



2025:DHC:3775-DB



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

Date of decision: 13th MAY, 2025

IN THE MATTER OF:

+ **CRL.L.P. 635/2023 & CRL.M.A. 35239/2023**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav and Mr. Lalit Luthra, Advocates along with SI Sachin, Insp Rajeev, P.S. Ashok Vihar.

versus

MOHD. AKRAM AND ORS.

.....Respondents

Through: Mr. Ravi Drall, Advocate for Respondent No.6
Mr. Aseem Bhardwaj, Mr. Aayush Gupta, Ms. Sunidhi Gupta and Ms. Nikita Vijay for Respondents No.1,2,5 and 7
Mr. Vishesh Wadhwa (DHCLSC), Ms. Swadha Gupta and Mr. Vishwam Mishra, Advocates for Respondent No.3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The present Petition under Section 378(1) of the Cr.P.C has been filed by the State seeking grant of leave to appeal against judgment dated 05.05.2022, passed by the learned Additional Sessions Judge, North West District, Rohini Courts, in SC No.51916/2016 arising out of FIR No.26/2011, registered at Police Station Ashok Vihar for offences under Sections 302, 396, 412, 120B IPC and Sections 25, 27, 59 of the Arms Act.



2. Shorn of unnecessary details, the facts leading to the present Petition are that on 29.01.2011, the accused/Respondents herein, in furtherance of a criminal conspiracy to commit dacoity, armed with country made pistols and knives, entered in the factory No.A-104, WPIA, Second Floor, Ashok Vihar, Delhi, and committed robbery. It is stated that the Respondents beat the employees of the factory and murdered Anil, who was the owner of the factory and took a black-coloured bag belonging to the deceased/Anil containing one packet of 100 notes from the drawer of the factory and fled. It is stated that FIR, being FIR No.26/2011, was registered at Police Station Ashok Vihar for offences under Sections 302, 394, 397, 34 IPC. It is stated that the accused were arrested by the Special Staff on 21.02.2011. After investigation trial commenced.

3. After consideration of the material on record, the Trial Court acquitted all the accused by observing as under:

"38. From the above discussion, it is evident that none of the accused persons were arrested from the spot. The accused persons were arrested in the present case on the basis of their disclosure statements which were recorded during the custody of the police and nothing incriminating has been recovered, so, the disclosure statements of the accused are inadmissible. The investigating officers have failed to recover the weapon used in the commission of the offence. The weapons recovered during investigation are not the weapon of offence. The accused persons were neither known to the complainant nor the other witnesses and the witnesses had the occasion to see many of the accused persons for the first time during their testimony in the court after the date of incident. None of the witnesses had disclosed any distinctive feature of any of the accused persons in their statements. In their entire



statements u/S. 161 Cr.P.C, there is no mention of physical description, facial features or the clothes worn by the accused persons, leave aside any distinctive features. All the witnesses categorically admitted during their cross examination that there is no mention in their statements that they can identify the accused persons, who had committed the offence.

39. All the material witnesses failed to identify accused Ranjeet during his TIP proceedings. Interestingly, when they were threatened outside the Rohini Jail where accused Mohd. Afsar was mistakenly taken by the Jail Van, they neither disclosed about the said threats to any of the police officials, to the IO, to the Jail Superintendent and the concerned Metropolitan Magistrate who was present there for the TIP at that time. Further, these witnesses wrongly identified some other accused persons in the court as the persons whom they had identified before the police officials on 05.03.2011.

40. The chance prints/ finger prints lifted from the table top of the spot did not match with the finger prints of accused Neeraj and Ranjeet. As per the ballistic report Ex PW44/A, 8 mm I .315" cartridge case marked Ex.EC1 has not been fired through the country made pistol .315" bore mark F1 in case FIR no.113/11 PS North Rohini (FSL -2011/F-4853).

41. The interval of time in which the entire offence of robbery and murder allegedly happened, and the nature of interaction of the witnesses namely PW3 Meghraj, PW7 Naval Kishore, PW19 Uma Shankar and PW20 Indal had with the accused persons was for a very short duration. Thus, it is dear in view of the above discussion, specially the testimony of these



witnesses, much evidentiary value cannot be attached to the sole identification of the accused persons in the court where identifying witnesses are total stranger who had just a fleeting glimpse of the persons identified in the absence of any corroboration. In view of the contradictions in the testimony of the witnesses and in the absence of any corroboration by any other evidence, the identification of the accused persons for the first time in the court does not form the basis for conviction."

