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

% **Date of order: 5th March, 2025**

\+ CRL.L.P. 399/2017 & CRL.M.A. 11454/2017

STATE .....Petitioner

Through: Ms. Priyanka Dalal, APP for the State along with SI Anil

versus

DANISH & ORS .....Respondents

Through: Respondents appeared in person.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present criminal leave petition under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023] has been filed on behalf of the appellant/petitioner seeking leave to appeal against the judgment dated 6th December, 2016 (hereinafter "impugned judgment") passed by the Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter "ASJ") vide which the respondents have been acquitted for the offences punishable under 365, 395, 397 and 412 of the Indian Penal Code, 1860 (hereinafter "IPC") registered at Police Station – Seemapuri, Delhi.

2. The brief facts that led to the filing of the instant petition are as

follows:

a. On 29th October, 2012 at 6:17 AM, Police Station – Seemapuri, Delhi received information that two persons had assaulted a victim, snatched his wallet containing an ATM card, driving license and cash, and damaged the vehicle.

b. The victim/complainant, Rajpal Singh, a driver for IBN7, was found injured near a CNG pump and was sent for medical treatment at GTB Hospital.

c. Upon regaining consciousness, the complainant reported that on 28th October, 2012, at 11:30 PM, while having dinner at a roadside eatery, four unknown men asked him to take them towards Seemapuri. Upon reluctance by the victim, the unknown men threatened him with a *katta*, robbed him and assaulted him until he lost consciousness.

d. The complainant later discovered himself tied up inside the vehicle's trunk near a fuel station, where a passerby helped him. Based on the statement of the complainant, FIR No. 442/2012 was registered for the offences punishable under Sections 365, 395, 397 and 34 of the IPC.

e. The accused Danish, Laxman, Rahul, Rajkumar and Amit were arrested on various dates between October and December, 2012 and some stolen articles such as wallet, ATM card, driving license were allegedly recovered at the instance of accused persons.

f. The prosecution examined 19 witnesses to establish the charges. The learned Sessions Court acquitted all accused vide the impugned judgment dated 6th December, 2016, holding that the prosecution

failed to establish guilt beyond reasonable doubt noting various investigating lapses, contradictions in police witness testimonies, lack of independent witnesses and inconclusive forensic evidence.

g. Aggrieved by the impugned judgment, the petitioner has filed the present leave to appeal.

3. Ms. Dalal, learned APP appearing on behalf of the petitioner submitted that the impugned judgment passed by the learned Trial Court is erroneous and unsustainable in the eyes of law. The findings recorded therein suffer from misappropriation of evidence and legal infirmities and therefore, the said judgment is liable to be set aside.

4. It is submitted that the impugned judgment is based on presumptions, conjectures and surmises, rather than a proper appreciation of evidence. As such, it cannot withstand the scrutiny of law and is liable to be set aside.

5. It is submitted that the learned Trial Court failed to appreciate that all the prosecution witnesses had fully supported the prosecution's case, establishing the guilt of the accused beyond reasonable doubt. The erroneous rejection of credible testimony has resulted in miscarriage of justice.

6. It is submitted that the learned Trial Court has erred in not considering that there were no material contradictions in the statements of the prosecution witnesses that could damage the root of the case. It is also submitted that the Hon'ble Supreme Court in ***Jagdish v. State of M.P.*** **1981 (Suppl) SCC 40**, has held that when discrepancies are of a minor character and do not go to the root of the prosecution's story, they should not be given undue importance, as mere congruity or consistency is not the sole test of

truth in witness depositions.

7. It is submitted that the testimony of the complainant, being that of an injured eyewitness, deserved greater weight and could not have been disregarded in the absence of compelling reasons. The erroneous appreciation of evidence by the learned Trial Court has resulted in a miscarriage of justice, making the impugned judgment liable to be set aside.

8. In view of the aforesaid submissions, it is prayed that the present petition may be allowed and the reliefs be granted as prayed for.

9. *Per Contra*, respondents - appearing in person vehemently opposed the present petition submitting to the effect that the impugned judgment passed by the learned Trial Court is well-reasoned, legally sustainable and does not suffer from any infirmity warranting interference by this Court.

10. It is submitted that the prosecution has failed to establish its case beyond reasonable doubt and while adjudicating the case, the learned Trial Court has rightly identified material contradictions, inconsistencies and lapses in the prosecution's evidence.

