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

+ **CRL.L.P. 298/2022**
STATE

.....Petitioner

Through: Ms. Priyanka Dalal, APP
for the State.
SI Naresh Kumar, PS
Bhlaswa Dairy.

versus

PRADEEP @PANKAJ & ANR.Respondents
Through: Mr. Nitin, Adv. through
V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
03.11.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter* '**CrPC**') seeking leave to challenge the judgment dated 24.07.2020 (*hereinafter* '**the impugned judgment**'), passed by the learned Metropolitan Magistrate, in Sessions Case No. 5283576/2016 arising out of FIR No. 06/2011, registered at Police Station Bhalaswa Dairy, thereby acquitting the respondents of the offences under Sections 325/34 of the Indian Penal Code, 1860 (*hereinafter* '**IPC**').

2. Succinctly stated, on 12.01.2011 at about 10-10:30 pm the complainant/Sh. Azad Sharma witnessed, three men fighting with a *jalebiwala* /sweet vendor, in front of the Sant Gyan Public School, near Nala ki Puliya, Mukundpur Part I, C-Block, Delhi (*hereinafter* '**Place of Incident**'). Out of the three men, the complainant could only recognize respondent no. 1/Pradeep @Pankaj. The complainant being a good Samaritan, attempted to intervene and break-off the fight to protect the poor vendor.

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However, the same resulted in agitating the respondents who then diverted their attention on the complainant/Sh. Azad Sharma and started beating him. Two men grabbed the complainants' hands while respondent no. 1/Pradeep @Pankaj hit the complainant's right leg, below the knee, with a stick (*danda*), thereby causing him grievous hurt.

3. Undisputedly, the complainant/Sh. Azad Sharma made a PCR call on the next day of the incident and the DD No. 13B dated 13.01.2011 was lodged. The complainant/Sh. Azad Sharma was medically examined at BRJM Hospital *vide* MLC dated 13.01.2011 (*Ex. PW8/A*). The statement of the complainant (*Ex. PW1/A*) was recorded on 22.01.2011 and the subject FIR was registered.

4. During investigation, accused persons were arrested and the weapon used for commission of the offence i.e. the stick (*danda*) was recovered at the behest of respondent no. 1/Pradeep @Pankaj.

5. After completion of the investigation, the Chargesheet was filed and the charges were framed against the respondents *vide* Order dated 06.09.2011, to which the respondents pleaded not guilty and claimed trial.

6. The prosecution examined total 10 witnesses in support their case.

7. **PW1/Sh. Azad Sharma** deposed about the events leading up to the incident, the manner of commission of offence and the nature of injuries sustained.

8. **PW2/Ct. Neetu** was the Duty Writer who entered DD No. 13B dated 13.02.2011 (*Ex PW2/A OSR*).



9. **PW3/Chaman Khan** was examined as the eye-witness. He deposed that he witnessed the complainant being beaten by the accused persons along with their three-four associates and he rescued him from their clutches.

10. **PW4/ASI Charan Singh** was the Duty Officer who registered the subject FIR no. 06/2011 (*Ex. PW4/A*) and made the endorsement on *rukka* (*Ex. PW4/B*).

11. **PW5/ASI Sukhpal** was the second IO of the case who arrested respondent no. 2/Visheshwar Singh @ Sonu on 12.04.2011 *vide* Arrest Memo (*Ex PW1/B*) and filed the chargesheet after completion of the investigation.

12. **PW6/Dr. Shipra Rampal**, Radiologist, BJRM Hospital prepared X- Ray Report no. 122 dated 14.01.2011 (*Ex. PW6/A*) of the complainant. She deposed that as per her report the complainant sustained a fracture of fibula - right ankle with foot and no injury was sustained to the nasal bone.

13. **PW7/SI Satya Dev** was the first IO, who was posted as ASI at PS Bhalaswa Dairy, when he received DD No. 13B regarding a quarrel on 12.01.2011. He deposed that when he reached the spot of the incident, the injured had already been taken to the BJRM Hospital. When he reached the hospital and obtained the MLC, the complainant refused to give his statement at that time due to severe pain. He obtained the opinion of the doctor regarding the nature of the injury which was opined as "grievous". He recorded the complainant's statement on 22.01.2011, arrested the respondent no. 1/ Pradeep @Pankaj on 29.01.2011 and recovered the weapon of offence (*danda*) from his residence. He also prepared the site plan (*Ex. PW7/B*) at the



instance of the complainant.

14. **PW8/Dr Seema** is the CMO at the BJRM Hospital. She deposed that one injured namely Azad was brought to Casualty by PCR van officers who was medically examined by Dr. Uma Kant under her supervision *vide* MLC (*Ex.PW8/A*). After preliminary treatment the injured was referred to SR Ortho and ENT for further examination. Final opinion was given by Dr. Neeraj/ SR Ortho as “grievous”.

15. **PW9/ASI Gyassuddin** joined the investigation on 29.01.2011 and deposed on similar lines as PW7.

