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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 550/2018

STATE (GOVT OF NCT OF DELHI)Petitioner

Through: Mr. S.K. Gautam, APP for
the State.
SI Jitender Kumar, PS
Anand Parbat.

versus

RAJESH

.....Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

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04.07.2025

**CRL.M.A. 30474/2018 (for condonation of 67 days delay in
filing the appeal)**

1. For the reasons stated in the application, the same is allowed and the delay of 67 days in filing the present appeal is condoned.

2. The application stands disposed of.

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3. The present petition is filed challenging the judgment dated 24.08.2018 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge (hereafter '**Trial Court**'), West, Tis Hazari Courts, Delhi, in the case arising out of FIR No. 395/2015 dated 09.06.2015, registered at Police Station Anand Parbat.

4. By the impugned judgment, the learned ASJ acquitted the respondent of all the charged offences under Sections 341/323/308 of the Indian Penal Code, 1860 ('IPC').



5. Brief facts of the case are that on 08.06.2015, the police received information regarding a quarrel that took place at House No. 222, Gali No. 4, Military Road, Anand Parbat, Delhi. Upon reaching the spot, it was found that one person namely– Rohtash/ complainant and his wife namely– Rajwanti had sustained injuries and were taken to the Hospital by a PCR van. The statement of the complainant was recorded after he was discharged and on the basis of his statement, the FIR No. 395/2015 was registered on 09.06.2015 against the respondent under Sections 341/323/308 of the IPC, for wrongfully restraining the complainant from entering his house, assaulting him by hitting a *danda* on his head and causing injuries to the wife of the complainant.

6. In his statement dated 09.06.2015, the complainant stated that the respondent is his neighbour and owns a pet dog that he would leave unleashed. He stated that the dog would often defaecate on the terrace of the complainant. He stated that a week prior to 08.06.2015 also, the complainant and the respondent had got into an altercation regarding the said issue, which led to the wife of the complainant being injured, however the issue was compromised. He stated that on 08.06.2015 at around 8:00 pm, another altercation broke out between himself and the respondent on the same issue, when the respondent started using foul language, and got even more engaged when the complainant objected to the same. He stated that when he was trying to go inside his house, the respondent grabbed him and hit him on his head with a *danda*, with an intention to kill him. He stated that when his wife tried to intervene, the respondent also inflicted beatings upon her. He stated that on seeing the blood running from his head, the respondent ran away with the *danda*,



following which, the wife of the complainant dialled 100, whereafter they were taken to the Hospital by a PCR van.

7. On 11.06.2015, the respondent was arrested by the police from his house, and at his instance, the *danda* was also recovered from a room on the first floor of his house.

8. The prosecution examined 9 witnesses including the two injured witnesses. Besides the formal witnesses, the complainant was examined as PW1 and his wife as PW2. PW5 is the doctor who proved the MLCs of the injured persons. The prosecution has relied on the statements of the witnesses as well as the medical evidence.

9. In his statement under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC'), the respondent stated he leaves for work at 10:00 am and returns home late at night around 11:00 pm. He denied that any quarrel had taken place with the complainant and his wife. He examined Sh. Ommun Pal, who runs a shop in front of the shop of the respondent in Gaffar Market, as DW1. DW1 proved that at the time of the alleged incident, the respondent was not present at the spot.

10. The learned Trial Court, while acquitting the respondent, noted that the prosecution had failed to prove the charges against him. It was noted that there were glaring inconsistencies in the testimonies of PW1 and PW2 and that the prosecution witnesses had not supported the case of the prosecution. It was further noted that there was lack of evidence to prove the version of the prosecution, despite the fact that the same could have been easily availed. The learned Trial Court was of the view that the possibility of false implication of the respondent in view of the grievance of the complainants against his pet dog, cannot be ruled out.



11. The learned Additional Public Prosecutor ('APP') for the State submits that the learned Trial Court had acquitted the respondent without application of mind.

12. He submits that the testimonies of the victims were unduly discarded by the learned Trial Court without appreciating that the evidence of injured witnesses has greater evidentiary value. He submits that minor contradictions in the testimonies of the victims are immaterial and the learned Trial Court gave undue importance to the same.

13. He submits that the learned Trial Court wrongly noted that the possibility of the respondent being falsely implicated cannot be ruled out, when in the facts of the present case, the complainant do not hold any grudge against the respondent.

14. The respondent is present in person and submits that he was falsely implicated in the present case.

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 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 ***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."

16. In the present case, the prosecution's allegations are sought to be proved on the basis of statements of the witnesses, recovery of the *danda* as well as the medical evidence.

17. The learned Trial Court while taking note of all the statements of the prosecution witnesses as well as the evidence placed on record, held that there are material inconsistencies in the statements of the witnesses and that the injured witnesses did not support the case of the prosecution. It was also noted that there was lack of evidence to support the case of the prosecution.

