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

+ **CRL.L.P. 378/2015**

STATE (GOVT OF NCT OF DELHI)

.....Petitioner

Through: Mr. Mukesh Kumar, APP.
SI Vikram, WSI Sangeeta, PS: SB
Dairy.

Versus

MADAN LAL & ANR

.....Respondents

Through: Mr. Rajneesh Bhaskar, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.07.2025

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1. The present application under Section 378(3) of the Code of Criminal Procedure, 1973¹ filed by the State, seeks leave to appeal against judgment of acquittal dated 24th December, 2014 passed by the ASJ-02, North District, Rohini Courts, Delhi in Sessions Case No. 129/2013 emanating from FIR No. 38/2008, registered at P.S. Shahabad Dairy. By the said order, the ASJ has acquitted Respondent No. 1 of the offences under Sections 308/323/34 of the Indian Penal Code, 1860.²

Factual Background

¹ "Cr.P.C."

² "IPC"



2. Briefly stated, the case of the Prosecution is as follows:

2.1 On 31st October, 2008, at about 7:30 PM, the Complainant was returning to her home after purchasing vegetables from the market. As she reached her *jhuggi*, the Respondents (accused persons) approached her, carrying *dandas* and hurling abuses at her. When the Complainant questioned them about their conduct, the Respondents started physically assaulting her with *dandas* on her waist and head.

2.2 Subsequently, the family members of the Complainant rushed to her assistance. However, her mother Asha, father Arjun, sister Seema, brother Abhimanyu, and their neighbour Ranjit, were also assaulted by the Respondents. A CAT ambulance arrived at the scene and transported the injured Complainant and her family members to MB Hospital for medical treatment. Consequently, the subject FIR was registered against the Respondents at P.S. Shahabad Dairy.

2.3 After completion of investigation, the chargesheet was prepared, and filed before the concerned court. Subsequently, on 10th December, 2013, charges were framed against the Respondents for the offences under Sections 308/323/34 of IPC. While Respondent No. 2 was declared a proclaimed offender, Respondent No. 1 pleaded not guilty and claimed trial.

2.4 In order to prove their case, the Prosecution examined eleven witnesses:

PW-1: Asha, mother of the Complainant;

PW-2: Seema, sister of the Complainant;

PW-3: Sarita, the Complainant;

PW-4: Arjun, father of the Complainant;

PW-5: Ranjit, neighbour of the Complainant (inadvertently re-examined and



cross-examined as PW-9)

PW-6: HC Joginder Singh, who collected the MLCs of the injured persons and arrested the Respondents along with the IO;

PW-7: ASI Ishwar Singh, the Investigating Officer of the case;

PW-8: Dr. Virendra Kumar, the Medical Officer, who proved the MLCs of the injured persons;

PW-10: ASI Ravinder Kumar, the duty officer, who proved the FIR and *rukka*; and

PW-11: Abhimanyu, brother of the Complainant.

2.5 After closure of prosecution evidence, the statement of Respondent No. 1 was recorded under Section 313 of the Cr.P.C., wherein he denied all allegations and claimed innocence. In his defence, he examined two witnesses: DW-1 (Neeraj) and DW-1 (Krishan, Respondent No. 1's son) (who was supposed to be examined as DW-2 but due to inadvertence, was also examined as DW-1).

2.6 On the basis of the evidence led by the parties, the Trial Court, by the impugned judgement, acquitted Respondent No. 1 of the charges under Section 308/323/34 of IPC. As for Respondent No. 2, he was declared a proclaimed offender, and the Prosecution was granted liberty to revive the case against him as and when he is arrested.

Prosecution's Case

3. Aggrieved by the acquittal of Respondent No. 1, the State has preferred the present application seeking leave to appeal against the impugned judgement. Mr. Mukesh Kumar, APP for the State, urges the following grounds to assail the order:



3.1 The impugned judgement is founded on presumptions, conjectures and surmises, rather than sound evaluation of evidence on record. As such, it is unsustainable and liable to be set aside.

3.2 The Trial Court failed to properly appreciate the testimony of PW-3, the Complainant, who provided a clear and specific account attributing distinct roles to each of the accused persons, aligning with the Prosecution's case.