16. **PW10/Ct. Mahipal** is the MHC(M), P.S. Bhalaswa Dairy.

17. The above witnesses were duly examined and the statement of the accused persons/respondents was recorded under section 313 Cr. PC. However, no defence evidence was led by them.

18. After due consideration of the evidence placed on record, the learned Trial Court acquitted the respondents of the charged offences *vide* the impugned judgment dated 24.07.2020 by observing that there are embellishments, material contradictions and gaps in the case of the prosecution.

19. It was noted that the complainant/PW1 has not been consistent in deposing about the place of incident. In the initial statement of the complainant, dated 22.01.2011 made before the police, which was also the basis of the present FIR, he had stated that he was on his way home when he spotted three people arguing with a local *jalebiwaala* upon which he stopped; intervened and got beaten up on the spot. Upon this statement the site plan (*Ex. PW7/B*) was made. However, in his deposition, he



stated that when he attempted to rescue the *jalebiwala*, the respondents asked him to leave and thus, he left the place of incident. He was subsequently attacked by the respondents when he was inside a mobile re-charge shop, along with a “known person”. Thus, there is a stark contradiction with regard to the place of occurrence of the offence.

20. It was further noted by the learned Trial Court that PW3/Chaman Khan, who is allegedly the only eye-witness, was made a witness only during trial and he was neither mentioned in complainant's first statement nor in the list of witnesses furnished by the prosecution, which casts a serious doubt upon the credibility of the testimony of the complainant and PW3/Chaman Khan rather appears to be a tutored witness.

21. It was also noted that even the description of events by PW3/Chaman Khan does not inspire confidence. He has deposed that when he arrived at the crime scene to save the complainant, he saw the respondents along with three-four more people, i.e. a total of five-six aggressors, attacking and beating the complainant. This is apparently contrary to the initial statement of the complainant wherein the complainant disclosed that there were only three persons who were attacking him. It is also unlikely that one person was able to fight five-six aggressors, who were having sticks/dandas with them.

22. Additionally, neither the *jalebiwala* nor the “known person” who accompanied the complainant to the mobile re-charge shop were traced or identified or been made a witness in the present case to support the version of the prosecution.

23. It has also been observed that the assertion of the



complainant that the police recorded his statement on the morning of 13.01.2011, in the hospital itself, is completely contrary to the record which reflects that the first statement of the complainant was only recorded on 22.01.2011 and thus, the subject FIR was registered after almost nine days. The delay of nine days has also not been explained by the prosecution as it was admittedly not the case where the victim was unconscious, disoriented or in an unfit state of mind.

24. Consequently, considering the totality of circumstance and the inconsistencies in the story of the prosecution, the learned Trial Court held that the prosecution has failed to prove the guilt of the accused persons beyond a shadow of reasonable doubt. Thus, the respondents were acquitted of the charged offences *vide* the impugned judgment.

25. Aggrieved by the impugned judgment of acquittal, the present petition, seeking leave to challenge the impugned judgement, has been filed.

26. The learned Additional Public Prosecutor for the State submitted that the learned Trial Court erred in acquitting the respondent of the charged offences.

27. It was submitted that the learned Trial Court has failed to appreciate the seriousness and the importance of the statement of a material witness who also happens to be the victim and also the magnitude of the scale on which the statement of the material witness must be weighed. The learned Trial Court has erred in doubting and discrediting the testimony of the complainant even when there are no major contradictions in his statement.



28. It was further submitted that the presence of the injuries has been corroborated by the statement of the Doctor on duty and the MLC dated 13.01.2011. The complainant's testimony cannot be disregarded merely based on the fact that the I.O. did not examine the *jalebiwala* or the acquaintance/ "known person" of PW1.

29. It was further submitted that mere delay of nine days in registration of the FIR is not *per se* fatal to the case of the prosecution and has been sufficiently explained by stating that the IO was waiting for the doctor's analysis of the injury and declaring the same to be grievous in nature.

30. *Per contra*, the learned counsel for the respondents submitted that the learned Trial Court has rightly acquitted the respondent after duly considering the evidence of the prosecution witnesses and there is no merit in the present petition.

31. Submissions heard and record perused.

Analysis

32. 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.”

33. At this juncture, it would also be beneficial to discuss the



essential ingredients of Section 325 of the IPC, which reads as under: -

“325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

34. A bare perusal of the above section demonstrates that for a person to be held liable under Section 325, evidence led by the prosecution has to prove beyond reasonable doubt that *firstly*, the accused persons caused the grievous injury; *secondly*, the injury was caused voluntarily; and *thirdly*, the case does not fall within the contours of Section 335.

35. The State has emphasised that the learned Trial Court had been overtly weighed by minute inconsistencies in the evidence of the witnesses even though the same was not material in nature.

36. However, from the appreciation of the material on record, it is apparent that there were gaps in the case of the prosecution and that the prosecution failed to establish the case against the respondents beyond reasonable doubt.

