



2025:DHC:11235



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Date of Decision: December 11, 2025***

+ **CRL.L.P. 285/2018 & CRL.M.A. 7911/2018**  
STATE (GOVT OF NCT OF DELHI) .....Petitioner  
Through: Mr. Ritesh Kumar Bahri,  
APP for the State with Mr.  
Lalit Luthra, Adv.  
SI Neelu & Inspector Data  
Ram

versus

SONU SHARMA & ORS .....Respondents  
Through: Mr. Ashish Dutt, Adv.  
(through VC)

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

**AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 23.11.2017 (hereafter '**the impugned judgment**'), in Sessions Case No. 122/2015 arising out of FIR No. 313/2013, registered at Police Station Dwarka North, whereby the learned Trial Court had acquitted Respondent Nos. 1-2,4 of the offence under Section 395 of the IPC and Respondent No. 3 of the offence under Section 412 of the IPC.

2. Briefly stated, the FIR was registered on a complaint given by one Dhani Ram who alleged that on the intervening night of 07/08.09.2013 when he was on security duty with one Sukhbir Singh and Suresh at the BSES store, Dwarka, then at about 3:00 am, 3-4 persons reached the spot and asked them to keep quiet. It



is alleged that thereafter, one of them gave a fist blow on the complainant's face and another person hit with his leg whereafter the complainant raised an alarm. It is alleged that thereafter Suresh came out whereafter both of them were beaten by the said persons. It is alleged that the accused persons had an iron rod, a wooden stick and a pistol like object. It is alleged that the accused persons tied and gagged the complainant and the said Suresh and Sukhbir and made them sit in the store. It is alleged that thereafter, two of the accused persons kept watch and the others went to look at the items in the store. It is alleged that thereafter, upon hearing the sound of a vehicle, the accused persons left the store and bolted it from outside. Thereafter, the victims managed to free themselves and made a call at 100 number.

3. During the course of the investigation, the victims were medically examined. Respondent No. 2 was identified by Sukhbir Singh in TIP proceedings. Further, a recovery of 30 robbed aluminium plates was effected from Respondent No. 3.

4. Respondent Nos. 1-2, 4 were charged with the offence under Section 395 of the IPC whereas Respondent No. 3 was charged with the offence under Section 412 of the IPC.

5. By the impugned judgment, the learned ASJ acquitted the respondents of the charged offences. It was noted that the complainant/PW8 and victim Suresh/PW2 categorically stated that they were unable to identify the accused persons as robbers. It was noted that as far as the testimony of PW1/Sukhbir Singh is concerned, he too deposed that he could only identify



Respondent No. 2 as his face was not covered. It was noted that even the testimony of PW1 was not reliable because in his statement to the police, it was never disclosed that the faces of the other accused persons were covered. It was noted that no description of any of the robbers were given by the victims immediately after the incident.

6. It was noted that even the number of robbers who had come to commit the alleged crime was in dispute. It was noted that the version of the victims were *inter se* contradictory in relation to the numbers of persons who had visited the store. It was also noted that none of the victims were able to disclose about the articles allegedly robbed from the BSES store.

7. The learned ASJ noted that insofar as the recovery of articles from Respondent No. 3 is concerned, even though 30 aluminium plates were recovered from him, however, the said aluminium plates did not find mention in the list of robbed articles. It was further noted that no explanation was given by the Investigating Officer as to on what basis the said aluminium plates were alleged to have been robbed in the incident when the same was never included in the list of robbed articles or shown to the victims/store incharge for identification. Consequently, considering the loopholes in the version of the prosecution, the learned ASJ acquitted the respondents of the charged offences.

8. The learned Additional Public Prosecutor for the State submits that the learned ASJ erred in acquitting the respondents of the charged offences. He submits that the acquittal of the respondents was based on conjectures and surmises and is liable



to be set aside. He submits that the learned ASJ failed to take into account the fact that Respondent No. 2 was identified by PW1/Sukhbir Singh in the TIP proceedings. He further submits that the learned ASJ failed to consider that a recovery of 30 aluminium plates was made from Respondent No. 3.

9. The learned counsel for the respondents submits that the learned ASJ has rightly acquitted the respondents after duly considering the evidence of the prosecution witnesses.

### Analysis

10. 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 ***State 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.*

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*24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”*

11. In the present case, in order to establish its case, the prosecution has examined 21 witnesses out of which the victims - PW1/Sukhbir, PW2/Suresh, PW8/Dhani Ram disclosed about the manner in which the alleged offence was committed, PW10/VK Vaish (*store incharge*), PW-11/BN Prasad (*store keeper*) disclosed about the items in the store and the other witnesses disclosed about the other aspects pertaining to the investigation.