4. It is this Order against which leave to appeal is being sought by the State by filing the present Petition.

5. Learned APP for the State primarily relies on the deposition of PW-3, 7, 19 & 20 to contend that PW-3, Mr. Megh Raj, who was present at the factory on the date of the incident has deposed that he saw Naval Kishore, one of the employees of the deceased-Anil, being beaten by two persons, i.e. Mohd. Akram (Respondent No.1 herein) and Neeraj (Respondent No.6 herein). Learned APP states that PW-3 has also identified Naushad (Respondent No.4 herein) and Ranjeet (Respondent No.7 herein). PW-3 has deposed that it was Ranjeet who had fired on the deceased/Anil. It is stated by the learned APP that nothing has been brought out to discredit the deposition of PW-3. Learned APP for the State has also relied on the deposition of PW-7, Mr. Naval Kishor, who was an employee of the deceased/Anil. He states that PW-7 has identified all the accused in Court by stating that these persons were present outside the office of the deceased on the day of the incident. PW-7 has also stated that it was Ranjeet who shot the deceased. Learned APP for the State has also placed reliance on the deposition of PW-19, Uma Shankar, who worked as a security guard in the factory of the deceased. He states that PW-19 also identified Ranjeet



(Respondent No.7 herein), Hari Singh (Respondent No.3 herein) and Neeraj (Respondent No.6 herein) in Court and has deposed that it was Ranjeet who fired at the deceased/Anil and that it was Neeraj who beat Naval Kishore. PW-19 has also deposed that Hari Singh took the bag of cash from the cabin. Learned APP for the State has also placed reliance on the deposition of PW-20, Mr. Indal, who is one of the workers of the factory. He states that PW-20 has also identified Hari Singh, Ranjeet, Mohd. Akram and Naushad by stating that they were having country made pistols in their hands. PW-20 has also identified Umar by stating that he saw Umar carrying a knife in his hands and was standing at the gate of the factory. PW-20 also identified Neeraj and Mohd. Afsar (Respondent No.2 herein). Learned APP for the State contends that the evidence of these witnesses has not been appreciated by the learned Additional Session Judge in proper perspective. He contends that the fact that the witnesses could not identify the accused during the Test Identification Parade (TIP) is of no consequence because the witnesses were threatened by the accused. He states that PW-7 has deposed that he was threatened by the accused. He further contends that Mohd. Afsar is bad character of the area. He contends that the learned Additional Session Judge has disbelieved the recovery of the bag by stating that said bag is commonly available and the place from where the bag was retrieved is in a populated area and that no public witness has joined while the recovery was made. He states that PW-37 has specifically deposed that he had requested public to join the recovery but everyone refused to join. He, therefore, states that the present Petition be allowed.

6. Per contra, learned Counsel for the Respondents support the Order of acquittal by stating that there is no recovery of gun and the ballistic report



does not prove the case of the prosecution. He also states that the identification of the accused/Respondents in Court alone cannot lead to conviction, more so when the Respondents were not identified during TIP.

7. Heard the learned APP for the State and the learned Counsel for the Respondents and perused the material on record.

8. The scope of grant of leave to appeal has been explained by the Apex Court in State of Maharashtra v. Sujay Mangesh Poyarekar, (2008) 9 SCC 475, wherein the Apex has observed 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.

22. *In Sita Ram v. State of U.P. [(1979) 2 SCC 656 : 1979 SCC (Cri) 576] this Court held that : (SCC p. 669, para 31)*

“31. ... A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the [concept] that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure.”

We are aware and mindful that the above observations were made in connection with an appeal at the instance of the accused. But the principle underlying the above rule lies in the doctrine of human fallibility that “Men are fallible” and “Judges are also men”. It is keeping in view the said object that the principle has to be understood and applied.

23. *Now, every crime is considered as an offence against the society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed.*

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."

9. In the said Judgment the Apex Court has held that while dealing with a petition for leave to appeal what the Court has to see is as to whether a *prima facie* case is made out and arguable grounds have been raised and not whether an order of acquittal be set aside.

10. Applying the parameters laid down by the Apex Court to the facts of the present case, the accused have been identified by PW-3, 7, 19 & 20 in Court. PW-3, 7, 19 & 20 have been consistent in their deposition in the manner in which the incident took place.

11. Learned Additional Session Judge has put a lot of stress on the fact that the recovery of the bag is doubtful. It has also laid emphasis on the fact that ballistic report does not support the recovery of gun from the accused. The issue as to whether the deposition of the witnesses will or will not lead to proving the case beyond reasonable doubt would be a matter of argument in appeal. As stated by the Apex Court, while considering an Petition for leave to appeal, the Court does not go into the question to decide as to



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whether the order of the Trial Court is perverse or not as the same would be decided at the time of hearing of appeal.

12. In the opinion of this Court, the finding of the learned Additional Session Judge that the ballistic report does not support the case of the prosecution alone cannot lead to the conclusion that the deposition of PW-3, 7, 19 & 20 is wrong.

13. This Court is, therefore, of the opinion that a case for leave to appeal is made out.

14. Accordingly, the present Petition is allowed and leave to appeal is granted to the State. The Registry is directed to register the present petition as an appeal.

15. List before the concerned Registrar for further proceedings on 14.07.2025.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHANSHANKAR, J

MAY 13, 2025

Rahul