State vs.sultani & Ors.

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Court : Delhi

Decided On : Jan-28-2019

Appellant : State

Respondent : Sultani & Ors.

Judgement :

$~ + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

14. h January, 2019 Decided on:-

"28th January, 2019 Crl.Appeal No.64/2005 STATE Through: Mr. Amit Ahlawat, APP for the ..... Appellant State with ASI Pavinder Kumar, PS Chandni Mahal. versus SULTANI & ORS. .....

... RESPONDENTS
Through: Mr. M.S. Khan, Advocate with Mr. M.L. Yadav & Mohammad Sajid, Advocates CORAM: HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT
1 The respondents herein (the second respondent having been mis-described in the memo of parties) were sent up for trial on the basis of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) dated 23.05.2001 submitted on conclusion of investigation into first information report (FIR) No.170/2000 of police station Chandni Mahal for offences punishable under Sections 452/354/506/3

of Indian Penal Code, 1860 (IPC). The Metropolitan Magistrate, before whom the charge-sheet was submitted on 19.07.2001, having taken cognizance and issued process, the respondents stood summoned and their presence having been secured, after due compliance with requirements of Section 207 Crl. Appeal No.64/2005 Page 1 of 22 Cr.P.C. They were eventually brought before the court of Sessions, the case (sessions case No.172/2001) having been registered upon committal. The three respondents were put on trial on the basis of charges framed on 01.02.2002 for offences under Sections 452/34, 3
and 5
IPC against each of them, additional charges under Section 451 IPC and Section 354 IPC having been framed against third respondent. Upon the conclusion of trial, the Sessions Court rendered its decision, by judgment dated 25.03.2004, holding that the respondents were entitled to the benefit of doubts and, thus, directing them to be acquitted of all charges.

2. The State (the appellant), feeling aggrieved, instituted criminal leave petition No.74/2004. Leave was granted, after due notice and opportunity for hearing to the respondents, by order dated 17.01.2005, in the wake of which directions, the present appeal (Crl. Appeal No.64/2005) was registered.

3. Arguments on both sides have been heard at length with the assistance of the learned counsel and trial court record has been perused.

4. The case concerns alleged assault on the person of Sabia (PW-

1) by the third respondent Mohd. Aslam (A-3) with the intent to outrage her modesty sometime around 12 Oclock noon time on 27.10.2000 on the top terrace of property described as No.1530 Chitli Qabar, Turkman Gate, Delhi. It also involves physical assault on the person of her husband Mohd. Islam (PW-2) by A-3, and his brother, the first respondent Sultani (A-1) and nephew second respondent Crl. Appeal No.64/2005 Page 2 of 22 Naseem (A-2), iron rod (sariya) having been used therein causing grievous injury allegedly with the requisite intent and knowledge thereby committing the attempt of offence of culpable homicide not amounting to murder, threatening words having been uttered so as to amount to criminal intimidation, the said offences having been committed after criminal house

trespass on the terrace of the said property, this part of the incident having occurred immediately and in continuation of the assault with the intent to outrage modesty of PW-1.

5. Given the issues that arise, it is essential to take note of the background facts, some of which emerge from the evidence on record, as indeed the submissions also of the respondents, as undisputed.

6. There is ample evidence to show that PW-1 was living with her husband (PW-2) in the aforesaid house, the family including Mohd. Imran (PW-3). The prosecution would also rely on the testimony of Sarfraz (PW-4) who admittedly is brother of PW-1, he being the resident of house No.1945, Street Chunnamal, Suinwalan, Chandni Mahal, Delhi, a property also located in the walled city area but a little away from the place where the incident occurred.

7. There is sufficient evidence to show that PW-2 was brought to Lok Nayak Jai Prakash Narayan Hospital in injured state at 12.30 p.m. on 27.10.2000 and he being medically examined by Dr. Shikha Mittal (PW-10/PW-12), senior resident at Guru Nanak Eye Centre where PW-2 had been referred, the observations on the basis of medical examination having been recorded in the medico legal injury register (MLC) (Ex.PW-9/A), the same having been proved by PW-
 without any contest. The MLC (Ex.PW-9/A) also bears an endorsement in the hand of Dr. Shailley Jain (PW-11), another senior resident (Ophthalmology) of the same hospital, the evidence of the said two witnesses read alongside the MLC, revealing that besides a lacerated wound on the web space between thumb and forefinger of the left hand, there was a lacerated wound blacking out the right eye of PW-2, there being fresh injuries suffered in the assault with use of an iron rod.

