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

+ **CRL.L.P. 314/2018**

STATE (GOVT OF NCT OF DELHI)Petitioner

Through: Mr. Aashneet Singh, APP
for the State.
SI Deepak Kumar, PS
Jahangir Puri.

versus

HUKAM & ORS

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **24.03.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') against the judgment dated 25.01.2018 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('ASJ'), North District, Rohini Courts, Delhi in SC No. 58196/2014 whereby the respondents were acquitted of the offences under Sections 341/323/308/34 of the Indian Penal Code, 1860 ('IPC')

2. The FIR No. 315/2013 dated 03.09.2013 was registered at Police Station Jahangir Puri on a complaint given by Sachin. It is alleged that on 03.09.2013, the complainant was playing with his friends at the Hathi Wala Park when at about 10:30 am, the respondents called on the complainant and asked him to include them in the game. It is alleged that when the complainant refused to include them in the game, the respondents started abusing the complainant. Thereafter, the respondents gave beatings to the complainant by giving him fists and kick blows and also hit him

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with a brick. The same incident led to the filing of the subject FIR.

3. The respondents were charged for the offence under Sections 308/34 of the IPC. Further, Respondent No. 2 was charged for the offence under Section 341/34 of the IPC, and Respondent Nos. 1 and 3 were charged for the offence under Section 323/34 of the IPC.

4. The learned ASJ, by the impugned judgement, acquitted the respondents of the charged offences. It was noted that there existed several material contradictions in the testimonies of the witnesses. It was noted that the complainant/PW-2, in his statement, stated that he along with 10-12 friends were playing cricket at Hathi Wala Park when the respondents asked him to include them in the game, to which the complainant allegedly refused. The complainant/PW-2 deposed that thereafter, all the respondents started abusing him, and also gave beatings to him. PW-2 deposed that the respondents also hit him on his head with a brick, and that when the complainant raised alarm, the respondents fled away from the spot. He deposed that his brother called at 100 number, and subsequently a PCR van took him to the hospital where the complainant was given treatment.

5. PW-2 further stated that he had shown the site to the police officials where the incident took place, and had also handed over a blood stained T-shirt to the police. It was however noted that PW-2 failed to identify his blood-stained T-shirt. It was noted that while PW-2 in his chief-examination, stated that he had shown the site to the police officials where the incident had taken place, in his cross-examination, PW-2 stated that the place of incident had been shown to the police by his brother. It was noted that while PW-2 claimed that he was not under the influence of



liquor at the time of the incident. The MLC report mentioned that there existed a “smell of alcohol” in the complainant’s breath. It was noted that the complainant claimed that he was discharged from the hospital after 2-4 days, however, as per the record, no such document had been brought forth to fortify the claim that the complainant was admitted in the hospital for 2-4 days. It was noted that while the complainant denied that he had gone to his house after receiving the injuries, and that his brother had called him, PW4 (brother of the complainant) stated that the complainant had come to his house, and was bleeding from his head for which reason, PW4 had called at 100 number, and had accompanied the complainant in the PCR van to the hospital.

6. The learned ASJ noted that the name of the assailants had not been mentioned either in the DD No. 25A which recorded the incident nor the MLC. It was noted that while PW-3/friend of the complainant had deposed that he was playing cricket with the brother of the complainant (PW-4), PW-4 had stated that he was present at his house at such time. It was further noted that the weapon of the offence, that is the brick had not been recovered.

7. Consequently, given the material contradictions in the testimonies of the witnesses, the learned ASJ acquitted the respondents of the charged offences.

8. The learned Additional Public Prosecutor for the State submits that the learned ASJ erred in acquitting the respondents of the charged offences. He submits that the impugned judgment is based on conjectures and surmises, and ought to be set aside. He submits that the learned ASJ erred in arriving at the conclusion that the complainant/PW-2 contradicted himself in his chief and cross examination. He submits that the complainant had categorically described the incident. He submits that the learned



ASJ did not take into account the fact that the testimony of an injured witness is placed on a higher pedestal, and minor contradictions are not fatal to the case of the prosecution.