18. It is the case of the prosecution that on 11.06.2015, when the Investigating Officer visited the house of the complainant, they were told that the respondent was quarrelling with and pressurising the complainant to withdraw the complaint, and on the same day, the respondent was arrested at the instance of the complainant and the weapon of offence was also recovered in the presence of the complainant. Whereas, PW1 has specifically denied the fact that on 11.06.2015, the respondent was quarrelling with him, and that the *danda* was recovered in his presence. He even expressed his inability to identify the *danda*.



The relevant portion from his testimony is extracted hereunder:

....The danda was not recovered in my presence. Accused was also not arrested in my presence.....

19. After deposing the same, the learned APP requested for cross-examination of PW1 as he was resiling from his earlier statement, however PW1 maintained his stance. He stated as under:

“It is wrong to suggest that on 11.06.2015, accused again quarreled with me and on that day he was creating pressure upon me to withdraw the present case. It is further wrong to suggest that on 11.06.2015, I alongwith the IO went to the house of the accused from where he was arrested at my instance and his arrest documents were prepared and accused was also made a disclosure statement. It is further wrong to suggest that on that day accused got recovered danda by which he caused injury on my head from his room of first floor which was lying in the corner of room and same danda was seized by the IO through seizure memo...”

20. The learned Trial Court noted that in regard the compromise *qua* the first quarrel between the parties, both PW1 and PW2 deposed that the issue was compromised after preparing a written document, in the presence of neighbours, however, neither the said document of compromise was produced nor any neighbour was examined as a witness to prove the version of the injured witnesses. It was noted that the injured witnesses had deposed that neighbours had gathered at the time of the incident, despite which, no neighbour was joined in the investigation or examined as a witness in support of the case of the prosecution. It was observed that despite the assertion of the injured witnesses that the complainant was hit on the head with a *danda* and his blood had fallen on the road and on the shirt of the complainant, PW9, who is the Investigating Officer in the present case, has deposed that no blood was found at the place of incident. Moreover, even the shirt worn by the complainant,



claimed to have been stained with blood was not seized by the prosecution.

21. In this regard, the learned Trial Court reasonably observed that the testimonies of PW1 and PW2 were not trustworthy and that there were material inconsistencies in the case of the prosecution.

22. In view of the above discussion, it will be useful to refer to the observations made by the Hon'ble Apex Court in **Krishnegowda v. State of Karnataka : (2017) 13 SCC 98**. The Hon'ble Court while noting the inconsistencies in the statements of the prosecution witnesses and lapses in the investigation, held as under:

"26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt.

27. Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the court, but if these contradictions create such serious doubt in the mind of the court about the truthfulness of the witnesses and it appears to the court that there is clear improvement, then it is not safe to rely on such evidence.

(emphasis supplied)

23. The MLCs of the complainant and his wife reveal that the injuries were simple in nature. It is apparent that there was no external injury on the wife of the complainant and that the complainant had a lacerate wound over his right parietal scalp region. It pertinent to note that PW5, who proved the said MLCs



has deposed during his cross-examination that there was smell of alcohol in the breath of the complainant during his medical examination and testified that the possibility of the complainant having sustained the injuries after falling cannot be ruled out.

24. The learned Trial Court rightly highlighted that neither any independent eye witness was produced to corroborate the statements of the injured persons, nor any inquiry was made from the neighbours of the parties. The defence examined DW1, who has deposed that the respondent used to run his shop in front of his shop at Gaffar Market and that on the date of the alleged incident, the respondent was present at his shop from 11:00 am till 11:00 pm. He also maintained his stance during his cross-examination by the learned APP for the State.

25. It is relevant to refer to another observation made by the Hon'ble Apex Court in *Krishnegowda v. State of Karnataka* (supra):

"32. It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad daylight. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice". In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused."

(emphasis supplied)

26. It is well settled that the testimony of an injured witness is

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accorded a special status in law and should be relied upon, provided that the same is without major contradictions [Ref: ***Abdul Sayeed v. State of Madhya Pradesh : (2010) 10 SCC 259***]. However, from a perusal of the record, it is apparent that there are several inconsistencies and contradictions in the case of the prosecution.

27. Since the prosecution has failed to prove the case against the respondent beyond reasonable doubt, this Court finds no infirmity in the view taken by the learned Trial Court that the complainant having grievance regarding the dog of the respondent as well as prior hostility, the possibility of false implication of the respondent by the complainant cannot be ruled out.

28. Moreover, the Court, while considering a challenge to a judgement of acquittal, in exercise of jurisdiction under Section 378 of the CrPC, is empowered to reconsider the evidence on record and reach its own conclusions, however, it is to be kept in mind that there is a double presumption of innocence in favour of the accused. The High Court ought to only interfere with the finding of acquittal if it finds that the appreciation of evidence is perverse. The Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka : (2007) 4 SCC 415*** has expounded upon the powers of the Appellate Court while dealing with an order of acquittal:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

*(1) **An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.***

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an



appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(emphasis supplied)

29. From the material/ evidence as brought on record, it can safely be said that no *prima facie* case is made out against the respondent.

30. 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 credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

31. The petition is therefore dismissed on merits.

32. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JULY 4, 2025