father of the present appellant. He further stated that he did not know the appellant.
- He further stated that “no quarrel took between me and Ajayaccused present in court today”. He further stated that he had seen the appellant in the Court on the day of his deposition after the date of occurrence for the first time. He further stated that he had never met the appellant before the said occurrence.

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- He further stated that there were 12 persons present at the spot.
- This witness was re-examined by the learned APP for the State and on pointing of the latter, he identified the appellant in the Court as the person who had caused him injuries and thereafter, on further cross-examination, this witness stated that he knew the appellant by his face and not by his name and he did not give the name of the appellant to the police and came to know the name of the appellant only at the time of his deposition.

ANALYSIS OF TESTIMONY OF PW-3

- In his examination-in-chief, PW-3, stated that he knew the appellant as he was residing in his neighbourhood. The witness in his examination-in-chief, could not provide the date of the incident however, he stated that about six months prior from the date of the deposition, at about 08:00 PM, he had gone to Nawada with his family members i.e., his parents and his friend-PW-2. Thereafter, they went to Rama Park, Mohan Garden, where they performed pooja by offering three types of sweets and the present appellant came there. He stated that the appellant said that they were performing 'UPPAR KI HAWA' time and again and, said that 'MAAR DOONGA'.
- PW-3 stated that thereafter the appellant hit him with a screwdriver causing an injury on his left thigh and when PW-2 tried to rescue him, he was also hit by the appellant on his chest.
- In his cross-examination, this witness stated that at the time of incident his parents, PW-2 and priest of the temple (*Panditji*) were present and no one else was there. He further stated that the appellant and his father were also



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present there. This witness denied the suggestion that he was drunk on the date of the incident. This witness also stated that *Panditji* was a male.

- The examination-in-chief and cross-examination of this witness was conducted on 25.08.2000. Thereafter, the said witness was re-called for cross-examination on 17.11.2000. On being cross-examined on the said date, this witness stated that 10-12 persons were present at the spot on the said date of incident. He further stated that those 10-12 persons gave beatings to them however, he cannot identify them.
- He further stated that the present appellant was not one of those 10-12 persons. He further stated that he did not know the appellant and in the said fight, the father of the appellant also received injuries as he had come there in order to settle the dispute and rescue them. However, he does not know as to who caused injuries to the father of the appellant. He further stated that the appellant never gave beatings to him nor the appellant had caused any injuries to him on the said date of incident. He further stated that neither he nor PW-2 identified the appellant.
- Learned APP for the State thereafter, re-examined the said witness. He was confronted with the statement given by him on 25.08.2000 and he denied the suggestion that the said statement on 25.08.2000 was given by him voluntarily without any pressure or under force. He stated that he was not feeling well on 25.08.2000 when his statement was recorded in the Court. He further denied the suggestion that he was deposing falsely and that he has been won over by the appellant.

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DEFENCE OF THE APPELLANT

13. It is well settled law that the defence of the accused need not be proved beyond reasonable doubt but has to be analyzed on the principle of the preponderance of probabilities.

14. The Hon'ble Supreme Court in **S.L. Goswami (Dr) v. State of M.P., (1972) 3 SCC 22**, has held and observed as under: -

“22..... We have had occasion to observe earlier that the standard of proof which the accused may adduce in support of his plea in defence is not the same which the prosecution is required to adduce. Once the probability of the accused's plea is established, we must give him the benefit of doubt. There is nothing to show that the accused fabricated the receipt. As we have pointed out, the appellant had at the very initial stage, even before the FIR was issued, produced the original receipt and gave a copy of the same to the investigating officer. This would indicate that the bill and the receipt were genuine.”

15. The defence of the appellant is that on the date of the alleged incident he received information that a fight was happening near House No. 89, Mohan Garden in which his father, Narender Nath Sondhi/DW-4 was getting beaten up. It is the case of the appellant that he immediately called the PCR and rushed to the spot of the incident and on reaching the spot, he found that 5-6 persons were fighting with PW-2 and PW-3 and during that fight his father was also getting beaten up. As per the appellant, when he reached there those 5-6 persons ran away and PW-2 and PW-3 also left thereafter. The father of the appellant, DW-4, was hit on his head as well as on his back side and the PCR which reached the spot informed the local police, who, in turn, took the appellant and his father to the police station to record their statement.

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16. In his defence, the appellant examined DW-1, DW-2, DW-3 and DW-4. Reliance was also placed on the Ex. DW1/A and Ex. DW1/B, MLCs of the appellant and his father/DW-4 conducted on the intervening night of 30-31.10.1999, to demonstrate that the appellant's father had received injuries on his back and the shoulder and that the appellant had also received injuries in person for which no explanation has been given by the prosecution. He also stated that these documents were not placed on record by the prosecution. It is further submitted that IO/PW-10 in his cross-examination has denied the knowledge of the aforesaid MLCs of the appellant as well as of his father. Thereafter, the concerned record was summoned from the Hospital and when this witness was confronted with the records so summoned, this witness, IO/PW-10, stated that he did not remember whether appellant was medically examined on the intervening night of 30-31.10.1999 at 02:40 AM. The MLCs of the appellant and his father were exhibited as DW-1/A and DW-1/B.

17. DW-2, Sohan Lal, also stated that on 30.10.1999 (date of incident) at around 08:00 to 08:30 PM, he saw two groups were quarreling outside the House No. 108, Mohan Garden and he saw DW-4, father of the appellant, trying to intervene in the matter. He also stated that someone hit DW-4 with a *lathi* and consequently, the latter started bleeding. He further stated that the appellant came there and he had already called the police by then. The said witness, DW-2, was cross-examined by the learned APP for the State and he had denied the suggestion that he was deposing falsely at the instance of the appellant.

