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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 529/2016**
STATEPetitioner

Through: Mr. Ajay Vikram Singh, APP.
SI Ekta, PS: Sector-23 Dwarka.

versus

AJAY BAKSHI & ORSRespondents

Through: Ms. Jagrati Singh, Advocate for R-2.
Mr. Biswajit Kumar Patra and Ms.
Khushboo Gupta, Advocates for R-3.
Mr. Archi Gupta and Mr. Rahul
Gupta, Advocates for R-4 & 5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
22.08.2025

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1. The State through the present petition under Section 378(3) of the Code of Criminal Procedure, 1973¹ seeks leave to appeal against judgment of acquittal dated 7th May, 2016 passed by the ASJ-02, South West District, Dwarka Courts, Delhi in Sessions Case No. 42/2012 emanating from FIR No. 119/2009, registered at P.S. Dwarka, Delhi. By the said order, the ASJ has acquitted Respondent No. 1 to 5 of the offences under Sections 395/397/412 of the Indian Penal Code, 1860.²

Factual Background

2. The case of the Prosecution, in brief, is as follows:

2.1. On the night of 26th February 2009, at about 11:00 PM, the Complainant, Montu Kumar, was driving his taxi and had just dropped off a

¹ "Cr.P.C"



passenger at Sector-13, Dwarka. At a nearby bus stop, five persons, namely Ajay Bakshi, Parveen Kumar, Daljeet, Mohd. Sarif and Dalip Kumar Mehto (Respondent No. 1 to 5 respectively) and asked for a lift till Palam Mor. Three sat on the rear seat, while two occupied the front. Shortly thereafter, Respondent No. 3 alighted on the pretext of disembarking, came to the driver's side, and along with the others assaulted the complainant. Respondent No. 1 gagged the complainant's mouth; Respondent No. 2 brandished a country-made pistol and threatened him; Respondent No. 4 took away his purse; and Respondent No. 5 snatched his mobile phone. The complainant was then pushed out of the vehicle near Janak Cinema, Pankha Road, whereafter the respondents drove away with his taxi.

2.2. The Complainant managed to seek help from another driver and informed both his employer and the police. A wireless message was circulated, and a police team, including SI Pankaj Malik (PW-18) and other officers, commenced a search. Around 1:15 AM, the stolen vehicle was located near Modern Convent School, Sector 4, Dwarka, by the Complainant and the police, with the Respondents inside. On being chased, the Respondents abandoned the car and attempted to escape into a park but were apprehended.

2.3. Upon search, a country-made pistol with a live round was recovered from Respondent No. 2, while the Complainant's purse containing his driving licence and PAN card was recovered from Respondent No. 4. The Indica car was seized, and the Complainant was medically examined. His statement was recorded and treated as the basis of the present FIR.

2.4. Investigation was carried out by SI Pankaj Malik, who prepared the

² "IPC"



site plan, seized property, recorded statements of witnesses, and sent the firearm for FSL examination. On completion of investigation, a charge sheet under Sections 395/397 of IPC and Sections 25/27/54/59 of the Arms Act, 1959 was filed against the Respondents.

2.5. The Magistrate took cognizance, and on 20th November, 2009 charges were framed as follows: against Respondents No. 1, 3, 4 and 5 under Section 395 of IPC; against Respondent No. 2 under Section 397 of IPC; and against all the Respondents under Section 412 of IPC. The Respondents pleaded not guilty and claimed trial.

2.6. In order to prove its case, the Prosecution examined nineteen witnesses which included the complainant Montu (PW-1), who narrated the incident; scientific and medical experts such as V.R. Anand, Senior Scientific Officer (Ballistics), FSL Rohini (PW-2) and Dr. Kumar Narendra Mohan, CMO, DDU Hospital (PW-10); Head Constable Hari Sagar, from 635 Communication Room, who brought the summons record of logbook of control room; and several members of the raiding/search team, including SI Vidyadhar (PW-7), SI Kashmere Lal (PW-8), Constable Sadhu Ram (PW-9) and Constable Satnarayan (PW-13).

2.7 After closure of Prosecution evidence, the statement of the Respondents was recorded under Section 313 of Cr.P.C., wherein they denied all allegations and claimed innocence. They did not produce any evidence in their defence.

2.8. On the evidence adduced by the Prosecution, the Trial Court noted material contradictions and, accordingly, by the impugned judgment, the Respondents were acquitted of the offences under Sections 395/397/412 of IPC.