11. It is submitted that the learned Trial Court rightly noted that the prosecution's case suffered from grave inconsistencies in the complainant's version, starting from DD Entry (two accused persons), FIR statement (four accused persons), and testimony in Court (six accused persons). The unexplained contradictions in the prosecution's star witness' version cast serious doubt on the reliability of the case.

12. It is further submitted that the learned Trial Court rightly rejected the prosecution's case due to serious procedural lapses and evidentiary gaps. On

the part of the complainant, the learned Trial Court noted his inconsistent statements regarding how he was restrained. The learned Trial Court also noted that the identification of the accused was tainted, as the complainant admitted to seeing their photographs at the police station before identifying them in court.

13. It is submitted that the learned Trial Court, on the part of the investigating authority, correctly pointed out the failure to recover crucial forensic evidence such as blood samples from the bloodstains inside the vehicle and the inconclusiveness of the recovered CCTV footage as it did not establish the presence of the accused inside the complainant's vehicle.

14. Heard learned counsel appearing on behalf of the petitioner and respondents – appearing in person, and perused the material available on record.

15. The submissions advanced by the learned APP essentially challenges the findings of the learned Trial Court on the grounds of alleged misappreciation of evidence, erroneous rejection of prosecution witnesses, and failure to properly assess the credibility of the complainant's testimony. Hence, the core issue that arises for consideration before this Court is:

Whether the acquittal of the accused persons by the learned Trial Court suffers from any legal infirmity, perversity or fundamental error in appreciation of evidence that would warrant interference by this Appellate Court?

16. In a criminal appeal against acquittal, the settled principles of law governing appellate interference must be examined. The Hon'ble Supreme

Court, in ***Mallappa v. State of Karnataka,*** **(2024) 3 SCC 544**, has laid down the guiding principles for the appellate court while deciding an appeal against acquittal. It was held that:

a. The appreciation of evidence must be comprehensive, covering all the oral and documentary evidence.
b. Selective or partial appreciation of evidence may result in a miscarriage of justice and is itself a ground for challenge.
c. If two views are possible after the appreciation of evidence, the view favoring the accused must ordinarily be followed.
d. If the Trial Court's view is legally plausible, the mere possibility of an alternate conclusion does not justify the reversal of acquittal.
e. If the appellate court seeks to reverse an acquittal, it must specifically address and refute each reason given by the Trial Court.
f. A reversal of acquittal requires the appellate court to demonstrate illegality, perversity or a substantial error of law or fact in the Trial Court's decision.

17. Applying these principles to the present appeal, this Court is of the view that the learned Trial Court has evaluated all available evidence, including witness testimonies, medical records, forensic reports and recoveries.

18. The inconsistencies in PW-1's statement such as fluctuating number of accused persons were duly considered. The learned Trial Court duly noted that the FIR, though registered at 8:50 AM, was allegedly received by the Investigating Officer only at 11:30 AM, with no explanation for the 3 hour

gap. Additionally, conflicting testimonies from PW-2, PW-5 (HC Satish) and PW-18 (SI Manish) regarding where and when the FIR was handed over, further cast doubt on the sequence of events.

19. The learned Trial Court noted the contradictions between PW-5 (HC Satish) and PW-18 (SI Manish) regarding vehicle seizure. While PW-5 claimed that the vehicle was pushed to the police station before being examined, PW-18 prepared a seizure memo stating that the vehicle was seized at the crime scene itself, creating a clear inconsistency.

20. Additionally, PW-9 (Fingerprint Expert) mentioned the examination of two Innova vehicles, though no other witness corroborated the presence of second vehicle. Furthermore, there were timing discrepancies in forensic examination reports, with PW-12 (SI Vikas) claiming that vehicle was examined before being moved, while forensic records indicated otherwise.

21. The complainant claimed he was assaulted inside the vehicle, sustaining injuries that caused bleeding on his shirt. PW-12, the first Investigating Officer, testified that he saw the complainant wearing a bloodstained shirt when he met him. However, despite this observation, neither PW-12 nor the new Investigating Officer, SI Manish, seized the shirt, nor was it sent for forensic analysis to establish the presence of human blood.