37. The case of the prosecution primarily hinged on the testimony of PW1/Sh. Azad Sharma, who is the victim himself.

38. PW1/Azad Sharma deposed that on 12.01.2011 at about 10:00 pm, he encountered three- four persons who were abusing each other. When he attempted to intervene, the respondent no. 1/Pankaj @Pradeep warned him and asked him to leave. He had heeded to his warning, left the place and started moving towards his home, when he met one “known person”/acquaintance, who asked the complainant to accompany the acquaintance to a



mobile re-charge shop. It was inside this shop the complainant was attacked by the by accused persons and the respondent no. 1/Pradeep @Pankaj struck his leg with a *danda*. He was rescued by one Chaman Khan who reached the spot. Thereafter, he went to his house and did not lodge any complaint with the PS as his brother was not present at the house and he was in severe pain. When the pain became unbearable his brother made a call to the called the PCR and took the complainant to BJRM Hospital. The Doctor therein opined that he was having fracture in the right leg. At the hospital, some local police officials came and he got his statement (*Ex PW1/A*) recorded.

39. During his cross examination dated 16.07.2012, the complainant again stated that he has given his statement for the first time on 13.01.2011, to the police officials, when he was in the hospital.

40. However, the entire narration of events leading up to the incident in the deposition of PW1, is clearly inconsistent with the initial statement of the complainant (*Ex. PW1/A*). While in his deposition he stated that he was beaten inside the mobile recharge shop, but in the initial statement the complainant stated that he was trying to save the *jalebiwaala* when he got beaten up by the accused persons at the place of incident. It is also noteworthy that the site plan (*Ex. PW7/B*) does not reflect the spot of incident to be any shop. Undoubtedly, there is a clear and significant contradiction emerges concerning the exact place of occurrence of the offence.

41. Surprisingly, there is no mention of him leaving the place or going to a mobile re-charge shop or one acquaintance



accompanying him to the shop or even PW3/Chaman Khan coming to his rescue. It also seems highly improbable that a person would not disclose or withhold such important information such as the identity of an acquaintance or the presence of an eye witness to the police officials at the very first instance or even during the course of investigation.

42. Now, coming to the evidence led by the eye-witness, PW3/Chaman Khan, who was never mentioned in the list of witnesses initially and was only added as a witness after the testimony of PW1 was recorded. PW3/Chaman Khan has deposed that on 12.01.2011, when he was present in front of Sant Gyan Public School near naley ki puliya Mukundpur, part I, C Block, Delhi, he saw that both the respondents, Pankaj and Sonu, along with three-four more persons, were severely beating the complainant. Respondent no. 1/Pradeep @Pankaj gave beatings to complainant with *danda*, while respondent no. 2/Visheshwar @Sonu and other associates of accused persons gave leg and fist blows to the complainant. He rescued the complainant and thereafter, the accused fled away from the spot.

43. During his cross-examination dated 19.05.2014, he further stated that the Police never came to record his statement and hence, his statement could not be recorded.

44. Pertinently, even the eye-witness, PW3/Chaman Khan has not disclosed about the spot of the incident or the presence of the accused persons along with the complainant at any mobile re-charge shop. Further, the complainant mentioned that there were three men beating him, while PW3/Chaman Khan has deposed that he saw two accused persons along with their three-four



associates inflicting injury on the complainant.

45. The testimony of the complainant as well as PW3/Chaman Khan casts a doubt on the case of the prosecution. Additionally, the *jalebiwala* and the alleged acquaintance have also not been examined to lend credence to the testimonies of PW1 and PW3.

46. It is also noteworthy that the complainant's claim that his statement was recorded by the police on the morning of 13.01.2011 stands contradicted by the official record which indicates that the complainant's first statement was only recorded on 22.01.2011. This delay of nine days has been explained by stating that the injured was in pain and could not give his statement, but it has never been disputed that the injured was oriented, conscious and fit to give a statement in these nine days.

47. It is no more *res integra* that minor discrepancies in the evidence of witnesses, arising from normal errors of observation or memory do not ordinarily undermine the credibility of a witness. However, material contradictions and inconsistencies, which cannot be attributed to such normal human error, do go to the root of the prosecution's case and affect its overall merit.

48. The heavy reliance placed by the State upon the MLC is wholly misconceived in light of the material discrepancies discussed above. The MLC and the accompanying X-ray report dated 13.01.2011 merely establish the *factum* and *nature* of the injury sustained. However, these documents are entirely silent as to the cause or source of the injury, and therefore, cannot, by themselves, establish the guilt of the accused. The mere existence of an injury, without cogent and credible evidence connecting the same to the alleged act of the accused, cannot form the sole basis



of conviction. The factum of injury is only a factor for consideration, but cannot override the glaring inconsistencies and infirmities pervading the prosecution's case.

49. In view of the above, in the opinion of this Court, 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.

50. The present leave petition, along with the pending application(s), if any, are hereby dismissed.

AMIT MAHAJAN, J

NOVEMBER 3, 2025

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