Prosecution's Case

3. Mr. Ajay Vikram Singh, APP for the State, urges the following grounds:

3.1. The impugned judgment is based on conjectures and surmises, and suffers from misappreciation of law and facts. The Trial Court erred in holding that the Prosecution failed to prove the case beyond reasonable doubt.

3.2. The identity of the Respondents, stood duly established. PW-1 (the Complainant) identified Respondent No. 2 (Parveen) and Respondent No. 4 (Mohd. Sarif) in court, and his testimony could not be discarded merely because he turned hostile in part.

3.3. The Trial Court wrongly treated minor discrepancies in the depositions as material contradictions. It is well settled that such inconsistencies are natural due to lapse of time and surrounding circumstances, and do not undermine the Prosecution case.

3.4. The recoveries made on the very night of the incident, the stolen vehicle, the country-made pistol, and the Complainant's purse containing his driving licence and PAN card, stood conclusively proved. The Trial Court failed to apply the statutory presumption under Section 114(a) of the Indian Evidence Act, 1872.

3.5. The testimonies of the Prosecution witnesses, including the police officers involved in the apprehension and recovery, were consistent, corroborative, and untainted by any animosity with the Respondents. Their evidence, untainted by any motive to falsely implicate, could not have been discarded merely on the ground that no independent public witnesses were



joined.

3.6. Medical evidence corroborated the Complainant's version, showcases injuries consistent with the assault. This crucial corroboration was overlooked by the Trial Court.

3.7. The Trial Court erred in disregarding settled precedent that the evidence of police witnesses cannot be discarded solely because they are police officials. Their testimonies stood unimpeached in cross-examination.

Analysis

4. The parameters governing leave to appeal against an acquittal under Section 378(3) of Cr.P.C are well settled. An order of acquittal strengthens the presumption of innocence already available to an accused, and such presumption cannot be lightly displaced. The High Court, while considering a leave to appeal, must be satisfied that the findings of the Trial Court suffer from a manifest error, or are perverse in nature or disclose a glaring misappreciation of law or evidence. The mere possibility of an alternative view cannot justify interference with an acquittal. Appellate Court's interference is warranted only where the Trial Court's findings are shown to be manifestly erroneous, patently unreasonable, or perverse in the sense of being against the weight of the record, or where material evidence has been ignored or misread. This cautious approach has been articulated by the Supreme Court in several cases and the principles regulating the hearing of appeal have been summarized in ***Prem Kanwar v. State of Rajasthan***,³ 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

³ (2009) 3 SCC 726.



Savant Majagavi v. State of Karnataka (AIR 1997 SC 3255) the following principles have been reiterated:

- 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.*
- 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), Raghbir 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. At the same time, we must also note in ***Ashok Kumar v. State of Rajasthan***,⁴ the Supreme Court emphasised 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 empowered, but is in duty-bound, to correct the miscarriage of justice.

6. Bearing in mind the principles noted above, we now proceed to examine whether the impugned judgment discloses any manifest error, perversity, or misappreciation of evidence warranting interference.

7. A perusal of the impugned judgment reveals that the acquittal of the Respondents is primarily based on material contradictions and discrepancies in the depositions of the Prosecution witnesses. For ease of reference, the relevant portion of the Trial Court's observations is extracted below:

“12.14 From the aforesaid testimony, it can be seen that PW 1 Montu has not supported the Prosecution case with respect to apprehension of the accused persons and recovery of the stolen articles. Even with regard to identification of the accused persons, he has not identified accused Ajay Baicshi, accused Daljeet and accused Dalip Mehto. PW 1 Montu had wrongly pointed out towards three accused persons namely Sonu Hadel, Mahesh Gupta and Maan Singh of some other case bearing FIR No. 29/08, Police Station Palam Village, as the accused persons in the present case. While identifying accused Sarif, PW 1 Montu had stated that the said accused had snatched the key of the car and drove the car. The same is contrary to the Prosecution version. While pointing out towards accused Sonu Hadel and Mahesh Gupta, PW 1 Montu stated that one of these two boys had kept 'Katta' on his left side waist and while pointing towards accused Maan Singh, he stated that the said accused gagged his mouth. Further, contrary to the Prosecution version, PW 1 Montu stated that

⁴ (1991) 1 SCC 166.