18. DW-3, Head Constable, Satya Prakash, who was summoned to bring the original PCR of 30.10.1999, has stated that the said record concerning the PCR



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call made on the date of the incident had been destroyed by them. The father of the appellant examined himself as DW-4 and he has deposed on the similar lines as was stated by the appellant in his statement under Section 313 of the CrPC. He was also cross-examined by the learned APP and had denied the suggestion that he was deposing falsely at the instance of the appellant.

19. The learned Trial Court while convicting the appellant after noting the contradictions and lacunae as well as the defence of the appellant has observed that the contradictions are minor in nature and reliance placed on the cross-examination in the testimony of the PW-3 on the subsequent date i.e., 17.11.2000, cannot be relied upon as he had resiled from his statement recorded on the previous date i.e., 25.08.2000.

20. This Court is of the considered opinion that on a closer scrutiny of the evidence produced by the prosecution, it has not been able to prove, beyond reasonable doubt, the guilt of the appellant for the following reasons: -

- a) The presence of the other persons including the family of PW-3 has clearly come on record and none of these persons were examined by the IO/PW-10;
- b) IO/PW-10 in his examination has stated that he did not examine these persons as he did not consider them to be the eye-witnesses to the incident. This is contradictory to the statement given by the PW-2, as noted hereinabove, who has clearly stated that injuries received by them were in the presence of said persons;



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- c) The statement of PW-2 and PW-3 contradict each other regarding the gender of the *Panditji* and does not ascertain whether he was a male or a female;
- d) There are material contradictions in the testimony of PW-2 and PW-3 regarding the presence of DW-4, father of the appellant, at the spot on the said date of incident. PW-3 clearly admits the presence of DW-4 however, PW-2 does not admit the same. The admission of PW-3 regarding the presence of DW-4 was on his first date of deposition i.e., 25.08.2000;
- e) PW-3 denied the suggestion that on the said date he was under the influence of alcohol, however, his MLC, Ex. PW-7/A clearly records that, “patient has consumed alcohol and is under influence”;
- f) Both PW-2 and PW-3 do not state that they had called the Police regarding the alleged incident;
- g) PW-3 in his cross-examination on 17.11.2000 clearly demolished the case of the prosecution case and, in fact, admitted that there were 10-12 persons who were quarreling with him and PW-2 and during the same they were beaten up;
- h) PW-2, in his cross-examination, has also stated that he knew the appellant only by his face and did not know his name and had not given his name to the Police;
- i) It was also observed by the learned Trial Court that PW-2 had identified the appellant in the Court during his re-examination only at the instance of learned APP for the State;



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- j) The alleged weapon of offence, i.e., screwdriver was never recovered;
- k) The MLCs of the appellant and his father, Ex. DW-1/A and DW-1/B respectively, were put to the IO/PW-10 who had denied their existence despite the fact that they were in the police file;
- l) There is no explanation as to the injuries received by the appellant and his father, DW-4;
- m) The testimony of PW-2 and DW-4-father of the appellant, has not been duly considered by the learned Trial Court;
- n) There is also discrepancy in the timing of the arrest of the appellant. As per the arrest memo, Ex. PW-3/A, the time of arrest has been mentioned as 08:10 AM on 31.10.1999, however, as per the testimony of PW-6, who was accompanying the IO/PW-10 to arrest the appellant, the appellant was arrested at the time of recording of his statement at the police station on the night of 30.10.1999 at around 01:30-02:00 AM;
- o) The arrest memo was not filed by the prosecution alongwith with other documents at the time of the filing of chargesheet and the same was placed on record from the police file at the time of cross-examination of IO/PW-10.

21. In the present case, as noted hereinabove, the appellant has been convicted for the offences punishable under Section 308/324 of the IPC, for causing injuries to PW-2 and PW-3 by a screw driver. The testimonies of PW-2 and PW-3 are inherently full of contradictions with respect to presence of other persons

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alongwith them at the spot. It is also pertinent to note that it is highly improbable that the appellant who had no animosity with PW-2 and PW-3, without any quarrel, would come and simply attack them with a screw driver for performing a pooja, as alleged by them. On the other hand, the defence put forth by the appellant on the test of preponderance of probabilities inspires confidence.

22. The investigation conducted in the present FIR was not fair. The explanation by the IO/PW-10 as to why the persons, who were, admittedly, present at the spot were not examined is contrary to facts of the case.

23. Similarly, the MLCs of the appellant and his father were not placed on record and, in fact, IO/PW-10 goes to the extent of denying the same despite they being part of the police file and subsequently, brought on record from the concerned hospital authorities. It has further come on record that the appellant had informed the police about the said incident at the first instance.

24. In view of the aforesaid circumstances and evidence discussed hereinabove, this Court is of the opinion that the prosecution case against the appellant has not been proved beyond reasonable doubt.

25. Accordingly, the appeal is allowed, the judgment of conviction dated 21.07.2003 and order on sentence dated 22.07.2003 *qua* the appellant are set aside.

26. The appellant is acquitted for the offences punishable under Sections 308/324 of the IPC.

27. Bail bonds stand discharged.

28. The appeal stands disposed of accordingly.

29. Pending applications, if any, also stands disposed of accordingly.



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30. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

31. Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA
JUDGE**

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