



2025:DHC:9021



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:10.10.2025

+ **CRL.L.P. 349/2022 & CRL.M.A. 14105/2022**

STATE OF NCT OF DELHI

..... Petitioner

versus

SHYAM DULARI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Priyanka Dalal, APP for the State for the State SI Mahendra Koli, PS Bhalswa Dairy

For the Respondent : Mr. Deep Dhamija & Ms. Santoshi Yadav, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 09.09.2020, (hereafter '**the impugned judgment**') passed by the learned Sessions Judge in Criminal Appeal No. 14/2017 arising out of FIR No. 205/2011, registered at Police Station Bhalswa Dairy. By the impugned judgment, Respondent Nos. 1-3 were



acquitted of the offences under Sections 323/34 of the Indian Penal Code, 1860 ('IPC') and Respondent No. 4 of the offences under Sections 451/354/323/34 of the IPC.

2. Briefly stated, the FIR was registered on a complaint given by one Ms. A. It is alleged that on 17.12.2011, at about 11:30 am, Respondent No. 4, who resided in the same neighbourhood as the complainant, forcibly entered the house of the complainant, brought her outside her house by holding her hand, dragged her onto the *gali* saying that he would teach her a lesson and also tore the complainant's suit. It is alleged that thereafter, the complainant's mother reached the spot and tried to rescue the complainant from the clutches of Respondent No. 4. It is alleged that in the meantime, Respondent Nos. 1-3 also reached the spot and thereafter inflicted beatings on the complainant and her mother. It is alleged that the complainant somehow managed to escape, and thereafter ran towards her house and dialled at 100 number.

3. By the judgment dated 03.01.2017, the learned Trial Court convicted Respondent Nos. 1-3 for the offence under Section 323/34 of the IPC and Respondent No. 4 for the offence under Sections 451/354/323/34 of the IPC. By order on sentence dated 07.01.2017, Respondent Nos. 1-3 were sentenced to undergo simple imprisonment for a period of 1 year and to pay a fine of ₹2000/- each for the offence under Section 323/34 of the IPC. Further, Respondent No. 4 was sentenced to undergo simple imprisonment for a period of 2 years and to pay a fine of ₹2000/- for the offences under Sections 354/451/323



of the IPC.

4. By the impugned judgment, the learned Sessions Court in appeal filed by respondents, acquitted the respondents of the charged offences. It was noted that the case of the prosecution was marred with discrepancies and evidentiary gaps and failed to establish the guilt of the respondents beyond reasonable doubt. It was noted that as per the testimony of PW2/mother of the complainant, she was the eye-witness to the entire incident. It was noted that despite the same PW2 failed to mention anything in regard to Respondent No. 4 tearing the clothes of the complainant. It was noted that none of the other alleged independent witnesses, who were also neighbours of the complainant, deposed anything regarding Respondent No. 4 tearing the clothes of the complainant.

5. It was noted that there existed discrepancies even in regard to the date on which the alleged incident took place. It was noted that while the PWs and the complainant herself claimed that the incident took place on 17.12.2011, the testimonies of DW-5 to DW-7, who were independent defence witnesses, claimed that the alleged incident occurred on 16.12.2011 when the complainant and her family pelted stones at the house of the respondents.

6. The learned Sessions Court also took note of the fact that it was an admitted case of the parties that much prior to the present incident, a quarrel had taken place between the parties on 28.02.2011 in respect of which a DD Entry 61B was also given as per which some injuries were caused to the respondents by the complainant. It was noted that it



was not the case of the prosecution that the DD entries were false or fabricated. It was consequently noted that the possibility of the present FIR being motivated also could not be ruled out.

7. The learned Sessions Court further noted that as per the medical record only minor abrasion was found on the forehead and right cheek and swelling on the left side of the head of the complainant. It was noted that medical record did not support the case of the prosecution that the complainant was dragged from her house to the *gali*. The learned Sessions Court also took note of the testimony of PW6/Dr Yogesh who opined that he could not state as to how the injuries were inflicted as there could be many reasons for the same.

