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

% ***Date of Decision: 15th May 2025***

+ **CRL.A. 676/2025, CRL.M.A. 17622/2021 (condonation of delay)**

STATE

.....Appellant

Through: Mr. Shoaib Haider, APP for the State
with SI Deepak Kumar, PS Jahangir
Puri.

versus

MOHD FARID & ORS.

.....Respondents

Through: Mr. Ravinder Pal Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.A. 676/2025

1. Appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the Appellant/State against the Judgment dated 06.02.2020 of Ld. Metropolitan Magistrate-07, North, Rohini Courts, New Delhi in FIR No. 283/2008 dated 02.06.2008, registered at Police Station Jahangir Puri, whereby the Accused persons were acquitted for the offence punishable under Sections 323/325/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*).

2. The *case of the Prosecution/State* is that on 02.06.2008, at about 04:00 PM the Respondents-Mohd. Farid, Mehtab Ali and Shabu @ Qasim



entered into the House of the Complainant, Uday Singh bearing No. I-1829, Jahangir Puri, Delhi, where the accused persons started beating him with a stick/danda because of which he sustained fracture on his hand. Accused-Mehtab Ali also gave beatings to Hemant, son of Complainant-Shri Uday Singh, while Shabo @ Qasim gave beatings to Pushkar, the other son of Complainant-Shri Uday Singh, because of which he suffered injury on his forehead and other parts of his body. Respondent-Farid pushed Kusum Lata, daughter of the Complainant-Uday Singh, and she was thrown out of the house. All the injured persons were taken to the hospital for their treatment. On the Complaint of Shri Uday Singh, an FIR under Sections 323/325/34 IPC was registered on 02.06.2008. Investigations were carried out and the statements of the witnesses were recorded under Section 161 Cr.P.C. On completion of investigation, Chargesheet under Section 173 Cr.P.C was filed.

3. *Charges under Section 323/325/34 IPC was framed against all the Respondents on 12.04.2012, to which they pleaded **not guilty**.*

4. The Prosecution in support of their case examined **total 11 prosecution witnesses** including PW2-Kusum Lata, PW3-Hemant Kumar and PW4-Pushkar, the daughter and the sons of the Complainant-Uday Singh, who had been beaten up by the Respondents.

5. ***The Statement of the Accused persons were recorded under Section 313 Cr.P.C.***

6. The Ld. MM considering the various contradictions in the testimony of the three Witnesses, gave benefit of doubt to the Respondents, who were acquitted *vide* Judgement dated 06.02.2020 in Cr. Case 5290734/2016.



7. Aggrieved by the acquittal, an Appeal has been preferred by the Appellant/State, whereby the Judgment of Acquittal dated 06.02.2020 has been **challenged on the grounds** that the testimony of the three material Witnesses has not been appreciated in correct perspective. Though the Complainant, Uday Singh has expired, but the case of the Prosecution stood proved beyond reasonable doubt from the testimony of PW2, 3 and 4. There were minor contradictions which have been termed as major contradictions and exaggerations to disbelieve the testimony of PW2, PW3 and PW4. Much reliance has been placed on the Statements of Witnesses recorded under Section 161 Cr.P.C. even though it is well settled that these statements can be used under Section 145 Indian Evidence Act only for the purpose of confrontations and contradictions, but cannot be treated as substantive piece of evidence.

8. Reliance has been placed on Tahsildar Singh & Anr. vs. State of U.P. AIR 1959 SC 1012; Md. Badruddin vs. State of Assam 1989 Cr.L.J. 1876 and Badri Chaudhary & Ors. vs. King Emperor AIR 1926 Pat, 20. It is, therefore, submitted that the impugned judgment is liable to be set aside.

