



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.06.2025

+ **CRL.L.P. 375/2022 & CRL.M.A. Nos. 13809/2022, 5311/2022**

STATE GOVT. OF NCT OF DELHI

.....Petitioner

versus

BAL MUKUND AND ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sunil Kumar Gautam, APP for the State.
SI Vikas Bhardwaj, PS MS Park.

For the Respondents : Ms. Purnima Maheshwari, Adv. along with Mr. D.K. Singh, Adv.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the judgment dated 28.09.2019 (hereafter '**impugned judgment**'), passed by the learned Metropolitan Magistrate, Shahdara, Karkardooma Courts, Delhi, in the case arising out of FIR No. 42/2012, registered at Police Station M.S. Park.

2. By the impugned judgment, the learned Trial Court acquitted



the accused persons of all the charged offences.

3. The brief facts of the case are that on 07.03.2012, at about 9PM, the accused persons voluntarily caused hurt to the complainant and two more victims by a pointed object and a piece of brick.

4. The accused respondents were charged for the offences under Sections 324/323/34 of the Indian Penal Code, 1860 ('IPC'). The prosecution examined 10 witnesses, including the three injured witnesses. The complainant, who was examined as PW1, deposed that the accused persons are her neighbours and on 07.03.2012, the accused Bal Mukund and Sunil came to her residence under the influence of alcohol and started dragging her and beating her with bricks. She alleged that her brother came to the spot along with his friend after hearing her scream and tried to save her. She further alleged that the accused Anil and Sachin also came there carrying pieces of bricks and started beating her, her brother and his friend. She alleged that her mother was pulled out of the house and the accused Sunil gave a blow with the brick on her head. Thereafter, she alleged that the accused Sachin attacked her with a sharp edged object due to which the complainant sustained injuries on her neck and arms. She further alleged that her brother and mother also sustained injuries in the altercation.

5. The learned Trial Court noted in the impugned judgment that the prosecution had failed to prove the charges and acquitted the accused persons. It was observed that there were contradictions in the



depositions of the different witnesses. It was further observed that the incident happened in a densely populated area and the complainant had deposed that the 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.

6. Initially, the present case was numbered as an appeal, whereafter, an application was filed by the State for amendment of the nature of the case to a criminal leave petition along with another application seeking leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973 ('CrPC'). This Court by order dated 20.07.2022 had allowed the application for amendment in the interest of justice and directed renumbering of the present case.

7. The learned Additional Public Prosecutor for the State submitted that the learned Trial Court had acquitted the accused persons without application of mind.

8. He submitted that the testimonies of the victims were unduly discarded by the learned Trial Court without appreciating that evidence of injured witnesses has greater evidentiary value. He submitted that categorical allegations had been made by PW1 to PW4, who are not only the eye witnesses but also the victims, against the accused persons, and they had correctly identified the accused persons as well.

9. He submitted that minor contradictions in the testimonies of the victims are immaterial and the learned Trial Court gave undue



importance to the same.

10. He further submitted that the delay of 681 days in filing the petition was caused on account of the pandemic and due to procedural aspects, and the same ought to be condoned in the interest of justice.

11. *Per contra*, the learned counsel for the accused respondents submitted that no case is made out by the State for condonation of delay and the present petition ought to be dismissed on the ground of limitation.

12. She submitted that even otherwise, the learned Trial Court has aptly taken note of the discrepancies in the statement of the witnesses and rightly acquitted the accused respondents. She further submitted that the injuries were not corroborated by the deposition of the victims. She submitted that there was no recovery of any sharp-edged weapon from the accused persons either.

13. She submitted that the investigation is not supported by even a single impartial witness even though the incident took place in a very populated place.

ANALYSIS

14. At the outset, it is relevant to note that the present case was filed belatedly and there is an inordinate delay of 681 days in filing of the present petition.



