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

% ***Date of Decision: 19th March, 2025***

\+ **CRL.L.P. 290/2018 & CRL.M.A. 8121/2018**

STATE .....Petitioner

Through: Mr. Aashneet Singh, APP for the State
SI Amit Kumar, PS-Dwarka South

versus

PRAVEEN & ANR .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petition is filed under Sections 378 of the Code of Criminal Procedure, 1973 (hereafter '**CrPC**'), for setting aside the judgement dated 22.09.2017 (hereafter '**impugned judgement**') passed by the learned Additional Sessions Judge (**ASJ**), Special Judge (NDPS), Dwarka Courts, Delhi, in FIR No. 240/2011 registered at Police Station Dwarka South for offences under Sections 392/394/308/323/342/34 of the Indian Penal Code, 1860 (hereafter '**IPC**').

2. By the impugned judgement, the learned ASJ acquitted the respondents of the offences charged under Sections 308/34 of the IPC, holding that the prosecution failed to prove the allegations

against the accused beyond reasonable doubt, as there were contradictions in the statement of the complainant and the independent witnesses. The learned ASJ observed that there were severe inconsistencies in the depositions of the two injured persons and the evidence adduced by the prosecution in respect to consumption of liquor, recovery of the weapon of offence as well as the conduct of the investigation. It held that there was nothing on record to show that the injury caused to the injured persons was inflicted upon them by the respondents.

3. The FIR was registered at the instance of Dev Raj / PW3, alleging that on 22.08.2011 at about 8:35 pm, he received a call from Respondent No. 1, who invited the complainant to his birthday party at Snooker Point, Ramphal Chowk, Sector-7, Dwarka, New Delhi (hereafter '**place of incident**'), where the complainant went along with his cousin brother namely– Ram Singh/ PW9. It is alleged that there were already 4-5 boys at the place of incident and later 3-4 more boys were called by Respondent No. 2.

4. It is alleged that a quarrel took place when Respondent No. 1 started taunting the complainant for not having lent him Rs. 20,000/- and thereafter inflicted beatings on the complainant with hands and legs. It is stated that Respondent No. 2 hit the complainant with an iron stool and when Ram Singh came to rescue the complainant, he was also beaten by a '*danda*'. It is further alleged that Respondent No. 1 also took away a gold chain from the neck of the complainant. It is stated that the

complainant along with Ram Singh escaped from the place of incident in order to save their lives.

5. It is stated that the injured persons refused to give their statements on 22.08.2011 as they were in pain and therefore the Daily Diary Entry was kept pending, and the FIR was thereafter registered on 24.08.2011, when the complainant appeared before the Police Station to give his statement.

6. It is the case of the prosecution that based on the statement of the complainant, on 24.08.2011 itself, both the respondents were arrested and the iron stool was seized. The *danda* was also seized on 26.08.2011, from the house of Respondent No. 1 at WZ-800, Village Palam New Delhi.

7. Chargesheet was filed in the present case, whereafter the matter was committed to the learned Court of Sessions. The learned ASJ *vide* order dated 29.10.2013, discharged the respondents under Sections 392/394/323/342 of the IPC and framed charge under Sections 308/34 of the IPC.

8. The prosecution examined 11 witnesses, including the injured persons, the medical officials as well as the investigating officers. The defence examined one witness namely– Prashant Sharma, who was present at the place of incident on 22.08.2011.

9. As noted above, the learned ASJ *vide* the impugned judgment, acquitted the respondents of the offence under Sections 308/34 of the IPC.

10. The learned Additional Public Prosecutor ('APP') submits that the learned ASJ failed appreciate the testimony of PW3 and

PW9 which are clear and categorical with regard to the occurrence of the offence, and that both these witnesses have been duly cross-examined.

11. He submits that the learned ASJ erred in relying upon the MLC, which reflects consumption of liquor by the injured persons, to note that the possibility of the injured persons falling and sustaining injuries cannot be ruled out, without such defence ever being led by the respondents. He places reliance on the judgement passed by the Hon'ble Apex Court in ***State of Maharashtra v. Ramlal Devappa Rathod*** **: (2015) 15 SCC 77** and ***Bipin Kumar Mondal v. State of W.B.*** **: (2010) 12 SCC 91** to state that the sole testimony of the injured witnesses is sufficient to base the conviction of the accused.

12. He submits that the learned ASJ erred in not appreciating the medical evidence in respect of the injuries sustained by the injured persons. He submits that the rest of the discrepancies noted by the learned ASJ are in the nature of conjectures and surmises, which are not sustainable in the eyes of law.

13. He further places reliance on the judgement passed by the Hon'ble Apex Court in ***Yogesh Singh v. Mahabeer Singh*** **: (2017) 11 SCC 195,** wherein it was observed that minor contradiction and inconsistencies should not affect the core of the prosecution case and should not be a ground to reject the prosecution evidence.

Analysis

14. It is trite law that 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.*
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> ***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.***
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> ***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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> (emphasis supplied)

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

16. The learned ASJ 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 case of the prosecution, some of which are broadly discussed hereunder:

Contradictions in the case of the prosecution

17. The injured complainant/ PW3 has stated in the complaint that he along with PW9 somehow escaped from the alleged incident to save their lives. In his examination in chief, though he stated that he fell unconscious due to the injuries sustained by him during the quarrel, and when he regained his consciousness, he called the police and was taken to DDU Hospital.