Analysis

9. 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.”

10. In the present case, in order to prove its case, the prosecution examined ten witnesses wherein PW-2/the injured victim/complainant narrated about the occurrence of the incident. PW-3/the friend of the complainant and PW-4/the brother of the complainant deposed about the incident. The other witnesses being official witnesses deposed about the manner of the investigation, and the registration of the present case.

11. PW-2/complainant, in his statement, deposed that in the year 2013, when he was playing bat-ball alongside 10-12 friends at Hathi Wala Park, at about 10:30 am, the respondents approached him and asked him to include them in the game. He deposed that upon his refusal to include them in the game, the respondents started abusing him. He deposed that Respondent No. 2 caught him from the backside while Respondent Nos. 1



and 3 inflicted fists and kick blows upon him. He deposed that the respondents also picked up one brick and threw it upon his head. He stated that upon raising alarm, all the respondents fled away, and that his brother called at 100 number. He stated that he had shown the site to the police officials where the incident took place, and had also handed over his blood-stained T-shirt to the police officials.

12. In his cross examination, PW-2 admitted that the respondents were staying in the same locality, and that he was acquainted with the respondents prior to the occurrence of the incident. He admitted that he deposed in Court in one or more cases of the quarrel incident in which the complainant was also an injured. He denied being in an inebriated state at the time of the occurrence of incident, and stated that he did not go to his house after the injury. He further stated that his brother called at 100 number while standing in the park. He stated that he was discharged from the hospital after 2-4 days.

13. PW-3 in his statement deposed that he alongwith his friends including the complainant, PW-4 and 3-4 other boys were playing cricket at the Hathi Wala Park. He deposed that one or two years ago when he had reached Hathi Wala Park, the complainant was lying in an injured condition, however, he did not know as to who had caused such injury to the complainant. He deposed that he had not seen those persons who had caused such injuries to the complainant.

14. PW-4/brother of the complainant stated that the complainant came to his house, and was bleeding from his head. He stated that for this reason, he made a call to the police at 100 number. He deposed that he had accompanied the complainant to the hospital, and that he had no knowledge regarding the persons



responsible for causing the injuries to the complainant. He further deposed that the complainant had not informed him as to who caused the injuries to the complainant.

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 emerged several contradictions in the version of the complainant/PW-2. Firstly, PW-2 in his chief examination, categorically stated that he had shown the site to the police officials where the incident had taken place, however, upon being cross-examined, he stated that the site had been shown to the police by his brother.

18. Secondly, PW-2 deposed that he was not under the influence of alcohol at the time when the incident took place, however, as is manifest from the MLC report, the smell of alcohol was present in the complainant's breath. Thirdly, the complainant deposed that he was discharged from the hospital after 2-4 days, however, as rightly observed by the learned ASJ, no such document had been placed to show that the complainant was admitted in the hospital for 2-4 days. Fourthly, the complainant categorically denied that he had gone to his house after receiving the injuries, and stated that his brother called at 100 number while standing in the park. Contrarily, PW-4, in his statement, deposed that the complainant had come to his house, and was bleeding from his head for which reason PW-4 made a call to the police.

19. It is also pertinent to note that even the presence of the brother of the complainant/PW-4 at the spot is dubious. PW-3 in his evidence had stated that he was playing cricket alongside the complainant, PW-4 and 3-4 other persons, however, PW-4, in his evidence, stated that he was present at his house at such time.

20. PW-3 and PW-4 are the prosecution witnesses and it is not the case of the prosecution that their testimony is not to be



considered.

21. It is also the case of the prosecution that the respondents had thrown a brick on the complainant's head. It is however pertinent to note that no such brick was recovered in the present case.

22. 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.

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

AMIT MAHAJAN, J

MARCH 24, 2025