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

% *Date of decision: 20th November, 2025*

+ CRL.L.P. 98/2021

STATE

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan, APP
with Insp. Shiv Karan Singh, PS Nabi
Karim

versus

PRAKASH@AKASH@CHINU & ORS.

....Respondents

Through: Mr. Kaushlender Singh and Mr.
Neeraj Gahlaut, Advocates for R-1 &
R-4
Mr. Avi Singh, Senior Advocate with
Mr. Kirti Raj, Advocate for R-2
Mr. Omkar Sharma and Mr. Aditya
Sharma, Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T

1. The present petition¹ assails Judgment dated 30.05.2020², whereby respondents herein have been acquitted of all the charges.
2. The accused persons, namely, Prakash (Respondent No. 1), Arjun (Respondent No. 2) and Sheetal (Respondent No. 3 herein) were charge-sheeted for offences punishable under Section 307 read with Section 34 IPC³

¹ Filed by the State under Section 378(3) of the Code of Criminal Procedure, 1973

² Passed by the learned Trial Court in Sessions Case No. 305/2019 arising out of FIR No. 398/2018, registered at Police Station Nabi Karim, Delhi.

³ Indian Penal Code, 1860.



and their co-accused Kajal (Respondent No. 4 herein) was sent up to face trial for commission of offence under Section 201 IPC.

3. The case of the prosecution, as emanating from the record, is that on 26.11.2018, at about 10:00 PM, complainant Prem (PW-5) along with his relatives Varun (PW-12) and Manoj (PW-9) were present at a street situated behind White House Hotel, Nabi Karim. R-1, R-2 and one juvenile offender⁴ came there. When R-2 blamed complainant of doing *mukhbari*⁵ against him, he was snubbed. R-1 sent CCL who returned, within 15 minutes, with a knife. In the meantime, R-3 (sister of R-1) also came there and handed over a pistol to R-2. Noticing the same, PW-12 Varun fled from the spot. R-3 caught hold of the complainant and exhorted to kill them by uttering “*Maaro*”, upon which R-1 and CCL gave knife blows to complainant. When complainant attempted to flee away, R-2 fired which resulted in gunshot injury on his left leg. Manoj (PW-9) also sustained gunshot injury in the incident.

4. On receipt of information about the incident, SI Ram Avtar (PW-18) along with Ct. Mahender reached the spot, where they seized bloodstained earth, earth control, and empty cartridges. Upon learning that the injured persons had been shifted to LHMC⁶ Hospital, they reached at the hospital where both the injured were declared unfit for statement.

5. Next morning, when the injured persons were declared fit, Investigating Officer⁷ recorded their statements. FIR was accordingly registered and accused were arrested.

⁴ Hereinafter referred to as CCL.

⁵ Passing on secret informer to police.

⁶ Lady Harding Medical College.

⁷ Hereinafter referred to as IO.



6. During interrogation, R-1 disclosed that he had procured weapon and cartridges from one Monu with whom he had conversation and chat through WhatsApp and such mobile was given to R-4 (his Bhabhi/ sister-in-law). She, when contacted, revealed that *such mobile device had been destroyed by her*. Consequently, she was booked under Section 201 IPC for causing disappearance of evidence.
7. Though the knife could not be recovered, the pistol used in the incident in question was, later on, found in possession of R-2 by the police officials of PS Model Town for which he was separately booked.
8. The seized exhibits were sent to FSL.
9. Upon completion of investigation, charge-sheet was filed.
10. R-1, R-2 and R-3 were charged under Section 307/34 IPC and R-4 under Section 201 IPC. They all pleaded not guilty and claimed trial.
11. It will be important to mention that no FSL report was ever placed on record.
12. Prosecution, in order to prove its case, examined 18 witnesses.
13. All the accused pleaded innocence, when examined under Section 313 Cr.P.C.
14. Observing that the evidence on record was insufficient against any of the accused, learned Trial Court has acquitted them of all the charges.
15. Such order is under challenge.
16. We have heard learned APP for the State and learned counsel for the respondents and have carefully perused the record.
17. The parameters governing the grant or refusal of such leave are well-defined and leave can be granted if *prima facie* case is made out or some arguable points are shown to be in existence.



