



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.05.2025

+ **CRL.L.P. 508/2018**

STATE

..... Petitioner

versus

PANKAJ SHARMA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Aashneet Singh, APP for the State.
SI Vipin Kumar.

For the Respondents :

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking leave to challenge the judgment dated 06.01.2018 (hereafter '**impugned judgment**'), passed by the learned Trial Court, in SC No. 52589/2016 arising out of FIR No. 80/2014, registered at Police Station Keshav Puram.

2. By the impugned judgment, Respondent No.1 was convicted for the offence under Section 325 of the Indian Penal Code, 1860 ('**IPC**') and Respondent Nos. 2 to 4 were convicted for the offence under



Section 323 of the IPC. Respondent Nos. 5 and 6 were acquitted.

3. The brief facts of the case are as follows:

3.1. The FIR was registered pursuant to a complaint made by the victim alleging that on 04.02.2014, at about 7 PM, he had gone to the house of the Respondent No.1 and Respondent No. 4 (sons of the victim's uncle/ cousins of the victim) to discuss a dispute in relation to some property situated in Village Ashtal, Rohtak, Haryana. It is alleged that as soon as the victim reached the house on his motorcycle, he saw Respondent No. 4 on the balcony, who told the victim that he was coming down. After 5–10 minutes, Respondent No. 4 came with an iron rod and gave a blow on the victim's side. It is alleged that when the victim tried to run away, Respondent Nos. 5 and 6 (aunts of the victim) allegedly caught hold of him. Thereafter, it is alleged that Respondent Nos. 1 to 3 also came to the spot carrying iron rods. Allegedly, Respondent No. 1 gave a blow with iron rod on the victim's head, Respondent No. 4 gave a blow with the iron rod on the victim's hand, Respondent No. 3 gave an iron rod blow on the victim's legs and Respondent No. 2 (cousin of the victim) gave a blow with the iron rod on the victim's back.

3.2. Charges were framed against all the accused persons for the offences under Sections 308/34 of the IPC.

3.3. The learned Trial Court, after considering the facts of the case, came to the conclusion that there was no premeditation between the accused persons and it cannot be held that the accused persons shared



a common intention to commit the alleged offence. It was further observed that while the injuries suffered by the victim were opined to be grievous in nature, however, it could not be held that the accused persons had caused the injuries with the intention or knowledge to commit culpable homicide not amounting to murder as the incident did not appear to be preplanned and no repetitive blows were dealt by the accused persons. It was noted that there was also nothing on record to show that the injuries suffered by the victim were sufficient in ordinary course of nature to cause death. It was further found that the allegations against Respondent Nos. 5 and 6 were highly improbable, due to which, they were both acquitted of the charge framed against them.

3.4. Aggrieved by the respondents not being convicted for the offence under Section 308 of the IPC, the State has preferred the present leave petition.

4. The learned Additional Public Prosecutor for the State submitted that the impugned judgment is based on presumption, conjectures and surmises. He submitted that the evidence that effaced during the trial, especially the testimony of the victim (PW8), has not been properly appreciated by the learned Trial Court.

5. He submitted that although the learned Trial Court had taken note of the injuries inflicted on the victim, however, despite observing that the injuries were grievous, Respondent Nos. 2 to 4 were convicted only for the offence under Section 323 of the IPC.



6. He submitted that when the accused persons had inflicted the injuries together in the same incident, Section 34 of the IPC was made out and the accused persons should have been convicted for the stricter offence under Section 308 of the IPC as the blow dealt to the head of the victim could have been fatal. He submitted that the common intention of the parties is evident from the evidence of the victim and the learned Trial Court wrongly differentiated the liability of the accused persons on the basis of their individual acts.

7. He submitted that the learned Trial Court erroneously acquitted Respondent Nos. 5 and 6 by finding the testimony of the victim to be unbelievable in their respect, even though, the learned Trial Court had found the testimony of the victim to be believable as far as the other accused persons are concerned. He submitted that specific role is assigned to Respondent Nos. 5 and 6 and they are also equally liable for the injuries inflicted by the other accused persons in terms of Section 34 of the IPC.

ANALYSIS

8. 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 *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 reappraisal, 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)

9. It is argued that the learned Trial Court erroneously found that there was no common intention between the accused persons and differentiated their liability instead of convicting them for the stricter offence under Sections 308/34 of the IPC. It is further argued that the learned Trial Court erred in acquitting Respondent Nos. 5 and 6, even though, the victim had made categorical allegations against them.

10. To prove its case, the prosecution had examined fourteen witnesses.

11. In the present case, the learned Trial Court has not found the case of the prosecution to be entirely unreliable and has convicted Respondent No.1 for the offence under Section 325 of the IPC and Respondent Nos. 2 to 4 for the offence under Section 323 of the IPC.