8. It was also noted that Respondent No. 4 produced on record a letter issued by his employer to establish that he was not even present at the spot when the alleged incident took place. It was noted that while Respondent No. 1 was arrested on 17.12.2011, the other respondents were arrested only on 25.12.2011. It was noted that the said fact coupled with the testimony of the other defence witnesses went on to show that there was some truth in the narrative pressed by Respondent No. 4 that he was not present at the spot on the day of the incident. Consequently, considering the discrepancies in the case of the prosecution, the learned Sessions Court acquitted the respondents of the charged offences.

9. The learned Additional Public Prosecutor for the State, at the outset, sought condonation of delay of 587 days in filing the present petition. She submitted that considerable time was taken for procuring



the certified copy of the impugned judgment and the delay was in part caused on account of the pandemic. She further submitted that initially the learned APP and the Director of Prosecution opined that the case was not fit for appeal. She submitted that the file went through various officers and departments and after receiving the assent from the office of Lt. Governor, the appeal was sent to Additional Public Prosecutor for preparing *performa* of appeal. She submitted that the delay was caused on account of the pandemic as well as due to the fact that the file pertaining to the present case was sent before various authorities.

10. Insofar as the merits of the case is concerned, the learned Additional Public Prosecutor for the State submitted that impugned order is based on conjectures and is liable to be set aside. She submitted that the complainant had identified her torn suit and had made categorical allegations against the respondents. She submitted that the learned Sessions Court failed to take into account the injuries suffered by the complainant. She submitted that the learned Sessions Court failed to take into account that PW2/mother of the complainant supported the case of the prosecution on material points. She consequently submitted that the impugned judgment is perverse and is liable to be set aside.

11. The learned counsel for the respondents vehemently opposed the condonation of delay of 587 days in filing of the present petition. He submitted that no proper explanation has been asserted for the delay apart from vague assertions of administrative issues. He submitted that even otherwise, the impugned judgment is well



reasoned and warrants no interference by this Court.

Analysis

12. Before advertent to examine the case on its merits, it is pertinent to note that the present petition has been filed with a delay of 587 days. It is well settled that each day of the delay is required to be explained. In the application for condonation of delay, it is mentioned that the delay was caused on account of the pandemic as well as due to the fact that the file pertaining to the present case was sent before various authorities.

13. The Hon'ble Apex Court has frowned upon weaponing of the administrative procedure by the Government departments as a ground to seek condonation of delay. 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.

14. Consequently, unless a satisfactory explanation is provided for the delay, the same cannot be condoned. As held by the Hon'ble Apex Court, the Government departments are obliged to ensure that they perform their duties with diligence and commitment.



15. Although lackadaisical attitude of officials and inefficiency of the State mechanism alone cannot be deemed to be sufficient reason to warrant condonation of delay, considering that some period was excluded for the purpose of limitation on account of COVID-19 pandemic by the Hon'ble Apex Court, this Court considers it apposite to also consider the case on merits.

16. 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 reappreciation, 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.”

17. In the present case, in order to establish its case, the prosecution relied upon 11 witnesses out of which PW1/complainant and PW2/mother of complainant deposed about the manner in which the incident took place, PW-3 and PW-7 gave account of the alleged beatings inflicted on the complainant and her mother, PW-6 deposed about the injuries caused to the complainant and the other witnesses deposed about the manner in which the investigation was conducted.

18. PW1/complainant stated that on 17.12.2011 at about 11/11:30 am when she was alone in her house and her mother had gone to bring some articles from the shop, Respondent No. 4 knocked on the door of her house, and upon opening, he forcibly entered into the house,



caught hold of her hand, dragged her in a *gali* while stating that he would teach her a lesson and also tore her suit. She stated that in the meantime, her mother reached the spot and tried to rescue her from the clutches of Respondent No. 4. She stated that during such time, Respondent Nos. 1-3, who are the family members of Respondent No. 4, reached at the spot and started inflicted beatings on her and her mother. She stated that she somehow managed to escape and thereafter ran towards her home and dialled at 100 number. Upon being exhibited, PW1/complainant also identified her torn suit.