15. It is well settled that each day of the delay is required to be explained. No worthy reasons have been pleaded in the application seeking condonation of delay that would warrant this Court to condone the delay. The relevant portion of the application seeking condonation of delay is as under:

“2. That the Ld. Addl. Prosecutor committed its report dated 11.12.2019 to the Chief Prosecutor Shahdara District who vide noting dated 29.01.2020 referred the matter to Secretary Law & Justice. Vide noting from Legal Assistant dated 6.2.2020 Law Department the file was referred to Chief Secretary and from whom to Lt. Governor who vide its approval dated 14.02.2020 sent the file to Law, Justice and Legislative Affairs from where vide order dated 18.02.2020 the file was sent to the office of the Standing Counsel (Crl.) Delhi on 29.02.2020 thereafter the said case was marked to the undersigned by the Standing Counsel (Crl.) on 05.03.2020.

3. That it is submitted that after receiving the file the complete lock-down was imposed due to the pandemic Covid-19 and as such the present appeal could not be filed. It is pertinent to mention herein that as per the Hon'ble Supreme Court Judgment as well as guidelines issued by this Hon'ble Court the limitation period has already been exempted even though the appellant preferred to file the present appeal in case this Hon'ble Court feels any delay in filing the present appeal which may kindly be condoned because the delay was not intentional or deliberate but due to the reason mentioned above.”

16. The petition was filed on 22.03.2022 and the delay is majorly attributable to the pandemic. Even otherwise, the matter has been pending before this Court since the year 2022 and this Court considers it apposite to appraise the merits of the present case.

17. 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 ***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.”

(emphasis supplied)

18. It is essentially the case of the prosecution that the testimony of the victims have not been properly appreciated by the learned Trial Court and the learned Trial Court has given undue deference to minor contradictions in the depositions.



19. While it is settled law that the evidence of an injured eye witness has greater evidentiary value and the same shall not be discarded in view of minor contradictions, it is open to the Court to assess if there are any exaggerations or inherent improbability in the evidence [Ref. ***Balu Sudam Khalde v. State of Maharashtra : (2023) 13 SCC 365***].

20. The learned Trial Court has rightly appreciated that the case of the prosecution is riddled with contradictions and there are contradictions not just in the testimonies of different witnesses, but also in the depositions made by the witnesses at different times. The learned Trial Court has taken note of the discrepancies and observed as under:

“(a) PW1 Meena Tripathi has deposed that IO came in the hospital and made inquiry from her and recorded her statement. However, PW2 Rajesh Tripathi has deposed that IO recorded statement of all at the hospital on the same day. PW7 HC Shamim Khas deposed that IO recorded the statement of complainant in my presence who had also deposed that he has not gone to the hospital with IO. PW10 SI Gajender Singh has deposed that he had recorded the statement of injured at their home.

(b) FIR is silent about beatings given by accused persons to the Rajesh, Brij Shushan and mother of complainant. There is nothing about injury to anyone else than complainant. However, PW1 deposed that accused started beating him, his brother and friend of his brother. PW3 had admitted it to be correct he has not received any injury. PW3 has further admitted that he had not personally seen the injury on Rajesh Tripathi. PW3 had also deposed that he does not remember the name of the accused who caused the injury to the Rajesh Tripathi.

(c) The version of Brij Bhushan i.e. PW3 is totally different with respect to the time when he had returned from the hospital. Though all other persons have allegedly come from the hospital late night at the date of incident itself, however, in his cross examination



*PW3 has deposed that he had left the hospital on the next day and went to his home. Though in his chief, PW3 has admitted that he has not received any injury and also that he had not personally seen the injury on the back of Rajesh Tripathi. PW3 has further deposed that he does not remember the name of accused who has caused injury to Rajesh Tripathi, though he had identified all the accused persons. PW3 has not stated anything about the presence & receiving of injury to Maya Devi. **From all the above discussion, the possibility of non presence of PW3 cannot be denied.***

*(d) PW4 Smt. Mayadevi has deposed that she alongwith her son Rajesh Tripathi and his friend Brij Bhushan came at the ground floor. But coming of PW4 with Rajesh Tripathi and Brijbhushan Tripathi has not been deposed by any other witness. **PW4 had not deposed anything about beating of any one else by the accused persons except beating given to PW1.***

(e) PW7 Ct. Shamim has submitted that IO ASI Gajender met with the complainant at the spot, however PW10 IO Gajender singh has deposed that when they have reached to the spot, they came to know that injured had already been shifted to the GTB Hospital.

