



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:28.05.2025

+ **CRL.L.P. 250/2018**

THE STATE (NCT OF DELHI) Petitioner

versus

AKSHAY KUMAR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ritesh Kumar Bahri, APP for the State.
SI Jay Prakash, PS Inderpuri.

For the Respondent :

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 15.01.2018 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('ASJ'), Patiala House Courts, New Delhi in SC No. 126/2017 whereby the respondent was acquitted of the offences under Sections 308/326/341/323/34 ('FIR') of the Indian Penal Code, 1860 ('IPC').
2. The FIR was registered on a statement given by the injured



victim Sonu. It is alleged that on the intervening night of 18/19.09.2016, the victim along with his friend Mohan went to meet one person namely Shiv at Police Station Inderpuri. It is alleged that when the victim Sonu and his friend Madan reached Police Station Inderpuri, they were not able to find Shiv. It is alleged that at about 1 AM, when they were returning from the Police Station, the respondent along with his associates came to the spot and gave beatings to the victim Sonu and also to his friend Mohan. It is alleged that the respondent hit the victim Sonu with an iron rod. It is further alleged that as a consequence of the scuffle, the victim Sonu suffered an injury on his right leg whereas his friend Mohan sustained an injury on his right shoulder. It is alleged that thereafter the respondent and his associates fled the spot. In the meantime, Shiv reached the spot and dialed the PCR at 100 number.

3. Consequently, the FIR was registered under Sections 323/341/34 of the IPC.

4. The respondent was charged for the offences under Sections 308/326/341/323/34 of the IPC.

5. By the impugned judgment, the learned ASJ acquitted the respondent of the charged offences. It was noted that there existed serious doubts in relation to the spot at which the incident took place. It was noted that as per the chargesheet and the testimony of constable Anil/PW-7 and IO Sunder Singh/PW-9, the investigation of the case started after recording of DD No. 8A as per which a quarrel had taken place at H. No. E-49, J.J Colony, Inderpuri. Contrarily, as per the



statements of the victim Sonu/PW-5, Mohan/PW-3, and Shiv/PW-6, the incident had taken place near Madrasi Temple, Inderpuri.

6. It was noted that as per the statements of Sonu/PW-5, Mohan/PW-3, and Shiv/PW-6, the incident took place at about 12:30 – 1:00 AM. The injured victim Sonu/PW-5 stated that the Police Station Inderpuri was only at about 20-25 steps from the place of the incident. The learned ASJ noted that despite the Police Station being near to the place of the incident, none of the injured had gone to the Police Station when they were attacked by the respondent and his associates. In his testimony, Sonu/PW-5 stated that he along with injured Mohan/PW-3 called their other friends including Shiv/PW-6 to the spot. The learned ASJ noted that from the testimony of the witnesses, it appeared that Sonu/PW-5 and Mohan/PW-3 were calling their friends in place of calling the police after the alleged incident took place. It was noted that the same casted a doubt in relation to the manner in which the injuries were allegedly received by the victims.

7. It was noted that there existed discrepancy in relation to the time at which the victims reached Police Station Inderpuri to meet Shiv. It was noted that while PW-3/Mohan stated that he along with Sonu/PW-5 had reached the Police Station at about 11:30 PM, PW-5 stated that they had reached the Police Station at about 12:30-1:00 AM. It was further noted that the victims had stated that they had not been able to find Shiv/PW-6 at the Police Station Inderpuri when they had arrived. However, Shiv/PW-6, in his cross examination had stated that he had reached the Police Station Inderpuri at around 11-11:30



PM and had remained there for 30-34 minutes. Shiv/PW-6 further stated that he had left the Police Station at about 12:05 AM and had again reached at around 12:20-12:25 AM. The learned ASJ noted that as per the testimony of the injured witnesses – PW-3 and PW-5, they too were present at Police Station Inderpuri around such time, however, there existed no reason why they could not meet Shiv/PW-6 at the Police Station during such time.

8. The learned ASJ further noted that PW-3/Mohan had stated that he had called PW-6/Shiv after the respondent and his associates had inflicted beatings on the him and PW-5/Sonu. Contrarily, PW-6/Shiv in his statement stated that he had received a call from some unknown person in relation to the alleged incident. Considering the discrepancies in the statements of the injured witnesses and the place at which the incident took place, the learned ASJ acquitted the respondent of the charged offences.

9. The learned Additional Public Prosecutor for the State submitted that the learned ASJ erred in acquitting the respondent of the charged offences. He submitted that the impugned judgment is based on surmises and conjectures, and is liable to be set aside. He submitted that the learned ASJ failed to take into consideration the testimony of the injured witnesses PW-3 and PW-5 as per which the respondent and his associates had inflicted injuries on them.