12. Insofar as the acquittal of Respondent Nos. 5 and 6 is concerned, the learned Trial Court took note of the role assigned to them by the victim and observed that the said accused persons were ladies and more than 50 years old at the time of the incident. It was noted that the allegations against the said accused persons were improbable. The relevant portion of the impugned judgment is as under:

“Now coming to the role of accused Shakuntala and Lakshmi as



assigned by PW 8. To my mind the role assigned to these two accused persons who are ladies and are more than 50 years of age and are aunti (Tai) of accused is not trustworthy. According to PW 8 when accused Sanjeev was chasing him he saw both the accused Lakshmi and Shakuntala standing near corner of the street and accused Sanjeev was shouting "pakdo pakdo" so both the ladies caught hold of him. Now it is to be kept in mind that the accused is a young man and both the ladies are more than 50 years of age. It is not understood when according to PW 8 both these ladies caught hold of him why he did not try to set himself free from the grip of both these two ladies. It is pertinent to mention here that both these ladies are old ladies and the accused being a young man could have easily set himself free from their clutches but it is not so, even it is really surprising that none of these ladies have received a single scratch in the incident because it is highly improbable that when a person is trying to save himself from an assault then he would have definitely made all his efforts with all his strength to save his life and if somebody catches him then in that case he would make all out efforts to set himself free and in the instant case both the ladies i.e. accused Lakshmi and Shakuntala who are old ladies and have been alleged to have caught hold the injured PW 8. Have not received a single scratch in this melee. So in my opinion, the testimony of injured / complainant PW 8 as far as the role assigned by him to accused Laxmi and Shakuntala is highly improbable. They both are, therefore, acquitted of the charge framed against them."

13. It is pertinent to note that no independent witnesses were associated by the prosecution to render corroboration to the testimony of the victim in the present case. While it has been aptly noted by the learned Trial Court that the same does not affect the creditworthiness of the case of the prosecution and the evidence of an injured witness has a greater evidentiary value, however, in the absence of corroboration, the learned Trial Court was not wrong in venturing into the probability of the allegations. It is to be noted that the victim and the accused persons were involved in a property dispute and there is a tendency in such matters to implicate all family members, whereby,



the possibility of exaggeration cannot be ignored. It has been rightly noted by the learned Trial Court that considering that Respondent Nos. 5 and 6 were old ladies, the victim being a young man could have freed himself from their clutches, however, the said accused persons had not even received a single scratch to show any sign of struggle. As noted by the learned Trial Court, the absence of any signs of struggle, or attempt on part of the victim to free himself, makes the allegations improbable. In such circumstances, the learned Trial Court rightly acquitted Respondent Nos. 5 and 6.

14. It is argued that the learned Trial Court found the testimony of the victim to be reliable in respect of the other accused persons, but acquitted Respondent Nos. 5 and 6 by noting that the allegations against them were improbable.

15. It is settled law that the Court should endeavor to only ignore any exaggeration or immaterial embellishments in the evidence of an injured witness and not discard the entire evidence of the injured [Ref. ***Balu Sudam Khalde and Anr. v. State of Maharashtra : 2023 SCC OnLine SC 355***]. Thus, merely because the learned Trial Court found the allegations to be credible in respect of the other accused persons, it does not mean that the exaggerations in the testimony cannot be ignored.

16. It is argued that the accused persons shared a common intention to commit the offence and the accused persons should have been convicted for the offence under Sections 308/34 of the IPC due to the nature of injuries suffered by the victim.



17. The learned Trial Court first dealt with the question of whether Section 308 is made out against the accused persons. It was noted that the victim suffered injuries on different parts of his body and the injuries were opined to be “grievous”, however, the same was not a decisive factor. It was found that from the facts of the case, it did not seem that the accused persons had any intention or knowledge to commit culpable homicide. The relevant portion of the impugned judgment is as under:

“47. Nothing has been brought on record to show that there was any premeditation or deliberate intention of the accused persons to eliminate the injured. The accused persons caused injuries on the person of injured PW 8 by a rod. Burden is on the prosecution to prove both, namely (i) the act (actus reus) and (ii) the intention (mens rea). It is also required to be shown that the act had been done under such circumstances that if by such act the death had been caused, the offender would be guilty of culpable homicide not amounting to murder. Naturally, the intention or knowledge of such circumstances is to be gathered from the peculiar facts of any given case and there cannot be any straitjacket formula to this regard. Such part related to intention and knowledge would, therefore, depend on the facts and circumstances of each case. 48. The nature of injury in the instant case is "Grievous" and it alone cannot be said to be a lone decisive factor...

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51. Accused Pankaj, Om Prakash @Nishu, Naveen @Tannu, and Sanjeev gave beatings to PW 8 Vinod with iron / steel rods as a result of which PW 8 Vinod received injuries on different parts of his body and the nature of injuries have been opined as "Grievous" in nature. But as per the facts of this case and evidence brought on record, it is difficult to say that these 4 accused persons had caused injuries with the intention or knowledge to commit culpable homicide not amounting to murder. This I say because there is no evidence on record to show that the act of these 4 accused was pre-meditated and preplanned and it appears from the evidence that only one blow was given by each accused and there were no repetitive blows. No doubt at the time of the incident these 4 accused were carrying iron rod but in my opinion it does not mean that these accused had the intention to cause death of injured /



complainant (PW 8) because *if that was so, they would have given repetitive blows to injured (PW 8) but this is not the case here and as per the testimony of PW 8 only one rod blow was given by each accused. Moreover, there is nothing in the testimonies of the doctors who have been examined as PW 10, PW 11 & PW 14 that the injuries on the person of PW 8 were sufficient in ordinary course of nature to cause death. No question has been asked by the Ld. Addl. PP (substitute) from PW 10, PW 11 and PW 14 that the injuries caused by these 4 accused on the person of complainant PW 8 are sufficient to cause death. In these circumstances, accused Pankaj, Om Prakash @Nishu, Naveen @Tannu, and Sanjeev cannot be held guilty U/s 308/34 IPG. Therefore, now it is to be seen under what section these accused persons are to be convicted.”*