(f) PW7 Ct. Shamim has submitted that IO has left him to the spot for guarding it and went himself to GTS Hospital, however PW10 IO Gajender Singh has deposed that both CT. Shamim and he himself went to the GTS Hospital.

*(g) **All PWs are unanimous that spot is situated in the densely populated area, however no neighbour has been joined in the investigation nor any neighbour has been examined as witness for supporting the case of the prosecution. In fact, the gathering of neighbours at the time of incident has been admitted by PW1 in her cross examination.***

(h) PW3 Brij Bhushan has deposed IO ASI Gajender and other constable came to the spot before they were taken to the hospital by PCR van, however every other PW has deposed that ASI Gajender reached the spot only when the complainant and other victims were already shifted to GTS Hospital.

(i) IO ASI Gajender has deposed that he alongwith complainant and others had returned to the place of complainant at 12:30am and then recorded the statement of the witnesses/victims and then proceeded alongwith Ct Shamm and complainant in search of the accused. This is again difficult to believe that after 12:30am



complainant will go alone in the night with police officials in search of the accused, despite the fact that other family members of complainant were present at house.

(j) No neighbour was joined by the IO either at the time of seizing the case property nor at the time of arrest of the accused persons nor any action was taken by the IO as per law against the persons/neighbours who have not joined investigation despite notice.”

(emphasis supplied)

21. As rightly noted by the learned Trial Court, PW1 had deposed that the IO came to the hospital to record her statement, however, PW7 (Head Constable) deposed that the IO had recorded the complainant's statement in his presence and he had not gone to the hospital with the IO. Even PW10 SI Gajender stated that he had recorded the statement of the injured at their home. The said discrepancy goes to the very root of the matter and cannot be categorised as minor.

22. It has also come on record that the FIR only mentions that the injuries being caused to one of the victims, whereas in her deposition, PW-1 deposed that the accused not only beat her but also her brother and friend of her brother.

23. As also rightly observed by the learned Trial Court, PW3 (friend of the complainant's brother) gave a totally different time of the incident and deposed that he had left the hospital on the next day, although the other victims maintained that they had returned from hospital late at night. He had also deposed that he could not tell the



name of the accused who had caused the injuries to PW-2 (brother of the victim) and he had personally not seen the injury.

24. The most relevant aspect which rightly weighed the learned Trial Court was the absence of any independent witnesses, even though the incident took place in a crowded place. It is pertinent to note that initially, in the FIR it was alleged that the injuries were caused only to the complainant, however, later on, it was alleged that injuries were suffered by the complainant, her brother, her mother and her brother's friend. There are evident substantial embellishments in the case of the prosecution. In the absence of any independent corroboration, considering the multiple discrepancies in the case of the prosecution, the evidence of the victims cannot be said to be entirely trustworthy. In the opinion of this Court, reasonable doubt has been created in favour of the accused persons.

25. It is also pertinent to note that in event of an altercation, the accused persons must have also suffered some injuries as it is only natural that the victims, including the complainant, her brother and his friend, would have tried to defend themselves. Despite the same, the entire case of the prosecution is peculiarly silent on this aspect.

26. This Court does not deem it apposite to go into detail and pen down all the other contradictions that have been taken note of by the learned Trial Court, as the aforesaid factors make it clear that no case is made out for warranting interference.

27. 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



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favour and no credible ground has been raised to accede to the State's request to condone the delay or to grant leave to appeal in the present case.

28. The leave petition along with the pending application for condonation of delay are dismissed in the aforesaid terms. Other pending application also stands disposed of.

AMIT MAHAJAN, J

JUNE 9, 2025