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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 276/2022**

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Aashneet Singh, APP
for the State.
SI Mahendra Koli, PS
Bhalswa Dairy.

versus

DASRATH & ORS.

.....Respondents

Through: Mr. Ashwini Kumar & Mr.
Arbaaz Khan Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

17.03.2025

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1. The present petition is filed seeking leave to appeal against judgment dated 07.02.2020 (hereafter '**impugned judgment**'), passed by the learned Trial Court, in SC No. 57491/2016 arising out of FIR No. 36/2014, registered at Police Station Bhalswa Dairy, whereby the accused respondents were acquitted of the offence under Sections 308/34 of the Indian Penal Code, 1860 ('**IPC**').

2. The brief facts of the case are that on 21.01.2014, at about 9 AM, when the complainant was trying to start his motorcycle to go to office, the wife of accused Dasrath (Respondent No.1) and accused Dinesh came there. It is alleged that the complainant used a profanity as he wasn't able to start his motorcycle, which prompted the wife of accused Dasrath (Respondent No.1) and accused Dinesh to hurl abuses at the complainant. They also allegedly threatened the complainant that they would teach him a

CRL.L.P. 276/2022

Page 1 of 10



lesson. After they left from the spot, accused Umesh and Dinesh returned to the spot with *danda* and iron rod (*sariya*) in their hands and attacked the complainant. It is alleged that they dealt blows at the complainant's head. Hearing the commotion, the complainant's elder brother– Manoj tried to intervene but he was also beaten up by the accused persons. It is alleged that the accused Dasrath and his son–accused Shiv Shankar also came to the spot when the scuffle was ensuing and dealt blows with a *danda* to the victim Manoj. The accused Dinesh also allegedly dealt a blow with the iron rod on the head of victim Manoj.

3. Charges were framed against the accused respondents for offences under Section 308 read with Section 34 of the IPC.

4. The learned Trial Court, by the impugned judgment, acquitted the respondents and found that the prosecution had failed to prove its case beyond reasonable doubt wherein false implication of the accused persons owing to prior enmity could not be ruled out. The learned Trial Court did not take into consideration the evidence of the injured Manoj (PW 6), as it was found that he was not mentally fit. It was observed that the nature of injuries suffered by the victim's were simple in nature, however, if the complainant (PW2) had been hit on his head with an iron rod as alleged, the injuries would have been serious in nature. It was further observed that the injuries could have been incurred by the complainant by falling on a hard surface, as stated by Dr. R.S. Mishra (PW3) in his cross-examination. The learned Trial Court further noted that even though the incident took place in a thickly populated area, no independent public witnesses were joined to corroborate the allegations and the accused persons had examined their neighbours–DW2 and DW3, who supported their defence. The relevant portion of the *CRL.L.P. 276/2022*



impugned judgment is reproduced hereunder:

“30. As per testimony of PW3 Dr. R.S. Mishra, the injuries sustained by both the injured persons were simple in nature... When I read this testimony with the testimony of the injured, it emerges that the injured has deposed that he was hit on the head with an iron rod by accused persons and he had sustained head injuries. However, in case he would have been hit on the head with an iron rod, the injuries would have been serious in nature. The MLCs of both the injured persons, however, reveal to the contrary.

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33. Therefore, the medical evidence does not suggest that the injured persons were hit with an iron rod on the head. The cross-examination of the doctor concerned i.e. PW3 Dr. R.S. Mishra further makes the case of prosecution doubtful as he states that such injuries were possible due to fall on hard surface.

34.... Admittedly, the place of occurrence is thickly populated residential area and in case of serious fight as projected by the prosecution, the neighbours would have witnessed the same. It is not clear as to why no public person was asked about the incident and why their statements were not recorded. It is also not clear as to why in case they had refused to participate in the proceeding, why no action had been taken against them by the investigating officer.

35. Moreover, to controvert the claim of the prosecution's story and the deposition of the injured, the accused persons examined three witnesses. DW1 Sukhbeer Singh is the Nursing Orderly from Babu Jagjivan Ram Hospital who placed on record the MLCs of accused Umesh and Dasrath.....In absence of any suggestion in cross examination regarding the MLCs being forged or fictitious, the MLCs cannot be ignored altogether, especially in view of the defence taken by the accused persons that they were beaten up by the injured persons themselves.

