



\$~17

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

% ***Date of decision: 24th April, 2025***

+ **CRL.L.P. 325/2017**

STATE, NCT OF DELHI

.....Petitioner

Through: Mr. Yudhvair Singh, Additional Public
Prosecutor for the State with SI
Sandeep.

Versus

SHIV SHANKAR
s/o Shripat Pandey
r/o RZ-49A/D Kailashpuri
D Block, Gali No. 8,
New Delhi.

.....Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

Crl.M.A. 8918/2017

1. For the reasons stated, the delay of 222 days in filing the Leave Petition is condoned.
2. The Application is disposed of.

CRL.L.P. 325/2017

3. The present Leave Petition under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) has been filed against the Judgment and Order dated 30.07.2016, passed by the



learned Metropolitan Magistrate, whereby the Respondent has been acquitted of the offences under Sections 342/325/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) in FIR No. 816/2000, Police Station Dabri, Delhi.

4. Learned ***Additional Public Prosecutor*** for the Petitioner/State has submitted that the Complainant in his examination-in-chief has supported the case of the prosecution. The acquittal of the Accused is merely on the ground of non-recovery of *danda* even though the testimony of the Complainant is supported by the MLC, as well as, X Ray Report.
5. For the grounds stated therein, the Leave Petition is allowed.
6. The Leave Petition stands disposed of.

Crl. A...../2025 (to be numbered by the Registry)

7. The case of the Prosecution is that on 08.09.2000, on receipt of DD Entry No. 22A at 2:50 p.m. regarding a quarrel, Head Constable Bir Pal Singh and Constable Hoshiyar Singh arrived at the vacant Factory Kailash Puri Extension at around 03:15 PM where they found three injured persons, namely, Vinod, Lalit and Viresh.
8. The injured persons were taken to the DDU Hospital for treatment. The MLC indicated that Vinod (PW-1) sustained grievous injuries whereas injuries suffered by Lalit and Viresh, were opined to be simple. On the statement of Complainant, Vinod, FIR No. 816/2000, under Sections 342/325/34 was registered at Police Station Dabri, New Delhi against the Accused Anil, Jagdish and Shiv Shankar.
9. After due investigations, Chargesheet was filed in the Court.
10. During the trial, ***Charges under Section 342/325/323/34 of the IPC***



have been framed against Respondent Shiv Shankar, along with the other two co-accused Jagdish and Anil Kumar, on **07.02.2004**.

11. During the pendency of trial, Accused Jagdish expired and proceeding *qua* him stood abated. Accused Anil Kumar was declared Proclaimed Offender on 13.02.2014 during the trial. **The trial was conducted only against the Respondent, Shiv Shankar.**

12. The Prosecution in support of its case, examined ten witnesses in all.

13. **The first material witness was PW-1**, Mr. Vinod Kumar, the Complainant, deposed about the incident as narrated by him in his Complaint, Ex.PW-1/A. The other two injured, namely, Viresh and Lalit were not traceable and, therefore, their evidence was not recorded.

14. **The other material witness is PW-3, Constable Hoshiyar Singh**, who on receiving information *vide* DD No. 22A, had rushed to the scene of crime wherein he had found the three persons injured and had taken them to DDU Hospital and got their MLCs prepared.

15. **PW-4, Deshraj, Record Clerk, DDU Hospital**, proved the MLC of Vinod as Ex.PW-4/A. PW-7, **Dr. Ajay Sharma, who was CMO in DDU Hospital** on the date of incident, deposed that Vinod had been brought in emergency with a history of assault. He was given first aid and MLC Ex.PW-7/A was prepared by Dr. Atma Prakash, Senior Consultant under his supervision. **PW-8, Dr. Rakesh Kumar**, who was SMO in DDU Hospital, proved the X-Ray report prepared by Dr. Brajendra Kumar as Ex.PW-8/A.

16. **PW-6, ASI Veerpal Singh** was the Investigating Officer, who conducted the investigations.



17. *The Statement under Section 313 CrPC* of the Accused was recorded wherein he set-up a defence that goat of Mr. Anil Kumar and Mr. Jagdish, was stolen earlier by the Complainant, Vinod and his friends, but no FIR was registered. However, the Complainant and his friends again stole the goat of Anil and Jagdish and were apprehended by the other two co-accused, Anil and Jagdish, who called the PCR on the spot. However, friends of Vinod were allowed to leave the spot, which they tried to prevent. Consequently, he was taken to the Police Station. He refused to give the bribe and was consequently implicated falsely in this case. Vinod, the Complainant was apprehended one day before the date of incident by the public while committing theft of a motor and was beaten up by the public. The injuries recorded in the MLC, pertain to the said incident.