3.3 The Trial Court erred in rejecting the testimonies of PW-1 to PW-5 and PW-11, all of whom are material witnesses. Their testimonies were specific, consistent, and withstood cross-examination. Each witness clearly identified the accused and detailed the specific role played by them during the incident.

3.4 The Trial Court wrongly treated minor discrepancies in the depositions of the Prosecution witnesses as material contradictions. It is a well-established legal principle that minor contradictions or discrepancies in witness statements are inevitable, and cannot serve as a ground to discard otherwise credible and trustworthy evidence.

Analysis

4. The Court has duly considered the afore-noted facts and contentions and perused the material on record. The limited issue that arises for determination is whether the present case warrants the grant of leave to appeal against an order of acquittal under Section 378(3) of CrPC. The legal principles governing such a determination are now firmly entrenched in our jurisprudence. The High Court, while considering a leave to appeal, must be satisfied that the findings of the Trial Court suffer from a manifest error, are perverse in nature or reflect a glaring misappreciation of law or evidence.



The mere possibility of an alternative view cannot be the basis for interference with an acquittal. Rather, the Court must be persuaded that the Trial Court has either ignored material evidence, adopted a patently unreasonable view, or drawn conclusions which no court could have arrived at. These principles have been clearly articulated by the Supreme Court in several cases and have been summarized in ***Prem Kanwar v. State of Rajasthan***,³ wherein the Court observed as follows:

“16. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court have been set out in innumerable cases of this Court and in Ajit Savant Majagavi v. State of Karnataka (AIR 1997 SC 3255) the following principles have been re-iterated:

- 1. In an appeal against an order of acquittal, the High Court possesses all the powers and nothing less than the powers it possesses while hearing an appeal against an order of conviction.*
- 2. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*
- 3. Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.*
- 4. In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.*
- 5. If the High Court on a fresh scrutiny and re-appraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.*
- 6. The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the Court especially in the witness box.*

³ (2009) 3 SCC 726.



7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

In this respect, the decisions of this Court in *Balbir Singh Vs. State of Punjab* (AIR 1957 SC 216) *Ram Kumar Vs. State of Haryana* (AIR 1995 SC 280), *Bharwad Jakshibhai Nagjibhai Vs. State of Gujarat* (AIR 1995 SC 2505), *Hari Chand Vs. State of Delhi* (AIR 1996 SC 1477), *Raghubir Singh Vs. State of Haryana* (JT 2000 (5) SC 21), and *Hari Ram Vs. State of Rajasthan* (JT 2000 (6) SC 254) may be seen.

17. In *Ashok Kumar Vs. State of Rajasthan* (AIR 1990 SC 2134) this Court has held as under: "While caution is the watchword, in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses interference should not be made merely because a different conclusion could have been arrived at. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless. In the present case the order of the trial Court is vitiated as part from deciding the case on irrelevant consideration the most serious error of which he was guilty and which rendered the order infirm which could be set aside by the High Court was that he misread the evidence and indulged in conjectural inferences and surmises."

5. The same principle was reiterated in *Ashok Kumar v. State of Rajasthan*,⁴ where the Supreme Court held that prudence must guide appellate interference. It is not the possibility of another conclusion, but the unreasonableness or illegality of the conclusion reached by the trial court that justifies appellate scrutiny. Where the trial court has proceeded on conjecture, surmise, or patent misreading of material evidence, the High Court is not merely entitled, but duty-bound, to correct the miscarriage of justice.

6. In view of the aforesaid legal principles, this Court now proceeds to examine whether the judgment of the Trial Court acquitting Respondent No.

⁴ (1991) 1 SCC 166.



1 suffers from any manifest error or perversity. Pertinently, the subject FIR pertains to an incident in respect of which two cross-cases were registered: FIR No. 37/2008, lodged at the instance of Respondent No. 1 under Sections 308/323/34 of the IPC, and the subject FIR, *i.e.*, FIR No. 38/2008, registered at the instance of the present Complainant, Sarita, under Sections 308/323/34 of the IPC.

