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

+ CRL.L.P. 233/2018 & CRL.M.A. 6767-68/2018

STATE

.....Petitioner

Through: Ms. Richa Dhawan, APP
for the State with SI Vikas
Rathi, PS Burari.

versus

SANJU & ANR

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

19.05.2025

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1. The present petition has been filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 03.10.2017 (hereafter '**the impugned judgment**'), in Sessions Case No. 21/2014 arising out of FIR No. 450/2013, registered at Police Station Burari, whereby the learned Trial Court acquitted the accused/respondents for the offences under Section 392/397/34 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts are that on 27.10.2013 at about 12:00 p.m. the complainant Sunil Kumar along with his brother-in-law Raj Kumar had gone to a nearby field to ease themselves. While returning back, the accused/respondents who allegedly were consuming alcohol stopped them and said that the field belonged to them.

3. It is alleged that the accused/respondents started assaulting them and demanded for everything they had in their possession. It is further alleged that when the victims refused, one of the



accused/respondent held Raj Kumar from behind and the other took out a knife from his pocket and allegedly took ₹1,200/- from the Raj Kumar's pocket and ₹7-8 from the pocket of the complainant along with his mobile phone.

4. However, when the complainant resisted the accused/respondents threw the mobile phone and ran away from the spot extending threats to the victims. One rag-picker namely Chandan is alleged to have witnessed the entire incident and told the victims that he would assist them in identifying the accused/respondents.

5. On the basis of the statement of the complainant the police registered FIR No. 450/2013 under Sections 392/397/34 of the IPC. Subsequently, the accused/respondents were arrested by the police and a currency note worth ₹500/- was recovered from both the accused/respondents. Allegedly a knife was also recovered from Respondent No. 2.

6. After completion of investigation, chargesheet was filed under Sections 392/397/34 of the IPC. The learned Trial Court on 01.08.2014 framed charges against the accused/respondents to which both of them pleaded not guilty and claimed trial.

7. The accused/respondent in their statement under Section 313 of the CrPC stated that they have been falsely implicated in the present case. Respondent No. 1 stated that the police had apprehended him from his house. When he reached the police station, he saw two boys who had levelled false allegations against him. He further stated that currency note of ₹500/- had been planted against him by the police. He further stated that he had not made any disclosure statement regarding the involvement Respondent No. 2.

8. Respondent No. 2 in his statement stated that the police



had arrested him from his house. At the time of his arrest the police were accompanied by Respondent No. 1. He was not carrying anything with him as a result nothing had been recovered from him.

9. The learned Additional Public Prosecutor for the State submits that the learned Trial Court failed to consider the fact that the complainant had supported the case of the prosecution.

10. She submits that the learned Trial Court failed to appreciate that the contradictions in the statement of the prosecution witnesses were not on material aspects. She submits that there were minor inconsistencies, but none of the witnesses were ever cross-examined to that effect.

11. I have heard the learned Additional Public Prosecutor for the State and perused the record.

Analysis

12. 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 ***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.”

(emphasis supplied)

13. The learned Trial Court *vide* the impugned judgment had acquitted the accused/ respondent for the said offences on the ground that there were material contradictions in the depositions made by the prosecution witnesses.

14. The learned Trial Court noted that DD entry was received regarding a quarrel in front of Gali No. 1, Sant Nagar, Burari. The PCR call was made from a mobile phone. Though the prosecution failed to connect the said mobile phone to the complainant, however, if an incident of robbery had taken place the caller would have specified the same and not informed regarding a simple quarrel.

15. It is further noted by the learned Trial Court that as per the *rukka* which is Ex. PW6/A the spot of the incident is recorded as Street No. 110, B-Block, Sant Nagar, Burari. The DD entry recorded the place of incident as Gali No. 1, Sant Nagar, Burari. PW-4 in his examination in chief had not deposed in which street the incident had actually taken place.

16. PW-6, Assistant Sub Inspector Veer Prakash deposed that he had recorded the statement of the complainant at the spot of



the incident. However, PW-7 complainant deposed to the contrary and stated that his statement was recorded at the police station and not the spot of the incident.

17. The learned Trial Court noted that there were material contradictions in the statements made by the prosecution witnesses as to the manner in which the accused/respondents had been apprehended and the recovery of said currency notes from the accused/respondents.

18. PW-7, Sub Inspector Himmat Singh deposed that after the site plan had been prepared, while at the spot of the incident the complainant pointed towards Chandan, the rag picker and told that he was an eye witness to the entire incident. Chandan stated that he knew where the accused/respondents resided and could lead them to their house.

19. After reaching the said area, Respondent No. 1 was found standing in the street. Both the complainant and Chandan pointed towards him stating that he was one of the persons who had robbed him, whereafter, he was apprehended and a currency note of ₹500/- was recovered from him.

20. As regards to the arrest of Respondent No. 2, Sub Inspector Himmat Singh deposed that Respondent No. 1 had made a disclosure statement regarding the involvement of Respondent No. 2 and led them to his house. He further deposed that after reaching the said area the complainant pointed towards Respondent No. 2 as the person who had allegedly aimed the knife at the time of the robbery. Thereafter, he was apprehended by the police. A knife and currency note of ₹500/- was recovered from him.

21. The learned Trial Court noted that according to the complainant after preparing the site plan they reached the police



station. He and his brother-in-law waited in the police station and after a duration of two and a half hours the police officials accompanied by Chandan returned to the police station along with the accused/respondents.

22. It was noted by the learned Trial Court that the complainant nowhere had deposed that he pointed towards Chandan while being present at the spot of the incident. The learned Trial Court further noted that the complainant did not support the case of the prosecution on the aspect that he too accompanied the police officials and Chandan while the accused/respondents had been apprehended.

23. The complainant deposed that a currency note of ₹500/- was recovered from Respondent No. 1 when he and Respondent No. 2 were brought to the police station. He further deposed that at the time the accused/respondents were brought to the police station nothing was recovered from Respondent No. 2.

24. In the opinion of this Court the learned Trial Court has rightly acquitted the accused/respondents. In the present case in order to prove the identity of the accused/respondents the prosecution has solely relied on the testimony of the complainant.

25. The prosecution failed to examine Raj Kumar, the brother-in-law of the complainant who was one of the victims in the present case as well as Chandan who allegedly was an eye witness to the incident. Their statement was neither recorded nor were they made a witness by the prosecution.

26. Further as per the deposition of the complainant only Chandan is alleged to have accompanied the police officials at the time of arrest of the accused/respondents, whereafter, the complainant identified them as the offenders. This is in complete



contradiction to the case of the prosecution where they state that it is the complainant who had pointed towards the accused/respondents at the time of their arrest.

27. The complainant has also not supported the case of the prosecution regarding the recovery of the knife and currency note from Respondent No. 2 in his presence.

28. In view of the aforesaid discussion, this Court is of the opinion that there is no infirmity with the impugned judgment passed by the learned Trial Court and the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

29. The leave petition is dismissed in the aforesaid terms. Pending applications if any also stand disposed of.

AMIT MAHAJAN, J

MAY 19, 2025