18. Learned APP for the State submits that the learned Trial Court has erred in acquitting the respondents as prosecution had succeeded in establishing its case beyond reasonable doubt. He submits that the testimony of PW-5, PW-9 and PW-12 remained consistent throughout and, therefore, there was no reason to have discarded the same. He, thus, prays for grant of leave to appeal.

19. However, a careful perusal of their testimony would indicate material inconsistencies and substantial contradictions. They did not, entirely, support the case of prosecution and were, therefore, cross-examined by the prosecution with the permission of the Court. Despite such cross examination, they remained adamant to their stand taken in examination-in-chief and deviated, materially, from their respective statements made during the investigation.

20. Complainant did not whisper even a single word against R-3 whereas, as per prosecution story, R-3 was the one who had brought the pistol at the spot and exhorted her co-accused to kill complainant party. During the trial, all the three material witnesses, in unison, deposed that R-1, R-2 and CCL were already carrying firearms. This deviation puts a big question mark over the veracity of prosecution case.

21. There is also uncertainty about the exact number of assailants.

22. Complainant deposed that assailants were much more in number which is in contrast to what he had claimed during the investigation. Introduction of more assailants, with no explanation about such huge improvement, has also caused a serious dent in the case of prosecution.

23. As per prosecution case, there was only one pistol which was used by R-2 whereas all the material spot witnesses have created flutter by claiming



that pistols were used by three persons. In their cross examination, they even disowned their respective statements which they had, allegedly, given to the police during investigation. Complainant could not assign any reason as to why and how he was able to see the faces of three offenders only and was not able to see the others when they all were together and had, allegedly, assaulted together. There is also no explanation as to why he did not reveal the police about the exact number of assailants.

24. The similar is the stand of PW-9 and PW-12.

25. Thus, the deposition of PW-5, PW-9 and PW-12 suffers from material discrepancies. In their police statements, they attributed stab injuries to R-1 and CCL and gunshot injuries to R-2, while specifically stating that R-3 had brought the pistol at the spot. However, in their deposition before the Court, they departed from these assertions and blamed unnamed “associates” for stabbing.

26. As noted, the specific role earlier assigned to Sheetal (R-3) is conspicuously absent in their testimony.

27. As per averments appearing in the charge-sheet, R-4 had, allegedly, destroyed one mobile phone belonging to R-1. Except for the bald averment and disclosure statement of co-accused, which does not carry any evidentiary value, there is nothing on record to substantiate the above charge and, therefore, there is not even an *iota* of evidence against her.

28. As regards the injuries sustained by PW-5 and PW-9, we have carefully perused MLC of PW-5 (Ex. PW-6/B), MLC of PW-9 (Ex. PW-11/A), the medical opinion (Ex. PW-6/B and Ex. PW-11/B), and the deposition of the concerned doctors.



29. MLC of PW-5 though records '*alleged history of gunshot injury*', however, the attending doctor did not identify the injury as a 'gunshot wound'. As regard the alleged entry or exit wound, his observations are visibly indeterminate, being preceded with a "question mark". Similarly, MLC of PW-9 also reflects a "question mark" against the alleged entry wound and records no exit wound. MLCs of both the injured label their injuries as mere 'simple injuries' and do not suggest any firearm related wound. The medical evidence also, therefore, does not support the prosecution's allegation of gunshot injuries suffered by PW-5 Prem or PW-9 Manoj.