accused Parveen was sitting in the rear seat. He has attributed the roles to accused Parveen and accused Mohd. Sarif which are contrary to the Prosecution version. During his re-examination by the Ld. Addl. P.P also, he identified accused Mohd. Sarif with the assistance of one police official. The said piece of evidence is not admissible being not his independent testimony. His testimony even with regard to identification of accused Parveen and accused Mohd. Sarif is neither consistent nor cogent. He has categorically stated that in his presence nothing was recovered from the accused persons since at that time, he was in Police Station Janak Puri. He also testified, contrary to the Prosecution version that his empty purse was taken into possession by the police from him in the Police Station and was seized. During his cross-examination on 20-03-2012, he admitted that on the previous date of hearing, he was tutored by the investigating Officer. As per him, it was the Investigating Officer who disclosed to him that accused persons had robbed him. His testimony, thus, casts a serious doubt on the Prosecution version.

12.15 PW 18 Inspector Pankaj Malik, PW 15 Inspector Rajesh Dahiya, PW 7 SI Vidya Dhar, PW 8 SI Kashmere Lai, PW 13 Const. Satnarayan and PW 17 Inspector Anil Kumar, who were members of the Police Search Team, have correctly identified all the accused persons. PW 9 Const. Sadhu Ram, who was also member of the police search team, during his examination-in-chief has correctly identified accused Ajay Bakshi and Mohd. Sarif. However, he wrongly pointed out towards accused Parveen naming him as Daljeet. He also pointed out towards accused Daljit naming him as Dalip Mehto. He voluntarily stated that there was darkness and due to confusion, he did not recollect the names and faces of the accused persons correctly. However, during his cross-examination by the Ld. Addl.

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12.24 The testimonies of PW 9 Const. Sadhu Ram and PW 13 Const. Satnarayan with regard to the number and kind of vehicles in which the police search team had gone is in contradiction to the Prosecution version . According to PW 9 Const. Sadhu Ram, there were 3-4 vehicles including one TATA 407. As per PW 13 Const. Satnarayan, he alongwith ASI Umed Singh was on his motorcycle and SI Pankaj Malik was in his private car. This is contrary to the Prosecution version that the police search team number were in two police Gypsies, and thus creates a doubt regarding the prosecution version. Use of vehicles like TATA 407 and motorcycle during search is not such a fact about which any mistake can be made.

12.25 It is also pertinent to note that, as per Prosecution version, PW 1 Montu Kumar and ASI Umed Singh were witnesses, inter-alia, to the proceedings recorded in the following documents:-

a) sketch, Ex. PW 1/B of the country made pistol and the cartridge,



b) seizure memo, Ex. PW 1/C of country made pistol and the round,
c) seizure memo, Ex. PW 1/D of the purse,
d) seizure memo, Ex. PW 1/E of Indica Car,
e) arrest memo, Ex. PW 1/G of accused Ajay Bakshi,
f) arrest memo, Ex. PW 1/H of accused Parveen Kumar,
g) arrest memo, Ex. PW 1/I of accused Daljeet Singh,
h) arrest memo, Ex. PW 1/J of accused Mohd. Sarif,
i) arrest memo, Ex. PW 1/K of accused Daleep Kumar Mehto,
j) personal search memo, Ex. PW 1/Q of accused Ajay Bakshi,
k) personal search memo, Ex. PW 1/R of accused Parveen Kumar,
l) personal search memo, Ex. PW 1/S of accused Daljeet Singh,
m) personal search memo, Ex. PW 1/T of accused Mohd. Sarif,
n) personal search memo, Ex. PW 1/F of accused Dalip Kumar Mehto,
o) disclosure statement, Ex. PW 1/L of accused Ajay Bakshi,
p) disclosure statement, Ex. PW 1/M of accused Parveen Kumar,
q) disclosure statement, Ex. PW 1/N of accused Daljeet Singh,
r) disclosure statement, Ex. PW 1/O of accused Mohd. Sarif, and
r) disclosure statement, Ex. PW 1/P of accused Dalip Kumar Mehto.
However, PW 1 Montu Kumar has not supported the Prosecution version regarding the seizure of the aforesaid articles and arrest of the accused persons in his presence. ASI Limed Singh had not been examined by the Prosecution. Therefore, the aforesaid seizures and arrest cannot be held to have taken place in the manner as stated by the Prosecution.