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39. The version of DW2 & DW3 clearly points out that on some issue of running of aata chakki, a dispute had arisen and a scuffle might have taken place wherein both parties were injured. The injuries sustained by the injured persons have not only been opined to be simple in nature which is not possible, in case a person is hit with an iron rod or dandas, but have also been opined by the doctor concerned that such injuries were possible by falling on the hard surface. The entire gamut of facts and evidence discussed above, thus, casts a veil of doubt on the entire version of the prosecution story and the testimony of the injured and rather creates a doubt that it was motivated. The nature of injuries sustained were not in accordance with the testimony of injured.

40. Considering the past history of previous enmity and disputes between the parties, false implication of the accused



persons cannot be ruled out...”

5. The learned Additional Public Prosecutor for the State submits that the impugned judgment is based on conjectures and surmises and as such cannot stand the scrutiny of law and liable to be set aside.

6. He submits that the learned Trial Court has not properly appreciated the evidence that effaced during the course of the trial, including the statements of the witnesses, and erroneously acquitted the respondents.

7. He submits that the complainant (PW2) has fully supported the case of the prosecution and the allegation that the victims suffered injuries at the hand of the accused persons is fully supported by the medical evidence as well. He submits that the learned Trial Court did not give due weightage to the testimony of PW2, who is an injured witness.

8. He further submits that the learned Trial Court failed to appreciate that there was enmity between the complainant and the accused persons whereby there was strong motive for commission of offence.

9. He submits that the prosecution case is not affected by its inability to explain the injuries sustained by the accused persons and stated that the MLCs adduced by the defence are not reliable.

10. He submits that the *danda* was recovered from accused Dasrath while the iron rod was recovered from accused Umesh and the recovery was proven by the evidence of Head constable Sanjay (PW9). He submits that mere non-association of public witnesses is not fatal to the case of the prosecution.

11. The learned counsel for the respondents vehemently opposes the present leave petition. He submits that the learned



Trial Court has rightly acquitted the respondents after considering the evidence on record. He submits that it was the complainant and his brother who attacked the respondents due to which Respondent Nos. 1 and 2 also sustained injuries.

12. He submits that no recovery of *danda* and iron rod was effected at the instance of the respondents and the recovery was a planted one.

13. I have heard the counsel and perused the record.

14. It is trite law that this 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 reappraisal, 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)

15. In the trial, to prove its case, the prosecution examined ten witnesses, including the complainant (PW2), the victim Manoj (PW6), Dr. R.S. Mishra (PW3; the doctor who proved the MLC of the complainant) and Head constable Sanjay (PW9; the police officer who effected the recoveries of the alleged weapons used in commission of the offence at the instance of accused Dasrath and Umesh).

16. On the other hand, the accused persons examined three defence witnesses, that is, Sukhbir Singh (DW1; a Nursing Orderly for proving the MLCs of accused Umesh and Dasrath), Raju Mehto (DW2; neighbour of the parties who deposed that the complainant and his brother were beating accused Umesh and Dasrath) and Phool Kumari (DW3; neighbour of the parties who deposed that the complainant had assaulted the accused Umesh



and that the complainant himself had caused injury on his head with a brick).

17. The learned Trial Court has not considered the testimony of PW6 (brother of the complainant) by noting that the learned Predecessor Bench had observed that PW6 was not of sound mind and mentally fit. The learned Additional Public Prosecutor has not pressed for consideration of the deposition of PW6.

18. It is argued that the evidence of PW2 has not been given due weightage by the learned Trial Court. A bare perusal of the impugned judgment shows that the said argument is meritless as the learned Trial Court considered the evidence of PW2 at the outset and ultimately opined that the case of the prosecution was rendered doubtful to a number of reasons.

19. The learned Trial Court took due note of the allegations as levelled by the complainant PW2 and then considered the medical evidence as well as the testimony of PW3 (doctor), who had stated that the injuries suffered by PW2 and PW6 were simple in nature. During cross examination, PW3 stated that the possibility of such injury being caused by falling on a hard surface could not be ruled out. After discussing the MLCs, the learned Trial Court rightly appreciated that the medical evidence does not suggest that the injured was hit on the head with an iron rod, as had been alleged by him.