18. The **learned Trial Court vide impugned Judgment dated 30.07.2016** held that only the medical record of the Complainant has been produced in evidence and there is no medical of injured Viresh and Lalit. There is nothing on record to show that the weapon of offence i.e. *danda* was ever recovered by the police. If it is believed that the police officials reached the spot at around 3:00-4:00 PM, they could have easily recovered the weapon. Also, it is not probable to believe that two persons without any weapon, forcibly took the people to Kailash Puri Extension, which was around 4 km away from Mohan Mandir, Hari Nagar, without any resistance from either of the victims or intervention of the general public. The benefit of doubt was thus, given to the Respondent, who was acquitted.

19. *Aggrieved by the said acquittal, the present Appeal has been preferred by the State. The grounds of challenge* are that the Judgment is



based on conjectures and surmises, which is contrary to the evidence on record, as well as the settled law. The learned Trial Court erred in observing that there were material contradictions in the Statements of PW-1, Vinod, the Complainant and in the Complaint made by him to the Police. Though the weapon of offence i.e. *danda* was not recovered, but it is settled law that the recovery of weapon of offence is not a precondition for the Prosecution to prove its case.

20. It is further submitted that the learned Trial Court fell in error in observing that there was a discrepancy in the time of apprehension and arrest of the Accused. It is explained that the DD Entry 22A was kept pending till the nature of injuries suffered by PW-1, were certified to be grievous by the doctor. It is only upon the determination of the nature of injuries, that the FIR was registered and the investigations were undertaken. Further, even if it is assumed that any of the Accused person was present on the spot, there was no question of their arrest till the registration of FIR.

21. *It is further contended* that the Trial Court erred in doubting the Prosecution Case on the ground that as per PW-3 Hoshiyar Singh Accused Anil was present on the spot when the Police arrived, the weapon of offence i.e. the *danda* should have been recovered from the spot. However, it has not been considered that the consistent stand of the Complainant was that it was Accused Shiv Shankar, who had used the *danda*, while Anil and Jagdish had only caused injuries by giving fist and kicks blows.

22. The learned Trial Court has also failed to appreciate that the other two injured could not be examined as they were not traceable. It has also not been considered that the Complainant and his friends were poor, illiterate,



minor boys, who were not permanent residents of Delhi and therefore, it was not unnatural for the other two injured to have left their place of residence and be not be traceable as the trial got concluded over a period of 16 years.

23. Furthermore, there were no major contradictions and discrepancies in the case of the Prosecution, to disbelieve that the Complainant had been injured by the Respondents.

24. It is further contended that the learned Trial Court disbelieved that the injured persons could have been taken to a distance of place of incident, which was 3-4 kilometers away, without any resistance or weapon. However, it has not been appreciated that Anil was only 15 years old at the time of the incident and the other injured persons were also of similar age. The assailants were previously known to Jagdish, father of co-accused Anil. The victims in fact accompanied Jagdish because he was senior and they did not suspect him to cause any harm to them, which cannot be considered as unnatural.

25. It is, therefore, contended that the case of the Prosecution was fully supported by the Prosecution witnesses. *The impugned Judgment of acquitting the Respondent is, therefore, liable to be set-aside.*

Submissions heard and the record perused.

26. ***The case of the Prosecution is that*** the Complainant, Vinod and his friends, Lalit and Viresh, were confined in the empty factory premises by the Respondent and the other two co-accused Anil and his father, Jagdish and were beaten with kicks and blows while Shiv Shankar, the Respondent gave the stick blows.

27. To prove their case, the first material witness examined by the



Prosecution was **PW-1, Vinod Kumar**, who deposed that on the date of incident in September, 2000, he along with his two friends, Lalit and Viresh Sethi, had gone for food to a *langar* at Mohan Mandir, Hari Nagar where they found the co-accused, Anil and his father, Jagdish present. They forcibly took all three of them to a vacant factory at RZ 226, Gali No. 11, Kailash Puri Extension where the Respondent, Shiv Shankar joined them. They were confined in the factory and were given beatings with fists and blows while Shiv Shankar also gave them beatings with the stick. Somebody from the neighbourhood informed the Police, who arrived on the spot and took them all to DDU Hospital for treatment. Subsequently, his Complaint Ex.PW-1/A was recorded.

28. Pertinently, **in his Complaint, Ex.PW-1/A, it was stated that** the co-accused, Anil had called them to the vacant factory and when they reached there, they were locked inside by Anil and his father, Jagdish while Shiv Shankar joined them thereafter.