8. PW-2, the victim, during the course of his testimony deposed that his right eye had been destroyed and an artificial eye had been planted in its place. His deposition to this effect, read in the light of the MLC, both unchallenged on this score, clearly make out a case of loss of sight in one eye rendering it to be a case of grievous injury, the only contest being with regard to the role attributed to the respondents, suggestions given at their instance to the relevant witnesses during

their cross-examination being that the injury might have been suffered on account of a fall. It may be mentioned here itself that while PW-11 would not give a clear reply as to the possibility of fall being the cause for such injury, she being unable to do so without examining the case. PW-12 was more in doubt by stating that it was difficult to say that fall on the ground could be the cause.

9. The initial input came to the police post Turkman Gate of police station Chandni Mahal in the form of DD No.14 (Ex.PW-6/A) recorded at 12.40 p.m. on 27.10.2000. The information had been conveyed by police control room (PCR) and the intimation was that Crl. Appeal No.64/2005 Page 4 of 22 there was a serious quarrel in house No.1528, Chitli Qabar. The matter was entrusted to Sub Inspector Kanhaiya Lal (PW-9) who set out for the place accompanied by constable Nand Lal (PW-13). As per the deposition of these two witnesses, they had arrived at 1530, Chitli Qabar where they had learnt that the victim (PW-2) had already gone to the Lok Nayak Jai Prakash Narayan Hospital. It may be mentioned here that Guru Nanak Eye Hospital is a specialty in the close vicinity of the said hospital and when PW-9 arrived there, he had learnt that PW-2 had been referred to Guru Nanak Eye Hospital. He eventually met the victim (PW-2) who made statement (Ex.PW-2/A) which formed the basis of the rukka (Ex.PW-9/B) of PW-9, which was taken by PW-13 to the police station where, on its basis, the FIR (Ex.PW- 5/A) was recorded at 5.05 p.m., this, in about 5 hours of the alleged occurrence, the said statement indicating afore-mentioned offences having been committed.

10. During the course of investigation, PW-9 (the investigating officer) also recorded the statements of other witnesses as to the incident and as to various steps in investigation. The witnesses to the incident included the victim (PW-2), his wife (PW-1), his brother (PW-3) and brother of his wife (PW-4). The investigating officer also prepared site plan (Ex.PW-9/C) depicting the layout of the houses in the vicinity it showing the house (No.1525) where A-3 would reside to be virtually the next door, the residences of A-1 and A-2 also being located close by. Crl. Appeal No.64/2005 Page 5 of 22 11. It is stated that during investigation, A-3 got recovered the sariya (Ex.P-1) which had been used in the crime, it being seized (Ex.PW-9/F) in the presence of PW-13, this recovery statedly having been made in the wake of a disclosure (Ex.PW-9/E). The prosecution also relied on similar

disclosure (Ex.PW-7/A) made by A-1. A-3 was arrested on 07.11.2000, after personal search (vide Ex.PW-9/D). A-2 had been arrested earlier on 04.11.2000 while A-1 was arrested on 29.10.2000 vide formal proceedings (Ex.PW-7/C and Ex.PW-8/A).

12. It is admitted case for the material prosecution witnesses i.e. the victim (PW-2), and those related to him (i.e. PW-1, PW-3 and PW-4), that there had been no enmity between the parties in the past. This admission came out during questioning during cross-examination by the defence.