9. **Submissions heard and record perused.**

10. The case of the prosecution is that on 02.06.2008 at about 04:00 PM, the Respondents-Accused(s) had voluntarily caused grievous hurt to the Complainant, Sh. Uday Singh and also caused simple hurt to his two sons Hemant Kumar and Pushkar. Complainant-Sh. Uday Singh, unfortunately, died during the pendency of the trial before his statement could be record. The other star witness is PW-3 *Hemant Kumar*, the son of Complainant-Sh. Uday Singh who had suffered simple injuries. He deposed that on the date of



incident at about 04:00 PM, he along with his brother Pushkar was present in the house, while his father and sister came home from Tis Hazari Courts. The Respondent-Accused-Farid started abusing his father, Sh. Uday Singh on the ground that his father has made a Complaint to MCD in regard to the toilet constructed by Respondent-Farid in front of their house. Respondent-Farid along with the other accused persons, entered their house and started beating his father with stick/danda, because of which his father suffered fracture in his left, and co-accused Mehtab Ali gave him beating with fists and leg blows, while co-accused Shabu gave beating to his brother. He suffered injury on his forehead and other parts of the body. Respondent-Accused-Farid also pushed his sister so hard that she got thrown out of the house. His father and brother along with him were taken to the hospital by the police officials for medical examination. His father Sh. Uday lodged Complaint on 02.06.2008. Three accused persons were arrest vide memo EX.PW3/A to EX.PW3/F.

11. He was cross-examined by learned APP for the State and he denied having told the police that the co-accused persons had stopped him and his father in front of House No.I-1830 or his brother ran to them to rescue from the clutches of the other accused persons.

12. In the cross-examination by the learned Counsel for the Respondents, he explained that the house of Respondent Farid was at a distance of about 8-10 houses from their house. Farid had purchased the house adjacent to their house and was constructing the toilet. He denied the suggestion that his father did not suffer fracture. Nothing else is emerged in his cross-examination.



13. The other material witness was **PW4-Pushkar**, who also deposed on similar lines as PW3-Hemant. He also reiterated that the three Respondents/Accused entered their house and gave beating to their father, who suffered a fracture in his left. He and his brother Hemant were also beaten up by the Accused persons. He suffered injury on his hand. He along with his brother and father, were taken to BJRM hospital for medical treatment. He was duly cross-examined by the Counsel for the Respondents, wherein, he admitted that the Respondents/Accused were known to him for the last 17-18 years and the house of Farid was about 10 houses away from their house. He admitted that at the time of incident, the neighbours gathered at the spot, though he could not tell the exact number of the neighbours. The Police reached and remained at the spot for 30 minutes, though no enquiry was made by the Police from the neighbours about the quarrel.

14. Third material witness was **PW2-Kusum Lata**, the sister of two injured and Daughter of the Complainant, Sh. Uday Singh. She also has deposed as PW3 and PW4, wherein, she also stated that her father had made a Complaint to the MCD against Respondent-Farid for having constructed toilet on the drain near their house. She further explained that Respondent-Farid along with the other two accused told her father “*Tu Badi compliant Karta Firta hai, Aaj Tujhe Maja Chakhate Hain*” and thereafter, started giving beatings to her Father with the stick/danda due to which her Father sustained fracture in one of his hand. Respondent-Mehtab Ali gave beatings to her brother Hemant with fists and leg blows, while the Respondent-Shabu gave beatings to her another brother Pushkar. She also corroborated that Accused-Farid pushed her so hard that she was thrown out of the house. Her



father and brothers were taken to the hospital by the Police for their medical examination.

15. Learned APP for State had confronted her with statement under 161 Cr.P.C., wherein, she had stated that Respondents/Accused had stopped her and her father in front of House No. I-1830 and her brothers had come to rescue them from the clutches of the Respondents/Accused. In her cross-examination she was consistent in her testimony about her brothers and father being beaten up by the Respondents inside their house. No material contradiction was brought forth in the testimony of PW2.

16. From the consistent testimony of three material witnesses, it emerged that there was an acrimony between the Complainant Sh. Uday Singh and his family members with Respondent, Farid who was irked by a Complaint made by late Sh. Uday to MCD with regard to toilet constructed by Respondent-Farid near their house. It is this acrimony which prompted the Respondent along with other two Respondents, to enter the house of the Complainant on 02.06.2008 at about 04:00 PM and give them beatings as narrated by PW2, PW3 and PW4.