7. A perusal of the impugned judgment reveals that the acquittal of Respondent No. 1 was primarily based on the contradictions and discrepancies in the accounts of the Prosecution witnesses. For ease of reference, the relevant portion of the Trial Court's observations is extracted below:

"34. Now coming to the testimony of the witnesses of this case. According to PW 1 her elder daughter Sarita had come inside the juggi and told her that accused Madan Lal and Babu Lal were abusing her. So she along with Sarita came out of the house and after that her daughter Seema and Abhimanyu reached there. She has also deposed that her husband Arjun reached after the incident. So this witness has not uttered a single word regarding the presence of PW Ranjeet and according to her husband Arjun is not an eye witness and was not present at the time of quarrel and only came thereafter.

35. According to PW 2 she came out of the house alongwith her father Arjun and Asha, Abhimanyu and then they were beaten by the accused Madan Lal and Babu La. This witness has also not talked about the presence of PW Ranjeet. According to this witness her father Arjun was also in the house who came alongwith them from the jhuggi but according to PW 1 her husband Arjun had come after the incident. So both the witnesses are contradicting each other.

36. According to the prosecution the quarrel had started because Sarita was abused by accused Babu Lal and Madan Lal when she was coming to her Jhuggi. This witness has not stated that she went inside the jhuggi and then all her family members came out as stated by PW 1 and PW 2. According to her her mother and sister came to her rescue when she raised alarm. She has also not uttered a single word about the presence of PW Ranjeet, her brother Abhimanyu and father Arjun. So this witness has totally stated in opposite direction as stated by PW 1 and PW 2.

37. PW 4 Arjun has deposed that his wife Asha, daughter Seema,



neighbour Ranjeet, son Abhimanyu and he himself tried to save Sarita but according to his wife PW 1 he was not present at the time of the incident and he only came there after the happening of the incident. He has also not stated as stated by PW 1 and PW 2 that Sarita came inside the Jhuggi and then they all came outside to confront the accused persons as stated by PW 1 and PW 2. He is totally silent about his presence. Rather in his cross examination he has stated that he saw accused Madan Lal, Babu Lal and his family members fighting with each other.

38. PW Ranjeet has deposed that on hearing the noise of "bachao Bachao" he came outside and Arjun, Asha, Sarita, Seema and Abhimanyu also came outside and saw Sarita being beaten and when they intervened they were also beaten. But PW 1, PW 2 and PW 3 are totally silent about the presence of PW 5. In his cross examination this witness has stated that he was not aware that if accused and his daughters received injuries in this case.

39. According to PW 11 he along with his father Arjun, mother Asha, sister Seema and neighbour Ranjeet came out and saw the fight but it is pertinent to mention that PW Arjun has himself stated that he was not present in the house and even PW 1 has stated that Arjun her husband came there after the incident. So, all the witnesses examined by the prosecution are contradicting each other.

40. Now from the evidence coming on record it can be safely said that a fight took place between the accused and his family members and the complainant and her family members which resulted in the registration of 2 FIRs.

41. The accused in his defence proved on record FIR No. 37/08 which was got registered by him about the incident and he has also placed on record the judgment Ex. DW1/C vide which the accused persons namely Abhimanyu, Arun, Jagdish and Hari Chand have been convicted.

42. From the analysis of the evidence of the public witnesses in this case, major contradictions are appearing which throws doubt on their version but the incident is also admitted by them. According to the case of the prosecution all the public witnesses came out together and then accused Madan Lal was confronted by them which shows that the accused was not the aggressor.

43. It is settled proposition of law that the prosecution is duty bound to explain the injuries suffered by the accused. But in the present case the same has not been done by the prosecution. The injuries remained unexplained from the side of the prosecution. Rather it was the accused who produced on record sufficient evidence in the form of his statement Ex. DW 1/B and the judgment of conviction as Ex. DW 1/C to show that it was he and his daughter who had received injuries at the hands of the accused persons.

44. So in these facts and circumstances, and keeping in view the fact that there are material contradictions between the testimonies of the



prosecution witnesses and also the fact that the prosecution has failed to explain the injuries on the person of the accused, the prosecution has failed to prove its case. The accused is, therefore, acquitted. File be consigned to Record Room. Accused Babu Lal is proclaimed offender. The prosecution is at liberty to get the case revived against him as and when he is arrested."