13. PW-1 was a young woman, aged about 27 years old, then working as constable in Delhi Police. On 27.10.2000, around noon time, she was at home. As per the version of prosecution witnesses, she had gone upto the terrace of house No.1530 to spread the clothes that had been washed for drying up in the sun. According to the version of PW-1 and PW-2, A-3 had been keeping an evil eye on her and had earlier also subjected her to indecent propositions including (statedly by exposing his private parts) by lowering his garment. It is alleged in the prosecution case that A-3, finding PW-1 on the roof top, had climbed over to the said terrace and had caught hold of her from behind, this resulting in she raising alarm. According to the version of PW-1 and PW-2, the latter (PW-2) was down stairs and, upon hearing Crl. Appeal No.64/2005 Page 6 of 22 the alarm raised by his wife (PW-1), he had rushed upstairs to find A- 3 assaulting his wife in the afore-mentioned manner. When PW-2 protested and tried to rescue his wife, A-3 left her alone and instead started threatening PW-2. It is stated that, upon hearing the commotion, A-1 also rushed upstairs and joined his brother (A-3). It is stated in the evidence of PW-1 and PW-2 that A-1 had caught hold of PW-2 and A-3 had picked up the sariya and hit PW-2 aiming the blow at his head. PW-1 and PW-2 testified that PW-2 had tried to ward off the attack and suffered injury on his left palm but A-3 gave another sariya blow which hit PW-2 in the right eye as a result of which blood started oozing from the said part of the body. PW-1 has deposed that A-2 with one Shakeel had also assisted A-1 and A-3 in hitting the back of PW-2 with a piece of brick, this causing injury on his leg, all four having fled away with sariya from the scene. PW-2 made a similar statement about the role of A-2, and the fourth person named Shakeel, though deposing that the brick piece had been

used to hit him on his back. As per these witnesses, the incident was seen by PW-3 and PW-4, their respective brothers, they having come upstairs on hearing the commotion. Statements in corroboration were made by PW-3 and PW-4, though PW-3 during his cross-examination conceded that he had not seen the incident with his own eyes, he having reached the place of occurrence after the incident when his brother (PW-2) was lying on the roof top in injured condition. It is the version of PW-4 that the incident had begun when he was climbing the stairs of the house of his sister (PW-1) and had rushed to the scene when he had heard the noise coming from the roof top. Crl. Appeal No.64/2005 Page 7 of 22 14. The other prosecution witnesses examined relate to the steps taken in investigation. They would include head constable Yashpal Singh (PW-5) who was the duty officer and had recorded the FIR; constable Sat Narain (PW-6), the official who had recorded the DD No.14 (Ex.PW-6/A) on the telephonic call from PCR; constable Paley Ram (PW-7), who was witness to the arrest of A-1 on 29.10.2000; Constable Ajab Singh (PW-8), who was witness to the arrest of A-2 on 04.11.2000; these besides the IO (PW-9), his companion constable Nand Lal (PW-13) and the two doctors (PW-10/PW-12 and PW-11).

15. The respondents in their statements under Section 313 Cr.P.C. denied the entire evidence as incorrect. They claimed to have been falsely implicated. It was stated by A-1 and A-3 that the complainant wanted to occupy the roof of the house of A-3 and on account of such enmity complaint had been filed by the complainant who was in Delhi police, apparently referring to PW-1, the wife of the complainant. It was claimed that house No.1525, where A-3 was admittedly residing, was separate from house No.1530 of the complainant by a 16 feet high wall and that it was impossible to jump over the said wall from the other side. A-1 and A-2 claimed that they were not residents of the house in question and were not present at the scene at the relevant point of time.

16. Two witnesses, Mohd. Mustkeen (DW-1) and Mohd. Talba (DW-2), were examined by the defence. The evidence of both was only to bring home that they had not seen any such incident taking place, DW-1 also terming the respondents as good people having Crl. Appeal No.64/2005 Page 8 of 22 good character, he adding that PW-1 was in police and, for this reason, she must have falsely

implicated the accused persons.

17. The trial judge found the evidence of PW-1 to PW-4 not worthy of reliance. The reasons for this impression, as may be culled out form the impugned judgment, were as under:-

"(i) In the FIR, A-2 and the fourth person named Shakeel had not been mentioned and yet role was attributed to them in the supplementary statements and court depositions; (ii) Neighbours though present at the scene, have not been examined in corroboration; (iii) PW-3 tried to project himself falsely as an eye witness though he conceded in cross-examination that he had not seen the incident; (iv) All the four material witnesses (PW-1 to PW-4) are interested and, therefore, unworthy of reliance; (v) It is a mystery as to how the investigating officer (PW- 9), with accompanying constable (PW-13), had reached house No.1530 when the intimation vide DD No.14 (Ex.PW-6/A) was that the quarrel had taken place in house No.1528; (vi) There is contradiction in the evidence on the issue as to whether PW-1 had (or had not) accompanied her husband (PW-2) to the hospital after the incident; Crl. Appeal No.64/2005 Page 9 of 22 (vii) The names of the assailants were not disclosed to the examining medical officer; (viii) The nature of injuries suffered by PW-2 is not corroborated by medical evidence; (ix) The site plan of the place where weapon of offence (sariya) had been recovered was not prepared; (x) PW-13 deposed (in cross-examination) that for recovery of sariya, the investigating officer had gone to house No.1530 which is the house of the complainant and not of A