Analysis

10. 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.”

(emphasis supplied)

11. In the present case, in order to establish its case, the prosecution has relied upon the testimony of 09 witnesses.

12. In his evidence, PW-3/Mohan stated that he along with PW-5/Sonu had gone to meet their friend Shiv/PW-6 at Police Station Inderpuri who worked as a newspaper reporter. He stated that on reaching the Police Station, they found that Shiv/PW-6 was not present there. He stated that while returning, the respondent and his associates gave beatings to him and also to PW-5/Sonu. He stated that the incident took place near Madrasi Mandir, JJ colony, Inderpuri. On being cross examined by the learned counsel for the respondent, PW-3 stated that they had reached the Police Station at about 11:30 PM. He further stated that at about 12:20 AM Shiv/PW-6 was informed about the incident.

13. PW-5/Sonu stated that he along with PW-3/Mohan had reached



the Police Station at about 12:30-1:00 AM to meet their friend Shiv/PW-6. He stated that during such time their friend Shiv/PW-6 was not present at Police Station Inderpuri. He stated the incident took place near Madrasi Temple which was about 20-25 steps from Police Station Inderpuri. On being cross examined by the learned counsel for the respondent, PW-5 stated that he had reached the Police Station at about 12:30 AM and had stayed there for 5 minutes. He further stated that PW-3/Mohan had called PW-6/Shiv and his family members to inform them about the incident.

14. PW-6/Shiv stated that he had gone to the police station for the purpose of video coverage. He stated that at about 12:30-1:00 AM, he had received a call from someone who informed him that his friends PW-3 and PW-5 had been beaten near Madrasi Temple, Inderpuri. Further, on being cross-examined by the learned counsel for the respondent, PW-6 stated that he had reached Police Station at around 11-11:30 AM and had remained there for about 30-45 minutes. He further stated that at about 12:05-12:10 AM he had left for his home however he had returned to the Police Station at about 12:20-12:25 AM and had then remained there for 10-15 minutes.

15. It is well settled that the evidence of an injured witness has been accorded a special position in law, and is placed on a higher pedestal than that of a witness *simpliciter*. It further needs no reiteration that minor contradictions do not discredit the testimony of an injured witness. The Hon'ble Apex Court in the case of **Abdul Sayeed v. State of Madhya Pradesh : (2010) 10 SCC 259** while underscoring the



relevance of the testimony of an injured witness observed as under:

28. *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. **Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.”***

[Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. *While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29) “28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there*



are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident. 29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

(emphasis supplied)

16. However, the same can be held to be unreliable on the face of material contradiction in the evidence and material on record. From a bare perusal of the material on record, it is apparent that there are several contradictions in the testimonies of the witnesses, and consequently in the story of the prosecution.

17. It is firstly seen that there are several contradictions insofar as the place where the incident took place is concerned. Whilst in the



chargesheet and the testimony of testimony of constable Anil/PW-7 and IO Sunder Singh/PW-9, the quarrel had taken place at H. No. E-49, J.J Colony, Inderpuri. Contrarily, as per the statements of the victim Sonu/PW-5, Mohan/PW-3, and Shiv/PW-6, the incident had taken place near Madrasi Temple, Inderpuri.

18. Secondly, there emerged several contradictions in the time and manner in which the incident occurred. PW-3/Mohan stated that he along with PW-5/Sonu had reached the Police Station at about 11:30 PM. As opposed to this, PW-5/Sonu stated that he along with PW-3/Mohan had reached the Police Station at about 12:30-1:00 AM to meet their friend Shiv/PW-6.

19. PW-6 himself stated that that he had reached Police Station at around 11-11:30 AM and had remained there for about 30-45 minutes. He further stated that at about 12:05-12:10 AM he had left for his home however he had returned to the Police Station at about 12:20-12:25 AM and had then remained there for 10-15 minutes. As rightly noted by the learned ASJ there existed no reason why the victims could not meet Shiv/PW-6 at the Police Station during such time when PW-6 himself stated that he was present at the Police Station during such time.

20. Thirdly, PW-5/Sonu himself deposed that the Police Station was situated at 20-25 steps from the place of the incident. The learned ASJ rightly noted that it appeared doubtful why the victims would not go to the Police Station when the place of incident was near the Police Station and would instead call their friends in place of calling the



police after the alleged incident took place.

21. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that 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.

22. The leave petition is therefore dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 28, 2025