18. As rightly held by the learned Trial Court, merely because the injuries suffered by the victim were opined to be grievous in nature, the same alone is not sufficient to hold that the accused persons had the intention or knowledge to commit the offence under Section 308 of the IPC. The offence under Section 308 of the IPC is tethered on the intention or knowledge of the accused to cause culpable homicide not amounting to murder. This Court in the case of **Shiv Singh v. State: 1983 SCC OnLine Del 163** had set aside the conviction of the accused therein for the offence under Section 308 of the IPC and discussed the ingredients of the said offence. The relevant portion of the judgment is reproduced hereunder:

*“15. Section 308 of the Code deals with the offence of attempt to commit culpable homicide not amounting to murder. To constitute” an offence under this section it must be proved (1) **that the accused committed an act, (2) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (3) the act was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide.***



‘Intention is the purpose or design with which an act is done. It is the foreknowledge of the act coupled with the desire of it, such foreknowledge and desire being the cause of the act inasmuch as they fulfil themselves through the operation of the will. An act is intentional if, and in so far as, it exists in idea before it exists in fact, the idea realising itself in the fact because of the desire by which it is accompanied.’

(Salmond's Jurisprudence 11th Edn. page 410).

16. The intention is a question of fact which is to be gathered from the acts committed by the accused.

17. ‘Knowledge’ as observed by Supreme Court in Basdev v. State of Pepsu, AIR 1956 S.C. 488, means awareness of the consequences of the act. It means the knowledge that specified consequences would result or could result by doing an act.”

(emphasis supplied)

19. The learned Trial Court has discussed in detail a number of precedents and appreciated that it is to be shown by the prosecution that the offender had the intention or knowledge to commit culpable homicide not amounting to murder. While the accused persons gave beatings to the victim which led him to suffer grievous injuries, the learned Trial Court has rightly noted that the offence under Section 308 of the IPC is not made out against them. It is rightly noted that there is no evidence to show pre-meditation between the parties and the concerned accused persons only gave singular blows to the victim. It is pertinent to take note of the conduct of the accused persons wherein they did not deal repeated blows on then victim.

20. It is also noted by the learned Trial Court that the prosecution put no question to the doctors (that is, PW 10, PW11 and PW14) to show that the injury was sufficient in ordinary course to cause death. It



is argued that the blow dealt to the head of the victim could have been fatal. This Court in the case of **Ramesh v. State : Crl. Appeal No. 965/2009** had altered the conviction of the accused therein to Sections 323/34 of the IPC from Sections 308/34 of the IPC after observing that a sudden quarrel had broken out between the parties and it could not be said that the assault was premeditated. It was noted that merely because the injury was caused to the head of the victim, it cannot be said that the injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder.

21. Lastly, as far as the argument in relation to the common intention of the parties is concerned, while it is correct that common intention can be formed in the spur of the moment and it does not require premeditation, however, as noted by the learned Trial Court, no evidence has been placed on record by the prosecution to show that the overt acts of Respondent Nos. 1 to 4 were done in furtherance of common intention. To establish an offence under Section 34 of the IPC, it is necessary to show that the intention was known by all accused persons and shared by them. It has been rightly noted that apart from absence of evidence to show premeditated concert to inflict injuries on the victim or any exhortation by any of the accused persons to kill the victim, it is also pertinent to note that the accused persons attacked the victim on different parts of the body. Taking into account the totality of circumstances wherein only Respondent No.1 attacked the vital part of the body and the other accused persons dealt blows on non-vital body parts, it cannot be said that the accused persons even



shared a common intention to grievously injure the victim, much less that they shared the intention to commit culpable homicide not amounting to murder.

22. Most importantly, it is not the case of the prosecution that accused persons gathered together and had gone to the victim to cause injuries. Even as per the allegations, it was the victim who had gone to the accused persons house where the altercation took place which led to injuries.

23. Thus, the learned Trial Court convicted the accused persons for their own overt acts and only Respondent No.1 was convicted under Section 325 of the IPC as he had dealt a blow to the head of the victim causing a grievous injury. Respondent Nos. 2 to 4 were rightly convicted for the offence under Section 323 of the IPC as they had only inflicted injuries on the non-vital parts of the victim's body.

24. In view of the aforesaid discussion, 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.

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

AMIT MAHAJAN, J

MAY 26, 2025