22. PW-18, SI Manish claimed that blood was found inside the Innova vehicle where the complainant was allegedly beaten. However, no blood samples were collected from the vehicle, nor was any forensic report produced to establish this claim. PW-8 (Photographer), who took crime

scene photographs, did not record any visible bloodstains inside the vehicle, contradicting PW-18's claims.

23. Applying the aforementioned principles to the present case, this Court finds that the learned Trial Court undertook a comprehensive appreciation of evidence. The testimony of PW-1 (complainant), police officers, forensic experts and medical witnesses was duly considered. The learned Trial Court rightly scrutinized the inconsistencies in the complainant's statements, the contradictions in police depositions, and the forensic as well as the procedural lapses in the investigation.

24. It is observed that the learned Trial Court did not rely on selective evidence, rather examined all the aspects of the case. The discrepancies regarding the number of assailants, contradictions in how the complainant was restrained and the inconsistencies in FIR registration timings were thoroughly assessed.

25. The learned Trial Court further found that the recoveries were not independently corroborated, forensic evidence was either missing or inconclusive, and in-court identification of the accused was tainted due to prior exposure to their photographs. These findings are based on material contradictions in the prosecution's case and not on conjecture.

26. In criminal jurisprudence, the standard of proof required to sustain a conviction is proof beyond a reasonable doubt, which is significantly higher than the preponderance of probabilities applicable in civil cases. It is a settled principle that the prosecution must establish the guilt of the accused to such a degree that there exists no reasonable doubt in the mind of a

prudent person regarding their culpability.

27. In assessing whether the prosecution has discharged its burden of proving the case beyond reasonable doubt, it is imperative to first define what constitutes "reasonable doubt" in the context of criminal trial. The Hon'ble Supreme Court, in ***Goverdhan & Anr. v. State of Chhattisgarh*** **2025 INSC 47**, has reiterated that reasonable doubt must not be an abstract or speculative doubt but one based on reason, logic and the totality of the evidence on record. The relevant portion is reproduced as below:

> *"21. It will be relevant to discuss, at this juncture, what is meant by "reasonable doubt". It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in* ***Ramakant Rai v. Madan Rai, (2003) 12 SCC 395*** *wherein it was observed as under :*
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> *"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."*
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> *22. While applying this principle of proof beyond reasonable*

doubt the Court has to undertake a candid consideration of all the evidence in a fair and reasonable manner as observed by this Court in ***State of Haryana v. Bhagirath (1999) 5 SCC 96*** *as follows:*

"8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression 'reasonable doubt' is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Edn.) as follows:

*'It is difficult to define the phrase "reasonable doubt". However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case [****Commonwealth v. Webster," Cush 295 : 59 Mass 295 (1850)****]. He says: "It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire*

comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

10. In the treatise The Law of Criminal Evidence authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

'The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the

innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the
evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.'

23. The concept of reasonable doubt has to be also understood in the Indian context, keeping in mind the social reality and this principle cannot be stretched beyond a reasonable limit to avoid generating a cynical view of law as observed by this Court in ***Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*** *as follows:*
"6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they

tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent …."

In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant.

In India the law has been laid down on these lines long ago."

28. Applying this principle to the present case, it is held that the learned Trial Court rightly found that the inconsistencies in the complainant's testimony, coupled with procedural lapses and inconclusive forensic evidence, gave rise to substantial and actual doubts regarding the prosecution's version.

29. Given the substantial doubt raised by the learned Trial Court's findings, the acquittal cannot be reversed merely because an alternative view is possible. The Hon'ble Supreme Court in ***Mallappa (Supra)*** has reiterated

that where two views are reasonably possible, the one favoring the accused must prevail. The prosecution's failure to prove the case beyond reasonable doubt entitles the accused to the benefit of doubt.

30. Further, the petitioner has not demonstrated any illegality, perversity or error of law in the learned Trial Court's reasoning. The judgment is well-reasoned, does not rely on extraneous considerations, and does not suffer from any legal infirmity warranting reversal.

31. Taking into consideration the discussions on facts and law, this Court does not find any merit in the arguments put forth by the learned counsel appearing on behalf of the petitioner and in view of the same, the impugned judgment dated 6th December, 2016 passed by the learned Additional Sessions Judge, Karkardooma Court in SC No. 87/2014 is, hereby, upheld.

32. Accordingly, the instant petition stands dismissed along with the pending application(s), if any.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 5, 2025
rk/kj/ryp

Click here to check corrigendum, if any