



2025:DHC:10373



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 17th November, 2025***+ **CRL.L.P. 275/2018**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State.

versus

SAMEER @ PAUWA

.....Respondent

Through: Mr. Zeeshan Diwan,
DHCLSC, Ms. Ankita
Yadav & Mr. Harsha,
Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (ORAL)**

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 31.01.2018 (*hereinafter* 'the impugned judgment'), passed by the learned Additional Session Judge (*hereinafter* 'ASJ'), in Sessions Case No. 225/2016 arising out of FIR No. 684/2016, registered at Police Station New Usmanpur, learned ASJ by impugned judgment acquitted the respondent of the offences under Sections 394/397/34 of the Indian Penal Code, 1860 (*hereinafter* 'IPC').

2. Succinctly stated, on 21.08.2016, DD. No. 45B was assigned to ASI Naresh Kumar. He reached the hospital along with Ct. Kuldeep and collected the MLC of the injured-Birbal.

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Signed By: SANJAY

KUMAR

Signing Date: 22.11.2025

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CRL.L.P. 275/2018**Page 1 of 10**



2025:DHC:10373



The injured was declared 'fit' for statement by doctor. ASI Naresh Kumar met with the injured who told him that two persons had committed robbery of his mobile phone from his possession after causing injuries to him with blade. Consequently, one accused-Respondent/Sameer @ Pauwa was apprehended by the police along with the looted mobile phone of the injured.

3. On the basis of the statement of the injured-Birbal, the subject under sections 392/397/411/34 of the IPC was registered.

4. After completion of the investigation, the Chargesheet was filed and the charges were framed under sections 394/397/34 of the IPC against the respondent *vide* Order dated 23.12.2016, to which the respondent pleaded not guilty and claimed trial.

5. The prosecution examined total 7 witnesses in support their case which are PW-1/ASI Daya Ram, PW-2/ASI Shankar Lal, PW-3/Dr. Kunal Kishore, PW-4/Ct. Kuldeep Ujjwal, PW-5/Injured-Birbal Kumar, PW-6/ASI Kewal Krishan and PW-7/ASI Naresh Kumar.

6. The statement of the accused was recorded under section 313 Cr. P.C. and he did not lead any defence evidence.

7. After due consideration of the evidence placed on record, the learned Trial Court acquitted the respondent of the charged offences *vide* the impugned judgment by observing that there are embellishments, material contradictions and gaps in the case of the prosecution and the prosecution has failed to prove its case against the accused beyond the reasonable doubts.

8. Aggrieved by the impugned judgment of acquittal, the



2025:DHC:10373



present petition, seeking leave to challenge the impugned judgement, has been filed.

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

10. It was submitted that the learned Trial Court has failed to appreciate the testimony of the injured-victim, who had also identified the accused. 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.

11. It was also argued that the minor discrepancies regarding the number of accused persons, could not have been held fatal to the case of the prosecution when the accused was apprehended on the spot along with the mobile phone.

12. It was further submitted that the presence of the injuries has been corroborated by the MLC dated 21.08.2016 which suggests that the nature of injury was “*grievous*”.

13. *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.

14. **Submissions heard and record perused.**

Analysis

15. 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



2025:DHC:10373



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.”

16. The settled principle is that an order of acquittal strengthens the presumption of innocence, and if two views are possible, the High Court must not substitute its own view merely because another interpretation is possible.

17. This Court has examined the impugned judgment of acquittal. From the evidence of the material witnesses i.e. PW-5/Birbal - complainant/injured, PW-2/ASI Shankar Lal, PW-4/Ct. Kuldeep Ujjwal, and PW-7/ASI Naresh Kumar (IO), it

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2025:DHC:10373



inconsistencies going to the root of the case.

18. The case of the prosecution primarily hinged on the testimony of PW-5/Birbal, who is the victim himself. PW-5 had deposed before the court that when he was going to his home from Gandhi Nagar on foot and reached at a place near Madarsa, Shastri Park, GT Road, *four boys* had come to him from behind. However, PW-5 in his statement made to the police stated that when he reached near Madarsa, Shastri Park, *two boys* came from behind and caught hold him. Evidently, PW-5 has given two different versions regarding the number of assailants, where in one he states that he was approached by *two* boys, who had committed robbery of his mobile phone from his possession after causing injuries to him, whereas in his deposition before the learned Trial Court, he has stated *four* boys approached him from behind. This contradiction is not minor or peripheral as it strikes at the identity and number of offenders. Such inconsistencies on a fundamental aspect render the core prosecution story unreliable.