29. The case of the Complainant as per the Complaint, was that they had been called by the co-accused, Jagdish to a vacant factory. However, in the testimony, he stated that he and his friends were forcibly taken by Anil and his father, Jagdish to a vacant factory. There is a material contradiction in the facts as narrated in the Complaint and the testimony. In the Complaint, it was said that they had been called by Jagdish to the vacant factory but in the testimony, it is deposed that Anil and Jagdish had forcibly taken them to the factory. The learned Metropolitan Magistrate, was right in observing that it is difficult to comprehend how three persons would have been forcibly taken by Anil and Jagdish for a distance of 3-4 kilometers to reach the scene



of incident i.e. the factory and Kailash Puri Extension that too without any weapon.

30. Further, there is not a whisper about they being locked up in the factory in the testimony of the Complainant while it was so stated in the Complaint, Ex.PW-1/A. It is therefore, evident that there is material contradiction in regard to his wrongful restraint/confinement.

31. If the version of the Complainant as given in his testimony is accepted, then they had merely been asked by Anil and Jagdish to come to the vacant factory and there is no averment that they were locked therein.

32. There is **no other eye witness** to this incident as the other two injured/victims Lalit and Viresh, were untraceable and could not be produced in the evidence. There is no other eye witness.

33. From the testimony of PW-1, **the Complainant**, no offence under Section 342/34 IPC is made out and the Respondent has been rightly acquitted under the said Sections.

34. **The second offence for which the Respondent had been charged was under Section 323/325/34 IPC.** The Complainant in his testimony as PW-1 had deposed that he and his two friends, had been given kick blows and fist blows by Anil and Jagdish while Shiv Shankar, the Respondent had also given stick blows to him because of which, he had suffered injuries. The MLC of the Complainant is Ex.PW-4/A, which is also proved by PW-7, Dr. Ajay Sharma and PW-8, Dr. Rakesh Kumar, indicates that there was fracture of ulna and the nature of injuries were certified as grievous.

35. The learned Metropolitan Magistrate disbelieved the testimony of the Complainant of having been beaten by a stick by the Respondent on the



ground that there was no recovery of stick from the scene of crime. It may be observed that the alleged incident happened at about 2:50 p.m., as per DD No. 22A, Ex.PW-5/B. The MLC indicates that the injured were taken to DDU Hospital at about 5:50 p.m. As per the **Investigating Officer, PW-6, ASI Veerpal Singh**, on receiving the information of the incident, he along with **PW-3, Constable Hoshiyar Singh**, had gone to the scene of incident i.e. the factory at Kailash Puri Extension where they have found three injured persons present. They were taken for their medical examination. **According to PW-3, Constable Hoshiyar Singh**, the Accused Anil Kumar was apprehended on the spot, while the other two co-accused had been arrested subsequently at the pointing of the Complainant.

36. The testimony of the Investigating Officer coupled with that of PW-3, Constable Hoshiyar Singh, thus confirms that soon after the incident, the Police had reached the spot and had taken the injured to the hospital from where they had returned to the spot and conducted the investigation. It implies that not only did they reach the spot soon after the incident, but had gone there again after the medical examination of the injured persons. The place of incident has been described as a vacant factory. In the circumstances, it was not difficult for the Police to have recovered the danda from the spot. There is also no evidence on record to show that any endeavor was made to recover the danda from the Respondent after his arrest.

37. While the law is well settled that recovery of weapon of offence is not a prerequisite for proving the act of physical assault with a weapon, but in the given facts, non recovery of weapon from the spot despite resching the spot immediately, creates adoubtabout theoccurrence of the incident of the



Complainant and his friends being beaten with a danda, itself doubtful. The learned Metropolitan Magistrate has, therefore, rightly held that the non recovery of danda, weapon of offence, was one instance to create a doubt about the incident.

38. As discussed above, there is a huge discrepancy about the manner in which the Complainant and his friends had been called to the factory. The presence of the Accused and the manner of arrest, is also not beyond suspicion. These facts assume importance in the light of the admissions made by the Complainant. The suggestions given to the Complainant in his cross-examination that the goat of Anil and Jagdish, had got stolen, which was recovered from a meat shop. The suggestion has also been given that again the goat of Anil and Jagdish got stolen and it was in this context that the Complainant and his friends had been called to the scene of the incident.

39. It is further claimed by the Respondent in his Statement under Section 313 CrPC that a day before, Complainant was caught trying to commit theft of a motor and was beaten by the public, which explains the injuries on his body.

40. The learned Metropolitan Magistrate in the light of material contradictions, has rightly extended benefit of doubt to the Respondents and acquitted them. **There is no merit in the present Appeal, which is hereby dismissed.**

41. The Appeal along with pending Applications, is disposed of accordingly.

(NEENA BANSAL KRISHNA)

2025:DHC:5267



JUDGE

APRIL 24, 2025

r/RS