12.26 It is also pertinent to note that as per PW 5 HC Hari Sagar vide Register, Ex. PW 5/D, an information was received at 0120 hours, through wireless, in the control room of South West District wherein, it was mentioned, "Gaadi mil gayi, ladke gaadi chod ke bhag gaye hai, tamam motorcycle ko alert karein, andhera hai.....". This appears to be contrary to the Prosecution version that the vehicle was found and the accused persons were arrested simultaneously while they were trying to run away. It also creates a doubt regarding the apprehension of the accused persons, at the spot."

8. The impugned judgment highlights substantial inconsistencies in the testimony of the Prosecution's principal witnesses. PW-1 Montu (the Complainant), projected as the sole eyewitness and as the person in whose presence the accused were allegedly apprehended and the stolen articles recovered, failed to support the Prosecution on either score. His testimony on identification was inconsistent, at times contrary to the Prosecution version, and tainted by an admission of tutoring by the Investigating Officer.



9. Pertinently, PW-1 failed to identify three of the Respondents altogether, instead pointing to individuals involved in a different case (FIR No. 29/2008, P.S. Palam Village). Even where he did identify Respondents No. 2 and 4, he attributed to them roles contrary to the Prosecution's case. For instance, while the Prosecution alleged that Respondent No. 2 wielded a firearm from the front seat, PW-1 stated that he was seated in the rear. Similarly, PW-1's account that Respondent No. 4 snatched his car keys and drove away conflicted with the Prosecution's version, which alleged that he was in the back seat and stole the purse. His re-examination compounded the problem, for his identification of Respondent No. 4 was only achieved with assistance from police officials in Court, after initially mistaking him for other accused. Such infirmities in the account of the primary eyewitness, by themselves, cast a serious doubt on the reliability of the Prosecution case.

10. As to the recoveries, PW-1 categorially denied witnessing the seizure proceedings, correctness of the arrest and seizure memos which bore his signatures. He stated that after lodging the complaint he remained at the police station, and that the recoveries were effected later in his absence. His testimony was therefore, directly hostile to the Prosecution's version on the very aspect where his presence was relied upon to establish authenticity.

11. Thus, the Prosecution's prime witness turned hostile on both the identity of the accused and the recoveries allegedly made in his presence. The cumulative effect of his contradictions, shifting stances, and eventual repudiation significantly compromised the Prosecution's case, casting grave doubt on the integrity and probative value of the entire evidence.

12. The testimonies of the police witnesses also exhibited material discrepancies. For instance, PW-9 (Constable Sadhu Ram), a member of the



search team, misidentified some of the Respondents while deposing in Court, confusing Respondent No. 2 with Respondent No. 3, and Respondent No. 3 with Respondent No. 5. Such misidentifications, especially by a member of the raiding party, seriously impacts the reliability of the Prosecution's narrative.

13. Further, all search team members generally described locating the Respondents, the robbed Indica vehicle, and recovering stolen property near Sector 4, Dwarka, with detailed accounts of arrests and evidence seizure. However, contradictions arose regarding the search operation: PW-9 stated the team used three to four vehicles, including a TATA 407, whereas PW-13 (Const. Satnarayan) mentioned a motorcycle and a private car, differing from the Prosecution's claim of using only two police Gypsies. These are not incidental details but are central to the credibility of the search operation and therefore, cannot be overlooked as a mere memory lapse. The discrepancies regarding the number and type of vehicles raise doubts about the Prosecution's version of events and weaken the reliability of its reconstruction.

14. The Prosecution also relied on two witnesses, PW-1 and ASI Umed Singh, as attesting witnesses to the seizure and arrest proceedings. However, with PW-1 turning hostile and ASI Umed Singh not being examined, this link in the chain of proof remained unsubstantiated. Finally, PW-5 HC Hari Sagar produced the wireless register showing that at 1:20 a.m. an alert was issued that the vehicle had been found but the accused had fled. This directly contradicted the Prosecution's version that the recovery and arrests were simultaneous, thereby casting further doubt on the credibility of the apprehension story.



Conclusion

15. In view of the material contradictions and inconsistencies in the Prosecution evidence, the Trial Court was justified in extending the benefit of doubt to the Respondents. The conclusions drawn by the Trial Court are based on proper appreciation of the evidence and do not suffer from perversity. It is a well-established rule of criminal jurisprudence that where two views are reasonably possible on the basis of the evidence, the view favouring the accused must prevail, and the Appellate Court ought not to disturb an acquittal merely because another view is also conceivable. The findings recorded by the Trial Court, therefore, represent a plausible view supported by the record and do not warrant grant of leave to appeal.

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

SANJEEV NARULA, J

AUGUST 22, 2025/as