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

% ***Date of decision: 23rd April, 2025***

+ **CRL.L.P. 334/2019**

THE STATEPetitioner
GOVT. of N.C.T. of DELHI

Through: Mr. Utkarsh, APP for State with SI
Sumit, P.S.Aman Vihar.

versus

1. **VICKY @ VINAY**Respondent No. 1
S/o SH. NAND KISHORE,
R/o B-252, GALI NO. 13,
GAURAV NAGAR II,
PREM NAGAR III,
DELHI
2. **NAND KISHORE**Respondent No. 2
S/o SH. SHIV CHARAN,
R/o B-252, GALI NO. 13,
GAURAV NAGAR II,
PREM NAGAR III,
DELHI
3. **RAM KISHAN**Respondent No. 3
S/o SH. SHIV CHARAN,
R/o C-266, BUDH BAZAR ROAD
PREM NAGAR III,
DELHI
4. **VIKAS**Respondent No. 4
S/o SH. RAM KISHAN (Deceased),



R/o C-266, BUDH BAZAR ROAD,
PREM NAGAR III, DELHI

Through: Mr. Bhuvneshwar Tyagi, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA
J U D G M E N T (oral)

CRL.L.P. 334/2019

1. Criminal Leave to Appeal under Section 378 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the State, to challenge the *Judgment dated 05.11.2018 acquitting the Respondents under Sections 341/325/527/34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC")*.
2. It is submitted that both the injured persons i.e. Sunil and Sunny have consistently deposed about the incident and there had been no material contradictions in the statements of the injured. However, their testimony has been wrongly disbelieved. Furthermore, minor inconsistencies do not affect the truthfulness of their testimony especially when their statements were recorded after a gap of three years from the date of incident. Thus, Leave to Appeal is sought by the State.
3. For the reasons stated therein, Leave to Appeal is allowed.

Crl.Appeal No. _____/2025 (To be numbered by the Registry)

4. Appeal under Section 378 Cr.P.C has been filed by the Appellant/State against the Judgment dated 05.11.2018 of the learned M.M



whereby the ***Respondents have been acquitted under Sections 341/325/527/34 IPC*** in in FIR No.322/2009 P.S. Aman Vihar.

5. ***Briefly stated***, as per the case of the prosecution, on 28.09.2009 at about 9.30 PM in Gali No.13, Prem Nagar III, Delhi, the Respondents restrained the Complainant, Sunil and voluntarily caused grievous injuries with blunt object on his person and voluntarily caused mischief to one musical instrument i.e. *Pipni* belonging to his brother, Sunil who was also beaten up with a *danda*.

6. FIR No.322/2009 dated 29.09.2009 under Sections 323/341/34 IPC, P.S. Aman Vihar was registered. Investigations were carried out where after the Chargesheet was filed in the Court. The learned Trial Court recorded the evidence of the 9 prosecution witnesses including the two injured. The statements of the Respondents were recorded under Section 313 Cr.P.C. The Respondents were acquitted *vide* Judgement dated 05.11.2018.

7. The ***grounds of appeal*** are that the facts and the evidence of the Prosecution Witnesses have not been examined in the right perspective. The testimony of the prosecution witnesses proves the case beyond reasonable doubt. There are minor contradictions in the testimony of the two injured, PW-1 and PW-2 which are of no consequence. While PW-1 had stated that the weapon of offence was *danda*, PW-2 stated it to be a hockey. PW-1 stated that Ram Kishan, Respondent No.3 had beaten up his younger brother, Sunny but did not depose about him being beaten up by the other Respondents. Such minor contradictions and inconsistencies do not affect the prosecution case.



8. It has not been appreciated that there are no material contradictions and the testimony of the two injured were trustworthy. It cannot be overlooked that the witnesses have been examined after a gap of about three years and minor contradictions are natural. The judgment of Acquittal dated 05.11.2018 is therefore, liable to be set aside.

9. It is further submitted that Respondent No.4, Vicky had expired during the course of trial.

10. *Learned counsel on behalf of other Respondents* submits that contradictions in the testimony of PW-1 and PW-2 cannot be termed as minor but they go to the root of the case of the prosecution. The alleged weapon of offence has not been correctly defined as to whether it was a *danda* or a hockey. Furthermore, the weapon of offence has not been recovered. It was alleged that the *Pipni* had been damaged by the Respondents, but no such *Pipni* was recovered ever during the investigations falsifying the entire case of the prosecution.

11. It is, therefore, submitted that the learned Trial Court has rightly acquitted the Respondents and the Judgment does not merit any interference.

12. **Submissions heard and record perused.**

13. The Accused has been charged for the offences under Section 341/325/427/34 IPC. The star witness of the Prosecution was the PW-1 Sunil, Complainant, who deposed that on 28.09.2009 at about 9/09:30 P.M. his younger brother Sunny had brought a *chota baza* "*Pipni*" from *Dusshera Mela*, which he was blowing at the outside door of their house, in the *gali*. The Accused, Ram Kishan who resides in front of the house of the



Complainant took an objection, but Sunny did not pay any heed and continued to blow the *Pipni*. This irritated Ram Kishan, who gave beatings to Sunny. On hearing his cries, the Complainant, Sunil rushed out and tried to save his brother and take him inside the house, but he was prevented by the Respondents-Vikas, Vicky and Nand Kishore @ Rana who stopped him from getting into his house. The Respondent, Ram Kishan gave him a *danda* blow because of which he suffered fracture of his hand. He was also beaten up by other two Respondents. On his call, the Police arrived at the spot and he made a Complaint, Ex.PW1/A.