30. PW-6 Dr. Ankush, who first examined them, noted only a fracture in the left foot of PW-5 and confirmed in cross-examination that no bullet was found inside PW-5 or PW-9 as per their X-ray sheets. PW-11 Dr. Rohit Kashyap, who examined them, surgically, also categorically stated that their injuries were simple and that there were no bullet wounds. He even deposed that the possibility of said injuries, being self-inflicted, could not be ruled out. PW-16 Dr. Munish also deposed that he was not sure whether injured had suffered gunshot injuries.

31. Thus, the medical evidence fails to corroborate the ocular version.

32. To make the things worse, no FSL report was ever produced or proved during the trial. Testimony of PW3 Ct. Joginder Singh would indicate that he had taken certain *pullandas* to FSL but two *pullandas* were returned with some objections by FSL and were not accepted. Nobody knows as to what were those objections and what was the eventual fate of such two *pullandas*.



33. IO had though called the crime team and the spot was got photographed but it is not explained as to why the crime team report and photographs were not collected and placed on record. The concerned photographer i.e. PW2 Ct. Deepak Nagar deposed that though he had taken 15 photographs of the scene of crime from official digital camera but the CD⁸ prepared in this regard was never collected by the IO. Similarly, PW8 Insp. Narender Singh, who was posted as incharge crime team of Central District at the relevant time, has deposed that he had prepared his report but IO did not collect the same. According to him, IO had merely recorded his statement and even learned Trial Court was compelled to observe that IO had not collected any such crime team report or photographs.

34. Besides the aforesaid material prosecution witnesses, there are two independent witnesses but to add to the misery of prosecution, these two independent witnesses i.e. PW13 Anil and PW14 Smt. Saroj have also not supported the prosecution story and despite being declared hostile by the prosecution and despite being cross examined by the prosecution, they remained adamant to their stand and did not utter anything in favour of prosecution.

35. Though, as per prosecution story, one firearm was recovered by police team of PS Model Town from the possession of R-2 and in this regard, prosecution examined PW17 ASI Rajesh, who deposed that on 01.12.2018, accused Arjun @ Prem, R-2, was arrested and from his possession one country made pistol and two live rounds were recovered. Said recovery resulted in registration of separate FIR⁹. However, fact remains that

⁸ Compact Disc

⁹ FIR No. 470/2018 at PS Model Town



aforesaid pistol, allegedly recovered from R-2 herein, was never produced before the learned Trial Court in the case in hand. So much so, learned Trial Court was not even apprised about the fate of the aforesaid FIR registered at PS Model Town or for that matter about the case against the juvenile offender.

36. Insofar as the allegations against accused Kajal were concerned, as already noted, prosecution miserably failed to show any act of destruction of evidence on her part.

37. The above omissions, inconsistencies and contradictions severely undermine the prosecution case. These strike at the very root of the genesis of the incident and leave us with no option but to hold that acquittal was the only outcome.

38. Moreover, both the sides were no strangers to each other.

39. They seem to share some history of discord. Quite possibly, such existing animosity is the prime reason behind registration of case. In such a backdrop, where prior enmity is clearly discernible, the courts are duty-bound to appreciate and evaluate the evidence with extreme circumspection. The inconsistent and shifting narratives of the key witnesses, when analyzed against such admitted background of hostility, compel us to not believe them, at all. Moreover, the possibility of false implication cannot be ruled out and, therefore, any benefit arising from such doubt must enure to the accused.

40. In the present case, learned Trial Court has taken note of (i) material contradictions in the deposition of the prime eyewitnesses, (ii) the absence of medical, ballistic, and forensic corroboration, (iii) the non-recovery of the alleged weapon and (iv) lack of evidence to sustain charge under Section



201 IPC and acquitted the accused. The findings recorded by the learned Trial Court are in consonance with the evidence led by the prosecution and do not warrant any interference or revisit.

41. As a necessary corollary, while holding that the State has failed to disclose any arguable point or *prima facie* case, we hereby decline to grant leave to appeal.

42. The present petition stands dismissed.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

NOVEMBER 20, 2025/dr/kp