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

+ **CRL.L.P. 484/2019**

STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Kunal Kishor, PS Roop
Nagar.

versus

AMIT @ RAVI & ANR

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

05.08.2024

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CRL.M.A. 34402/2019 *(for condonation of delay of 41 days in
filing the petition).*

1. For the reasons mentioned in the application, the delay of 41 days in filing the petition stands condoned.

2. The application stands disposed of.

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3. The present petition is filed seeking leave to appeal against the judgment dated 05.04.2019 (hereafter '**the impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Tis Hazari Courts, Delhi in Sessions Case No. 71/2015 acquitting the respondents – Amit@Ravi (A-1) and Dashrath Mishra (A-2), of the offences punishable under Sections 308/341/34 of the Indian Penal Code, 1860 ('**IPC**').

4. The FIR was registered alleging that on 28.12.2015, the accused persons with common intention restrained the complainant Padam Sagar and hit him on his head by iron rod

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and with iron (*patti*) with such intention or knowledge and in such circumstances that by the act they could have caused the death of the complainant.

5. The prosecution in support of their case, examined PW-1 (ASI Veer Singh), PW-2 (complainant / victim) and other formal witnesses.

6. Initially, during the course of the investigation, the victim had identified the assailants. The learned Trial Court noted that the witness has not fully supported the prosecution case. The injured in his cross examination deposed that he is unable to say if the accused Amit was holding an iron rod or a *danda*. He further deposed that he was not sure if the accused Amit was present at the time of incident.

7. It was also noted that PW-3 (ASI Balwant Singh), who recorded statement of the victim, did not remember the time when the injured was discharged from the hospital and was also unable to describe the clothes worn by the injured. The learned Trial Court also noted that the clothes of the injured were not seized and no weapon of offence was recovered in his presence.

8. The same in the opinion of the learned Trial Court casts a doubt on the prosecution's case as to whether any such incident had ever taken place. The evidence was thus found unreliable and not enough to connect the accused persons with the alleged offence. The accused persons were, therefore, acquitted.

9. The Hon'ble Apex Court in ***Muralidhar v. State of Karnataka* : (2014) 5 SCC 730**, while dealing with the powers of the High Court in an appeal against acquittal, observed as under:

“12. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:



- (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;*
- (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;*
- (iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and*
- (iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."*

10. This Court finds that the learned Trial Court has undertaken a very detailed analysis of the evidence on record. Having perused the petition and having considered the submissions of the learned APP for the State for the State, the Court is not persuaded to hold that sufficient grounds have been made out for grant of leave against the impugned judgment dated 05.04.2019 passed by the learned ASJ.

11. The victim (PW-2) was cross-examined by the accused. He deposed that he was unable to say if the Respondent No. 1 was holding an iron rod or a *danda*. He, during further cross-examination, deposed that he was not sure if Respondent No. 1 was present at the time of incident. The victim also could not identify Respondent No. 1.

12. It was the case of the prosecution that PW-3 (ASI Balwant



Singh) had recorded the statement of the victim. He, however, during his deposition stated that he does remember the time when the victim was discharged. He also could not describe the clothes that were worn by the victim.

13. It is also a matter of record that no weapon for offence was ever recovered from the accused.

14. PW-3 (ASI Balwant Singh) deposed that the victim was found admitted in hospital and the statement was recorded whereas the victim in his examination stated that the name of the accused was informed to him by the Police Official and he did not know the accused earlier.

15. The complaint was initially given that the accused had beaten the victim with a rod whereas in his deposition, the victim deposed that that he was injured with a blade. Thus, the victim, as per his deposition, was not aware of the identity of the accused persons, however, specific names have been mentioned in the FIR.

16. Also initially, the complaint alleged that the victim was beaten with a *danda* whereas in the deposition, the victim claimed to have been injured with a blade.

17. Considering the evidence, the learned Trial Court rightly observed that the entire version of the prosecution is doubtful.

18. It is not in doubt that the minor contradictions, inconsistencies of trivial nature do not affect the case of the prosecution and the entire evidence for that reason, cannot be rejected. However, the contradictions of such nature, as noted above, cast doubt on the reliability of the evidence.

19. The learned Trial Court rightly held that the prosecution has not been able to prove its case beyond a reasonable doubt and



the benefit should be given to the accused persons.

20. It is also settled law that the Appellate Court, while hearing an appeal against an order of acquittal, shall not interfere when two views are possible on the evidence adduced in the case. If one view points towards the guilt of the accused and the other towards his innocence, the view which is favourable to the accused, should be adopted. Moreover, the Appellate Court ought not to interfere with the judgment of acquittal unless there are compelling and substantial reasons for doing so.

21. In view of the above, I find no reason to interfere with the impugned judgment.

22. The present petition is, therefore, dismissed.

AMIT MAHAJAN, J

AUGUST 5, 2024

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