14. Nothing material could be elicited from his cross-examination. His testimony is fully corroborated by PW2, Sunny who was 12 year old at the time of incident. He deposed that his brother, Sunil was beaten by a hockey and sustained injury on his head and his hand.

15. No MLC of Sunny was prepared, while the Complainant, Sunil was taken to Sanjay Gandhi Memorial Hospital, Mangolpuri, where his MLC, Ex.PW5/A was prepared, wherein it has been noted that he had injury on his head and his arm and X-ray etc. were recommended. *His injury was certified to be grievous.*

16. The testimony of the two injured, Sunil and Sunny is consistent in regard to having been beaten by the Respondents and Sunil having suffered a fracture in his hand, which is fully corroborated by the MLC.

17. The learned M.M. fell in error in over-emphasizing the minor discrepancies in the case of the Prosecution. Non-recovery of *Pipni* was not material to the beatings given by the Respondents to the two injured. The



blowing of *Pipni* was only the background which triggered the incident of beatings. The core case of the Prosecution was the beatings given to the injured and not the blowing of *Pipni*. Merely because the *Pipni* was not recovered, cannot be considered as of any significance or take away the truth of the two PWs being beaten by the Respondents.

18. Likewise, the learned M.M has over-emphasized that while Sunil had deposed that he was hit by *danda*, Sunny asserted it to be a hockey. The fact remains that it was a *danda* which may have been hockey, with which Sunil was hit. The fact remains that it was a *danda*/hockey with which the injury was inflicted. It cannot be overlooked that PW-Sunny was a small boy of about 12 years and had witnessed the incident of beatings given to him and his brother. In such turmoil, no scientific precision about the exact description of weapon of offence can be expected. Mere mis-description or merely because the *danda* got described as a hockey by Sunny, would not make the testimony not-believable about an injury been inflicted on Sunil with a *danda* like weapon.

19. Likewise, merely because Sunny was not medically examined or his MLC was not prepared, is again, no reason to disbelieve the case of the Prosecution. Merely because the MLC was not prepared, would not make his testimony less credible. Learned M.M. fell in error in over exaggerating the inconsequential aspects of their testimony to give the benefit to the Respondents.

20. Though the Respondents in their Statement under Section 313 Cr.P.C. had set up a defence that no such incident happened, but no such suggestion



had been given in the cross-examination of PW1, Sunil and PW2, Sunny. Pertinently, it is not in dispute that the phone call was made by the Complainant, Sunil and the Police had arrived at the spot and apprehended the Respondents on the spot. Furthermore, the MLC of PW-1 Sunil further establishes the happening of the incident. The defence set up that no such incident had taken place, is patently against the comprehensive prosecution evidence on record establishing the commission of offence.

21. The impugned Judgment is hereby, set aside and the Respondents are convicted under Section 325/341/34 IPC.

Conclusion:

22. The learned Counsel on behalf of the Respondents has submitted that the alleged incident is of 2009 and the Complainant and the Respondents are living in vicinity and the benefit of being neighbours, be given to the Respondents.

23. Learned counsel for the *other Respondents* submits that the Respondents are all senior citizens and they were all living in the neighbourhood. It was a small fight. Furthermore, the accident happened in the year 2009. They have all suffered much and hence, the leniency is prayed.

24. *Learned counsel for the State* submits that considering the gravity of the offence, they be punished appropriately.

25. The provisions of the Probation of Offenders Act empower the Courts to release the convict on good conduct, and the nature of the offence and the behaviour of the convict need to be taken into consideration while granting



the probation. The grant of relief of probation under the said Act varies from case to case and thus, needs to be scrutinized independently in each case.

26. Having regard to the aforesaid facts that the Respondents herein are all Senior Citizens and have already suffered enough since 2009 and also that being the neighbours there has been no other incident since 2009, the benefit of probation under Sections 3 and 4 of the Probation of Offenders Act, 1958, can be extended to the Respondents.

27. The Respondents are directed to be released on probation on furnishing of Bond of Peace and Good Conduct in the sum of Rs.10,000/- (for keeping peace and good behaviour) with one surety of like amount for a period of one year, before the concerned Trial Court, within a period of one month of this Order.

28. The Respondents shall remain under the supervision of the Probation Officer, Rohini Courts, Delhi, for one year. In case the Respondents do not maintain good conduct during the period of probation, then they shall be liable to undergo the substantive sentence.

29. The Appeal is accordingly disposed of along with pending Applications(s), if any.

30. Copy of the Judgement be sent to Ld. M.M. for information.

NEENA BANSAL KRISHNA, J

APRIL 23, 2025

Rk/va

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