12. PW1/Sukhbir, in his evidence, stated that in the



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intervening night of 07/08.09.2013 at about 03-03:15 AM some boys assaulted him and the other victims. He stated that those boys gave beatings to them and thereafter took the victims to a store and tied them. He stated that he heard a sound of a vehicle and that those boys thereafter took the goods kept in the store and loaded the same in a vehicle. He stated that he could identify Respondent No. 2 as he was not wearing a muffler. He further stated that he could not identify the faces of the other robbers as they were wearing a muffler. The said fact that some of the accused persons were wearing a muffler was not mentioned in the statement recorded under Section 161 of the CrPC. On being cross examined by the learned counsel for the accused, PW1 stated that he did not see any of the robbers while entering or leaving the store. He further stated that 4-5 persons gave beatings to him in the guard room. He further stated that he did not see the accused persons taking any articles from the store.

13. PW2/Suresh, in his evidence, stated that on the night of the incident, some boys assaulted him alongside the other victims and thereafter took them in the store and tied them. He stated that he heard the sound of a vehicle and thereafter the said boys took the goods kept in the store and loaded the same in the vehicle and thereafter bolted the store from outside and fled the spot. He further stated that he cannot identify any of the robbers as some of them were wearing a muffler. On being cross examined by the learned counsel for the accused, he stated that 6 persons had entered the store. He further stated that he did not know about the articles that were robbed from the store. The said victim too, in



his statement under Section 161 of the CrPC, did not disclose about the fact that some of the accused persons were wearing a muffler.

14. PW8/Dhani Ram, stated that on the night of the incident, 5-6 persons came towards him and started beating him mercilessly and broke his teeth. He stated that the said persons broke open the locks of the godown and tied the victims to a chair. He stated that thereafter, the said persons broke the lock of the shutter and stole articles from the store and loaded them in a tempo. He stated that the said persons fled from the spot after bolting the door from outside. PW8 was not able to identify the accused persons. On being cross examined by the learned counsel for the accused, PW8 stated that he did not see the vehicle and only heard the sound of the vehicle which sounded like a tempo.

15. PW10/V K Vaish (store incharge) stated that in the morning of 08.09.2013, he made a list of the stolen articles and handed over the same to the police.

16. From an examination of the material on record, this Court does not find any ground to interfere with the finding of the acquittal of the respondents for the following reasons:

17. *Firstly*, the testimony of PW2 and PW8 would reveal that they were not able to identify the respondents as one responsible for the commission of the alleged offences. While PW1 identified one of the accused persons being Respondent No. 2, the same, as rightly noted by the learned ASJ did not inspire confidence in the light of the fact that none of the victims in their statements under Section 161 of the CrPC made a whisper about some of the



accused persons wearing a muffler.

18. *Secondly*, there was a discrepancy in regard to the total number of persons who had entered the store and the version of the victims runs *inter se* contradictory to each other. From a perusal of the material on record, it is apparent that PW1 stated that 4-5 persons gave beatings to him in the guard room. PW2 on the other hand stated that 6 persons had entered the store on the night of the incident. Contrarily, PW8 stated that on the night of the incident, 5-6 persons came towards him and started giving beatings to him.

19. *Thirdly*, none of the victims could narrate an account of the items stolen from the BSES store. In fact, from the cross examination of the store incharge/PW10, it is apparent while a list of stolen articles were given to the police, there was no list to draw a comparison between the items present in the store a day before the occurrence of the alleged incident and the missing stock a day after the commission of the alleged incident.

20. *Fourth*, insofar as the recovery of 30 aluminium plates from Respondent No. 3 is concerned, from the list prepared by the store incharge/PW-10 it is apparent that the recovered plates do not form part of the list prepared by PW10. In fact, as is evident from the testimonies of the victims, they did not know what articles were stolen from the shop and they were also not shown the alleged recovery made from Respondent No. 3. Nothing has been presented by the prosecution to link the alleged recovery of aluminium plates from Respondent No. 3 with the present case.



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21. On such a conspectus of facts, this Court is of the opinion that the case of the prosecution is marred with manifest discrepancies and does not establish the guilt of the respondents beyond reasonable doubt.

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

23. The leave petition is therefore dismissed in the aforesaid terms. Pending application also stands disposed of.

**AMIT MAHAJAN, J**

**DECEMBER 11, 2025**

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