19. PW2/mother of the complainant deposed that on the day of the incident at about 11-12 noon when she was returning after purchasing articles from the shop, she saw that Respondent No. 4 was dragging PW1/complainant out of her house towards the *gali*. She stated that she rushed to the spot and tried to save her daughter from the clutches of Respondent No. 4, however, in the meantime Respondent Nos. 1-3 arrived at the spot and started inflicting beatings on the complainant and herself. She stated that the complainant somehow managed to escape and thereafter ran home and called at 100 number.

20. PW3/Gulab Singh stated that the incident took place on 17.12.2011 at about 11-11:30 am. He stated that he was running a general store in the *gali* and saw that the respondents were inflicting beatings on the complainant and her mother.

21. PW6 stated that there was an abrasion on the forehead and right check and on the left side of the head.

22. PW7 deposed that she did not remember the exact date of the



incident, however, the door of her house opened towards the *gali* where the incident took place. She stated that she heard some noise and upon opening the door, she saw that the respondents were giving beatings to the complainant and her mother.

23. In their defence, the respondents denied all the allegations levelled against them. Respondent No. 4 further stated that there was previous enmity between the complainant and their family and that a complaint was also given by their family against the complainant in February, 2011. He further stated that on the day of the incident, he was in Sonapat, Haryana. Further, DW-5, DW-6 and DW-7 deposed that no quarrel took place on 17.12.2011 and that on 16.12.2011 the complainant and her family members were pelting stones on the house of the respondents.

24. The case of the prosecution essentially rests upon the evidence of the complainant and her mother. The State has emphasised that the learned Sessions Court had been overtly weighed by minute inconsistencies in the evidence of the witnesses even though the same was not material in nature.

25. From a perusal of the material on record, it is apparent that there were gaps in the case of the prosecution and that the prosecution failed to establish the case against the respondents beyond reasonable doubt.

26. It is the case of the PW1/complainant that Respondent No. 4 forcibly entered her house, dragged her into a *gali* and tore her clothes. From a perusal of the testimony of the mother of the complainant/PW2, it is apparent that she asserted that she was witness



to Respondent No. 4's act of dragging the complainant out of her to the *gali*. It is pertinent to note that despite the same, no whisper in relation to Respondent No. 4 tearing the clothes of the complainant was made. The same is also absent from the testimony of the other prosecution witnesses being PW3 and PW7 who did not mention anything in relation to Respondent No. 4 tearing the clothes of the complainant. The same, as rightly noted by the learned Sessions Court, is a material fact and discrepancies in relation to the same cast serious doubts on the veracity of the case of the prosecution.

27. The case of the prosecution is further belied by the medical record which indicates that the complainant had only suffered abrasion on the forehead and right cheek and on the left side of the head. The entire case of the prosecution is that the complainant was forcibly dragged from her house by Respondent No. 4 into a *gali*. As rightly appreciated by the learned Sessions Court, the injuries sustained by the complainant does not indicate that she was forcibly dragged to a certain distance. In that regard, PW6/Dr. Yogesh had also opined that he could not state as to how the injuries were inflicted as there could be many reasons for the same.

28. It is also pertinent to note that the prosecution witnesses as well as the DW5 – DW7 took contradictory stances in relation to the alleged date on which the incident took place. While the prosecution witnesses asserted that the incident took place on 17.12.2011, DW5 – DW7 asserted that no quarrel took place on 17.12.2011 and that on 16.12.2011, the complainant and her family were seen pelting stones



on the house of the respondents.

29. It is an admitted case of the parties that a criminal case was registered by the daughter of Respondent No. 1 against the complainant ten months prior to the date of the alleged incident. Considering the pending litigation between the parties, as rightly noted by the learned Sessions Court, the possibility of a motivated complainant cannot be ruled out.

30. After considering the totality of the circumstances, 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.

31. The leave petition along with the pending application for condonation of delay are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 10, 2025

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