17. Learned Counsel for the Respondents had submitted that the testimony of all three material witnesses suffers from inherent contradictions and are not reliable. All three Witnesses have deposed that all three Respondents had entered their house and given beatings, while as per the Complaint EX.PW7/A as well as in the statement recorded under Section 161 Cr.P.C., all three material witnesses had stated that Respondents had come outside their house and had given beatings to their father late Sh. Uday and thereafter, to the two sons of the Complainant, who had tried to



intervene to save their father.

18. Pertinently, the testimony has been consistent about Complainant- Sh. Uday Singh and his two sons being beaten by the Respondents, while they were in their house; whether they were beaten in or outside the house cannot be considered as a material contradiction or to disbelieve their testimony, when the incident *per se* has not been denied.

19. Moreover, it stands corroborated by MLC of late Sh. Uday and MLC of Hemant Kumar EX.PW10/A as well as MLC of Pushkar EX.PW10/B, wherein, the alleged history has been given as physical assault, which have been proved by PW10-Dr. Deepak, CMO, BJRM Hospital. The MLC and the injuries stated therein clearly corroborate about the commission of the offence.

20. It is also pertinent to refer to the testimony of PW11 HC Hari Das, who has also deposed that on the date of incident, i.e. 02.06.2008, he had received an information about a fight vide DD No.60B. He went to the spot but came to know that the injured have been taken to the hospital.

21. The testimony was further corroborated by PW7- Charan Singh (IO) that PW11-HC Hari Das that the injured were taken to the hospital. He prepared a rukka EX.PW7/A and got the FIR registered through PW11-HC Hari Das. The testimony of the two police witnesses further corroborates the happening of the incidents.

22. Much has been argued on behalf of the Respondents that though according to PW3 and PW4, neighbours had gathered, but the statement of no neighbour was recorded. In the light of the consistent testimony of the Prosecution witnesses, no significance could be attached to the non-



recording of the statement of the neighbours.

23. It is a known fact that generally the public persons are reluctant to be a witness in a Police Case. The consistent testimony of PW2-Kusum Lata, PW3-Hemant and PW4-Pushkar proves that Complainant, Sh. Uday, his sons, Hemant and Pushkar had been inflicted injuries by the Respondents/Accused and Complainant-Sh. Uday suffered fracture, while Hemant and Pushkar suffered simple injuries.

24. The Ld. MM has wrongly given over-emphasis to the minor contradictions, which do not take away the truth from the whole incident of the three injured being beaten by the Respondents/Accused. Therefore, the Impugned Judgment dated 06.02.2020 is hereby set aside and the three respondents are convicted for the offence under Sections 323/325/34 IPC.

25. **Arguments addressed on the Sentence.**

26. *Learned Counsel on behalf of the Respondents* submits that the Respondent No. 1-Mohd. Farid is 47 years old and drives an Eco vehicle in a School. He has his mother and four children to support. He has never been involved in any crime and this incident was only a neighbourhood dispute.

27. The Respondent No. 2-Mehtab Ali is the younger brother of the Respondent No. 1-Mohd. Farid, aged 46 years and also drives the vehicle for School. He has mother, wife and three children and has never been involved in any crime.

28. The Respondent No. 3-Shabu @ Qasim is a neighbour, aged 36 years and also drives the Eco vehicle for the School. He has mother, wife and three children and not involved in any crime.

29. From the submissions made, it is evident that it was a dispute between



the neighbours on an issue of a construction of the unauthorized toilet on a public drain. The Respondents submit that their family is dependent on them and that the incident occurred in the spur of the moment. Furthermore, they have been facing trial since 2008.

30. Considering the submissions, the Respondents are directed to be released on ***Probation on furnishing of Bond of Peace and Good Conduct in the sum of Rs.15,000/- each*** for keeping Peace and Good Behaviour with one surety of like amount each for a period of one year, before the concerned Trial Court, within a period of 30 days of this Order.

31. 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.

32. The Appeal is accordingly disposed of along with the pending Application(s).

33. The Order be sent to the learned Trial Court for information.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 15, 2025
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