20. Apart from the nature of injury not being in accordance with the testimony of PW2, the learned Trial Court also did not find the testimony of PW2 to be trustworthy on account of the prior enmity between him and the accused persons in relation to the atta chakki. It is relevant to note that PW2 has himself admitted that he had prior enmity with accused Dasrath as he used to operate his atta chakki at odd hours, even though, the



matter was later compromised. It was rightly noted that the possibility of false implication cannot be ruled out.

21. The learned Trial Court was also weighed by the absence of any statements of neighbours or public persons to lend credibility to the deposition of PW2, who would have witnessed the fight as the incident took place in a thickly populated area in broad daylight. It was noted that in case such persons had refused to participate in the proceedings, it was unclear as to why no action had been taken against them by the Investigating Officer.

22. It cannot be ignored that the defence on the other hand has brought forth two witnesses to the incident- DW2 and DW3 (neighbours of the parties), who have supported the case of the defence that the accused persons were beaten by PW2 and PW6 instead.

23. DW2 has stated in his testimony that on 20.01.2014, he had seen PW2 and PW6 were beating the accused Dasrath and Umesh. He stated that when the neighbours rushed to save the said accused persons, PW2 and PW6 started quarrelling with each other and also caused injury to each other. During cross examination, he denied that he was not present on the spot or that he was deposing falsely.

24. DW3 in her testimony stated that PW2 had started abusing accused Umesh when he was taking his son to school and thereafter, an altercation took place between the parties when accused Umesh objected to the same and PW2 hit the head of the accused Umesh with a lathi. She further stated that PW2 himself caused an injury on his head with a brick. During cross examination, she denied that she was deposing falsely at the instance of the mother of accused Umesh.

25. Despite extensive cross-examination, the prosecution was



not able to create a dent on the testimony of the said witnesses and bring forth any material contradictions so as to render their evidence inadmissible. As also noted by the learned trial Court, there is nothing on record to show that the defence witnesses were motivated to depose falsely against the injured victims.

26. The medical evidence adduced by the accused persons was also considered. The testimony of DW1 (Nursing Orderly) was discussed who had been called to prove the MLCs of accused Umesh and Dasrath (Ex. DW1/A and Ex. DW1/B respectively), which stated that the nature of injuries is simple. It was noted that while DW1 had been called to prove the said MLCs instead of the concerned doctor or record clerk, in the absence of any suggestion in cross-examination regarding the same being forged or fictitious, the MLCs could not be ignored, especially in view of the defence taken by the accused persons that they had been beaten themselves.

27. It is argued on behalf of the State that the MLCs as adduced by the defence cannot be taken into consideration and the learned Trial Court has erroneously observed that no suggestion was put to DW1 regarding the MLCs being false or fabricated. It is stated that while DW1 denied the suggestion, he admitted in cross examination that the MLCs were not prepared in his presence and he could not identify the treating doctors. It is relevant to note that no action has been taken by the prosecution against the accused persons for allegedly adducing false evidence in Court or preparing forged MLCs.

28. It is also argued that the onus to explain the injuries suffered by the accused persons does not rest on the prosecution. While the same alone may not be a ground to throw the case of the prosecution, however, considering the totality of
CRL.L.P. 276/2022



circumstances in the present case, the same casts a doubt on prosecution, especially as it is supported by other defence witnesses.

29. Insofar as the alleged recovery of the weapons is concerned, it is argued by the counsel for the respondents that the same were planted. It is relevant to note that the recoveries were effected from the house of accused Dasrath and a room near the house of accused Umesh. As noted above, the parties resided in a thickly populated area, despite which, no public witnesses were joined. As also noted by the learned Trial Court, the weapon of offence was not sent to FSL and no explanation was provided for the same, even though, in the case of a bleeding head injury, the FSL report would have been crucial.

30. From a perusal of the record, it is apparent that there are several discrepancies and infirmities in the case of the prosecution and the learned Trial Court has rightly noted that the prosecution has failed to establish its case beyond reasonable doubt.

31. In view of the aforesaid discussion, 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.

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

AMIT MAHAJAN, J

MARCH 17, 2025