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

+ CRL.L.P. 210/2022

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Nitesh Kumar, PS Kotla
Mubarak Pur.

versus

ARJUN @ KALU BACHCHA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

11.07.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 19.10.2019 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('MM'), Saket Courts, New Delhi in Criminal Case No. 4636/2018 whereby the respondent was acquitted of the offences under Sections 451/325 of the Indian Penal Code, 1860 ('IPC').
2. Briefly stated, the case of the prosecution is that on 22.03.2018 at about 5:30 AM near Mahila Park, the respondent trespassed into the house of the victim and also inflicted beatings thereby causing grievous injuries to the victim.
3. The respondent was charged with the offences under Sections 451/325 of the IPC.
4. By the impugned judgment, the learned MM acquitted the respondent of the charged offences. It was noted that the case of the prosecution was premised on the testimony of the victim which was not without blemish. It was noted that as per the



testimony of the victim/PW-1 the incident took place at about 5:30 AM when the respondent came inside the victim's jhuggi and inflicted beatings with a *danda*. It was noted that in his cross – examination, however, the victim stated that the incident took place outside the jhuggi. It was further noted that despite the alleged incident taking place outside the jhuggi of the victim, no independent witness or public persons were arrayed as a witness or examined by the prosecution.

5. The learned MM further noted that no call on 100 number was made by the victim at the time when the incident took place. It was noted that while the incident allegedly took place at around 5:30 AM, the victim, for the first time, informed about the incident to the police in the evening.

6. It was noted that the MLC of the victim indicated that there existed an incised wound on the scalp of the injured, however, no injury was caused to the right hand of the victim as had been alleged by him in his complaint. The learned MM further noted that the incident took place in a crowded area, however, no eye witness to the said incident had been produced by the prosecution. Consequently, considering the contradictions in the version of the injured witness, the learned MM acquitted the respondent of the charged offences.

7. The learned Additional Public Prosecutor for the State submitted that the learned MM erred in acquitting the respondent of the charged offences. He submitted that the impugned judgment is based on surmises and conjectures, and is liable to be set aside. He submitted that the learned MM failed to take into consideration the testimony of the injured victim/PW-1 as per which the respondent had inflicted injuries on him. He submits that minor contradictions in the testimony of the injured witness



is not fatal to the case of the prosecution and ought to be ignored. He consequently submits that the impugned judgment is perverse and is liable to be set aside.

Analysis

8. It is trite law that the Appellate Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar : (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code. 20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside. 21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.

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24. We may hasten to clarify that we may not be understood



to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

9. In the present case, in order to establish its case, the prosecution examined 03 witnesses out of which the victim/PW-1 deposed about the manner in which the accident took place, and the other witnesses deposed regarding the manner of conduction of the investigation.

10. In his evidence, PW-1/victim stated that on 22.03.2018 at about 5:30 AM, the respondent came inside the victim's jhuggi and alleged that the victim had stolen a sum of ₹36,000/- and also inflicted beatings on him with a *danda*. He stated that the respondent hit him on his head. On being cross-examined by the learned counsel for the respondent, PW-1/the victim stated that the incident occurred after day break and took place outside his jhuggi.

11. It is well settled that the evidence of an injured witness has been accorded a special position in law, and is placed on a higher pedestal than that of a witness simpliciter. It further needs no reiteration that minor contradictions do not discredit the testimony of an injured witness. The Hon'ble Apex Court in the



case of *Abdul Sayeed v. State of Madhya Pradesh* : (2010) 10 SCC 259 while underscoring the relevance of the testimony of an injured witness observed as under:

28. *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."* [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29) "28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident. 29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness



sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

(emphasis supplied)

12. However, the same can be held to be unreliable on the face of material contradiction in the evidence and material on record. From a bare perusal of the material on record, it is apparent that there are discrepancies in the testimony of the victim, and consequently in the story of the prosecution.

13. Firstly, in relation to the time and manner in which the complaint was given, it is the case of the prosecution that the incident took place at around 5:30 AM in the morning of 22.03.2018. From a perusal of the evidence of PW-2 and PW-3, who deposed regarding the manner of conduction of investigation, it is apparent that no call was made by the victim after the alleged incident took place. PW-3 stated that he came to know about the incident only after receiving a DD No. 9A in relation to an injured from the AIIMS Trauma Centre. He further stated that the victim himself only came in the evening and narrated about the alleged incident.

14. Secondly, in relation to the place where the alleged



incident took place, the victim stated that the respondent had committed trespass and had entered his jhuggi at about 5:30 AM in the morning of 22.03.2018 and had inflicted beatings on him. On being cross-examined by the learned counsel for the respondent on this specific aspect, the victim stated that the incident took place after day break and also outside his jhuggi. The stance of the victim in his examination-in-chief as well as his statement under Section 161 of the Code of Criminal Procedure, 1973 ('CrPC') that the respondent had committed trespass and that the incident took place inside the victim's jhuggi on one hand, and his stance in his cross-examination that the incident took place outside his jhuggi on the other hand casts a doubt on the case of the prosecution.

15. *Thirdly*, the area where the alleged incident took place is stated to be crowded despite which no independent witness or public persons were arrayed as a witness or examined by the prosecution.

16. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

17. The leave petition is therefore dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 11, 2025