8. It is evident from the aforesaid analysis undertaken by the Trial Court that the testimonies of the Prosecution's material witnesses are marred by significant inconsistencies. For instance, PW-1, Smt. Asha, the mother of the Complainant, deposed that the Complainant had returned from the market and was outside the gate of their *jhuggi*, when she informed her that the accused persons were abusing her. Pursuant to this, PW-1 and the Complainant left the house and confronted the Respondents. She further stated that her younger daughter, Seema (PW-2), and son, Abhimanyu (PW-11), reached the spot subsequently, and her husband, Arjun (PW-4), arrived only after the incident had taken place. However, in her cross-examination, PW-1 contradicted herself by stating that Arjun had, in fact, reached at the scene "*at the time of the incident*", and had attempted to intervene.

9. On the other hand, PW-2, Seema, stated that she was inside the house with her father, mother, and brother while the Complainant had gone to the market to purchase vegetables. She further deposed that upon hearing the Complainant cry out "*bachao bachao*," all of them left the *jhuggi*, whereupon the accused persons began assaulting them with a *danda*. However, during cross-examination, PW-2 changed her account, stating that only she and her mother went outside the *jhuggi* in response to the Complainant's cries for help, without mentioning the presence of her father or brother. This discrepancy between the testimonies of PW-1 and PW-2 regarding the presence of Arjun (PW-4) in the house at the time of the



alleged incident, as well as the sequence and timing of the family members who came to the aid of the Complainant, casts serious doubt on the veracity of the Prosecution's version.

10. Furthermore, the Complainant (PW-3) testified that upon raising an alarm, her mother Asha and sister Seema came to her aid. She further stated that she subsequently lost consciousness and regained it in the hospital, where she found Asha, Seema, Abhimanyu, Arjun, and a neighbour named Ranjit admitted. She later learned that Abhimanyu, Ranjit, and Arjun had also been assaulted by the accused. Pertinently, the presence of the neighbour Ranjit at the time of the alleged incident was mentioned for the first time in PW-3's testimony and was conspicuously absent from the statements of PW-1 and PW-2. In fact, PW-1, in her cross-examination stated that she recalled the presence of only one neighbour, Nandan Lal, at the scene and categorically denied that any neighbours had intervened during the assault. This discrepancy regarding Ranjit's presence raises further doubts about the consistency of the Prosecution's case.

11. Additionally, PW-4, Arjun, father of the Complainant, initially deposed that he was present in the house at the time of the incident and went outside upon hearing his daughter's cries, witnessing her being physically assaulted with a *danda*. He also corroborated the alleged presence of neighbour Ranjit. However, during cross-examination, PW-4 significantly altered his version, stating that he was working in the market at the time of the incident and did not know who informed him of the same. He added that when he reached the location, a fight was already ongoing between the accused persons and his family members. This reveals that there were not only discrepancies in the statements of prosecution witnesses regarding the



presence of PW-4 in the house at the time of the alleged incident, but also contradictions within PW-4's own statements on this aspect. These contradictions diminish the credibility of his testimony and also undermine the case of the Prosecution.

12. Moreover, PW-5, Ranjit, a neighbour of the Complainant, deposed that upon hearing the Complainant's cries, he came outside along with Arjun, Asha, Seema, and Abhimanyu, and witnessed the Respondents assaulting the Complainant. However, when he was subsequently examined (as PW-9), he stated that while intervening to save the Complainant, only Seema and Asha were present, making no mention of Arjun and Abhimanyu. Further, Abhimanyu, brother of the Complainant, who deposed as PW- 11, stated that after hearing the Complainant ask for help, he, along with Arjun, Asha, Seema and Ranjit, went outside and saw the accused beating the Complainant. His account thus corroborates Ranjit's presence at the scene, distinguishing it from the versions provided by PW-1 and PW-2.

Conclusion

13. The Trial Court rightly opined that the testimonies of the Prosecution's key witnesses suffer from significant material inconsistencies. The conclusions drawn by the Trial Court are based on a plausible appreciation of the evidence and do not suffer from perversity or disregard of settled principles. It is well-established that when multiple views are possible based on the evidence on record, the view favourable to the accused, adopted by the Trial Court, should not be disturbed by the Appellate Court. Accordingly, the observations made by the Trial Court in this regard cannot be considered perverse, or contrary to the record, such that they require further consideration for this Court to grant leave to appeal.



14. In view of the above, the present leave to appeal is dismissed.

SANJEEV NARULA, J

JULY 22, 2025

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