19. Another significant aspect is the prosecution's inability to associate any independent public witness either at the spot of the incident which admittedly was a busy public place or even at GTB Hospital. PW-2/ASI Shankar Lal has stated that he was on PCR duty and having heard alarm raised by the complainant, he chased the accused, apprehended him and recovered the robbed mobile phone from pocket of his pant. However, during his cross examination he has himself admitted that public persons were present when the accused was searched and the mobile phone



2025:DHC:10373



was allegedly recovered. He further admitted not calling any public person during the arrest or seizure proceedings.

20. On the other hand, PW-5 stated that no public person was present when the phone was taken out. Additionally, PW-4/ Ct. Kuldeep in his cross examination deposed that there were so many patients and their attendants in GTB hospital but he did not remember as to whether IO had asked public persons to join the investigation.

21. Additional doubt arises from the seizure memo of the mobile phone Ex. PW2/A itself. The memo was prepared in gel ink, while signatures of witnesses were obtained in ball pen. The said discrepancy has been admitted by PW-4 as well as PW-5.

22. These contradictions, coupled with the complete absence of independent corroboration, despite availability of public witnesses and inconsistency in the preparation of seizure memo cast a serious doubt on the veracity of the alleged recovery.

23. It is also evident from the record that the complainant could not produce any bill, invoice, or documentary proof of ownership of the mobile phone, which was allegedly robbed. The IO made no efforts to verify ownership or obtain a *superdarinama*. This raises a significant doubt as to whether the recovered phone belonged to PW-5 at all, and whether any robbery had occurred.

24. Another glaring lacuna in the story of the prosecution is that no consistent version, regarding the manner in which injuries were caused and the weapon of offence, has been produced. PW-5 had categorically deposed that he received repeated fist blows



2025:DHC:10373



on his face, causing bleeding and breaking of his front tooth. However, in contradiction, PW-7 deposed that PW-5 initially informed him that injuries were caused by a blade. Further, during his cross-examination, PW-7 has admitted that no blade injury had occurred, no blade was used or even recovered. Pertinently, the DD entry 55B, however, records that snatchers caused injuries with a blade.

25. However, a third version is reflected from the MLC which shows injuries caused by a “*blunt object*”, thus, contradicting both the DD entry and the PW-7’s initial version. These contradictions are substantial and undermine the prosecution case entirely and also creates a doubt regarding the weapon of offence used in commission of offence.

26. It also emerges that though the accused allegedly disclosed the name of a co-accused Yunus @ Changa and stated that he can get him arrested, the IO sought only judicial custody remand and not police custody remand for tracing the co-accused. Further, no meaningful effort was made to trace the alleged associate, this mechanical conduct of investigation, without pursuing crucial leads, further weakens the prosecution case.

27. There is yet another set of contradictions relating to the location where PW-5’s complaint was recorded. In this regard, PW-5 has given three different versions. His statement before the police reflects that his statement was recorded at GTB Hospital. In his deposition he has stated that the same was recorded at Shastri Park Hospital, however during his cross-examination, he stated that the same was recorded at the Police Station. PW-7



2025:DHC:10373



however, maintained that the statement was recorded only at GTB Hospital. These contradictions materially affect the credibility of the prosecution witnesses and the reliability of the foundational complaint.

28. It is a well-established principle that where the evidence suffers from material contradictions, improvements, and inconsistencies, particularly relating to identity of accused, manner of occurrence, recovery, and investigation, the accused is entitled to benefit of doubt.

29. The heavy reliance placed by the State upon the MLC is wholly misconceived in light of the material discrepancies discussed above. The MLC merely establishes 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.

30. In view of the above, this court is of the view 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.

31. Hence, the learned Trial Court has rightly acquitted the accused persons *vide* the impugned judgment dated 30.01.2018



2025:DHC:10373



and the same does not merit any interference.

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

AMIT MAHAJAN, J

NOVEMBER 17, 2025

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