18. PW2 Ct. Vijay Singh, who is a formal witness, has stated that on receiving a call, he along with the IO reached the place of incident, where they came to know that the injured persons were already admitted in DDU Hospital.

19. A combined reading of these statements creates a doubt upon the credibility of the story of the prosecution that the delay of 2 days in registering the FIR was owing to the fact that the injured persons were in pain and not in a position to give their statement on the day of the alleged offence. The inconsistency in the statements of the injured complainant and the delay in

registering the FIR *prima facie* reflects to be an afterthought, to implicate the respondents.

20. Another contradiction in the case of the prosecution is that PW2 has stated in his examination in chief that the accused persons/ respondents were arrested on 24.08.2011 from the place of incident. During cross-examination, he stated that Respondent No. 1 was arrested from Village Palam and Respondent No. 2 was arrested from Naseerpur on 24.08.2011, and thereafter recovery of the stool was made at his instance.

21. Consequently, the learned ASJ reasonably observed that there are discrepancies in regard to the place of arrest of the accused persons/ respondents. The learned ASJ has further noted that only the recovery of the stool and *danda* are not enough to convict the respondents of the alleged offence, in the absence of any scientific evidence in respect of the same being the weapon of the alleged offence.

22. The observations made by the Hon'ble Apex Court in ***Krishnegowda v. State of Karnataka*** **: (2017) 13 SCC 98** are relevant to note here. 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****."*
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> (emphasis supplied)

Oral evidence contrary to documentary evidence

23. The injured complainant/ PW3 and PW9 deposed that due to Janmashthmi festival, they had not consumed liquor, however, the MLCs of the injured persons, that is, Ex. PW4/A and Ex. PW5/A, indicate that they had consumed liquor on the day of the alleged incident.

24. PW4, PW5, PW8 and PW10 are doctors, who have proved the MLCs of the injured persons. PW10, who has proved the MLC of the injured complainant, that is, Ex. PW5/A, admitted during cross-examination, that the possibility of the injuries mentioned in the MLC, being self-inflicted by the patient/ injured complainant, cannot be ruled out.

25. The contents of the MLCs and statement of the medical experts, *prima facie* reflects the possibility of the injuries being caused to the injured persons as a result of consumption of liquor by them. In this regard the learned ASJ rightly observed as under:

> *"oral testimony is contradictory to the documentary evidence, so Court has always to be conscious that if they had consumed liquor, the possibility of falling after consumption cannot be ruled out"*

The observation made by the learned ASJ is in conformity with the view taken in ***Krishnegowda v. State of Karnataka*** *(supra)*, which is extracted hereunder:

> *"42. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear laches in the investigation, then the benefit of doubt has to go to the accused.*
> *43. Going by the material on record, we disagree with the finding of the High Court that the ocular evidence and the medical evidence are in conformity with the case of the prosecution to convict the accused. The High Court has brushed aside the vital defects involved in the prosecution case and in a very unconventional way convicted the accused."*

Lack of information from independent witnesses

26. As per the material on record, there were 6-7 more people who witnessed the alleged incident. It is also relevant to note that the place of incident was a guarded place, as it was in a market area. The learned ASJ 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 guards present at the place of incident or from the public present at the market. One Prashant Sharma, who was present during the alleged witness was examined as DW1, who has denied the alleged incident and stated that the injured persons were in a heavily drunk condition when they came to the place of incident and started demanding liquor from Respondent No. 1, and thereafter they were asked to leave the place. The learned ASJ has not relied upon his statement as the prosecution evidence had already created doubt upon the case of the

prosecution. In this regard, 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.***
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> *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**."*
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> (emphasis supplied)

27. The learned ASJ, thus, taking note of all the inconsistencies in the prosecution evidence, held that there have been material contradictions between the statements of the witnesses and the material facts and therefore the prosecution failed to prove its allegations beyond reasonable doubt.

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

29. 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. 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, reappreciate 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 strong circumstances", "distorted conclusions", "glaring*

> *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."*

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

31. The present petition is filed with a delay of 127 days. Apart from the usual excuses which are taken by the Government Departments, no worthy reason has been mentioned which would entitle the application for condonation of delay, that is, CRL. M.A. No. 8121/2018, to be allowed. The application merely states that the impugned judgement was pronounced on 22.09.2017 and the certified copy of the same was applied for the same day, however it was made available to the concerned authority on 10.10.2017, who prepared the acquittal report on 12.10.2017. It is stated that after various administrative process for requisite formalities, the Department of Prosecution forwarded the file for appeal to the Standing Counsel (Criminal)

on 24.02.2018, whereafter it was marked to the learned APP.

32. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. The Hon'ble Apex Court, in the case of ***Postmaster General v. Living Media India Ltd.* : (2012) 3 SCC 563**, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

33. The Hon'ble Supreme Court in the case of ***State of M.P. v. Bherulal* : (2020) 10 SCC 654**, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

> *"6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any*

> *action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation."*

34. It is apparent that no explanation has been given for condoning the delay in filing the appeal.

35. The petition is, therefore, dismissed on the ground of delay as well as on merits.

36. Pending applications also stand disposed of.

AMIT MAHAJAN, J

MARCH 19, 2025