18. The learned additional public prosecutor for the State argued that the above reasons did not justify the evidence of PW-1 and PW-2, in particular, being disbelieved especially in the face of clear evidence that the incident had been reported, not only to the medical authorities, but also to the police, promptly and without loss of any time. It is his argument that there is no suggestion given to the material witnesses about any illicit design of the complainant side to grab any part of the property of the respondents or this being the cause for setting up this case. It is also his argument that it is inconceivable that in order to grab the neighbours property a person would inflict injury of such nature upon himself. It is submitted

that depositions of defence witnesses are inconsequential as merely on account of their certification that they had not seen any such incident taking place, the court cannot assume that no such incident ever occurred, this in the face of credible evidence showing a grave injury having been Crl. Appeal No.64/2005 Page 10 of 22 inflicted. It is argued that in the face of admitted defence position that there was no past enmity, there is no reason why PW-2, having suffered such serious injury, would falsely implicate the respondents leaving out the actual perpetrator(s) of the grievous hurt rendering him permanently blind in one eye. It is pointed out that no suggestion worth the name has been given to PW-1 and PW-2 to the effect that the grievous injury had been sustained on account of fall, the hesitant suggestion given to the medical officers not making out a case for such defence theory to be believed or acted upon. It is further submission of the State that the contradictions or the deficiencies in the evidence as have been noted in the impugned judgment are not such as can go to the root of the matter so as to extend any benefit of doubts of false implication.

19. Per contra, the counsel for the respondents argued that the trial judge has taken a balanced view and such view cannot be discarded or junked merely because there is possibility of another view being taken on the basis of some evidence. It was his argument that there was inordinate delay in reporting the incident, and that an attempt has been made to rope in persons not mentioned in the FIR, this, according to him, exposing design to set up a false case, there being no independent corroboration, the statements of PW-1 and PW-2 in particular being suspect, it being inadvisable to act upon the depositions of PW-3 and PW-4 whose presence was not even referred to in the first instance (the FIR). Crl. Appeal No.64/2005 Page 11 of 22 20. While it is well-settled that the appellate court is not to upturn the conclusions leading to acquittal by the trial court only because views contrary to such findings could also possibly be drawn [Kallu Alias Masih vs. State of M.P. (2006) 10 SCC313, the duty of the appellate court in matters where the view taken by the trial judge is found to be unreasonable or perverse goes beyond. In Atambir Singh @ Chota Babla vs. State of Delhi 2015 SCC Online Del 10734, a division bench (of which I was a member) of this Court had summarized the law thus:-

"68. It is well settled and has been the consistent view of the Supreme Court that in an appeal against acquittal, the appellate court possesses full and unfettered power to review at large all evidence and to reach the conclusion that, upon such evidence, the order of acquittal should be reversed. It is rather under bounden duty to scrutinize the probative material de novo. Undoubtedly, it must bear in mind that rebuttable innocence attributed to the accused in the case of acquittal stands on a weightier footing. In this view, it would be slow in upsetting the findings returned by the trial court if supported by convincing reasons and comprehensive consideration. If, however, the view taken by the trial court upon such review, reappreciation and reconsideration of the evidence is found to be unreasonable or perverse leading to serious illegality, the appellate court would not hesitate in interfering and reaching its own conclusion. Thus, if the evidence recorded in the judgment of acquittal shocks the conscience of the appellate court or shows that norms of legal process have been disregarded or substantial and great injustice had been done, the same can be interfered with. [Surajpal Singh v. State, AIR 1952 SC52 State of Bombay v. Rusi Mistry, AIR 1960 SC391 Sanwat Singh v. State of Rajsthan, AIR 1961 SC715 Jadunath Singh v. State of U.P., (1971) 3 Crl. Appeal No.64/2005 Page 12 of 22 SCC577 Damodarprasad Chandrikaprasad v. State of Maharashtra, (1972) I SCC107 Shivaji Sahabrao Bodade v. State of Maharashtra, (1973) 2 SCC793 Chandrappa v. State of Karnataka (2007) 4 SCC415 S. Ganesan v. Rama Raghuraman (2011) 2 SCC83 Jugendra Singh v. State of U.P., (2012) 6 SCC297 State of M. P. v. Dal Singh, (2013) 14 SCC159 and Mritunjoy Biswas v. Pranab Alias Kuti Biswas & Anr. (2013) 12 SCC Cases 796].. 21. Having accorded anxious consideration to the rival contentions against the factual matrix of the case and in light of the evidence which was adduced at the trial, this Court finds the judgment of the trial court to be wholly perverse and totally misdirected. Without doubt, before convicting a person on the charge of he having committed a crime, the criminal court must feel satisfied as to his guilt in its judicial conscience. The proof of guilt, it is well settled, has to be brought home beyond all manner of doubts. At the same time, it is equally well settled that it is not any about, or mere doubt, which would result in acquittal. The doubts of which benefit is given so as not to hold a person guilty must be one that arises reasonably and such that goes to the root of the matter

rendering suspect the prosecution evidence showing complicity. The reasons set out in the impugned judgment to discard the evidence of prosecution witnesses PW-1 and PW-2 in particular do not pass the muster.

22. It does appear that in the initial statement there was no role attributed to A-2 or to the fourth person named Shakeel. Shakeel, it may be observed, was not even prosecuted, the investigating agency Crl. Appeal No.64/2005 Page 13 of 22 also not being satisfied as to his complicity. But, merely because a certain role was also attributed to A-2, it does not mean that the entire version of PW-1 and PW-2 is to be disbelieved.

23. It is trite that FIR is but the starting point of the criminal law process and is not a document which is expected to be a compendium of all facts. The incident had occurred at about 12 Oclock noon time. The injury suffered by PW-2 was very grave in nature, his right eye having been pierced and he was on the verge of losing the sight in that eye for all times to come. He had been brought to the hospital within half an hour. His focus was more on his medical treatment. His statement was recorded sometime before 4.45 p.m. as is reflected by the time of dispatch of rukka (Ex.PW-9/B) for registration of the FIR. Though he had been quite elaborate in narrating the incident, delineating the role of A-1and A-3, there indeed was no reference to the acts of commission on the part of A-2. The benefit of such omission could possibly, and may deservedly, be extended to A-2. But, this does not mean that the evidence as to the role of A-1 and A-3 should also get effaced.

24. The absence of neighbours from the witness box is inconsequential. From out of the four witnesses to the scene, there apparently is no reason to doubt the presence of PW-1 and PW-2. PW-2 had suffered the injuries and was bound to know, given the time of the day of the incident, the identity of the perpetrator(s). Since the sequence of events begins with what concerns PW-1, her presence at the scene being natural, she being the wife of PW-2 living with him in Crl. Appeal No.64/2005 Page 14 of 22 the house below the terrace, there being no evidence to show that she was elsewhere at that point of time, sufficient corroboration was available. It is well known even otherwise that public persons who happen to

witness incidents of such nature are generally reluctant to depose against one side for serving the cause of the other. People generally tend to maintain neutrality lest involvement as witness affects them vis--vis the opposite side which, as in this case, was also equally a neighbor.

25. The argument that it was not possible to climb over to the terrace of the house of the complainant because of a high wall separating it from the house of the accused is not based on any material in evidence. The defence witnesses may not have been present so as to be witness to the scene and, thus, their general statements as to good character of the respondents are of no effect.

26. PW-3 and PW-4 have been examined as eye witnesses. But, it was conceded by PW-3 that the incident did not occur in his presence, he having arrived at the scene immediately thereafter. But, the fact that he had come on the scene around the time of the conclusion of the incident will have to be accepted inasmuch as he is the person who took PW-2 to the hospital where they had arrived within half an hour of the injuries being inflicted. Be that as it may, owing to the reason that PW-3 would have reached the scene after the assault had been committed, PW-4 not even living in the household, he being the brother-in-law to PW-2, their evidence can be kept aside. This does Crl. Appeal No.64/2005 Page 15 of 22 not, however, mean that the testimonies of PW-1 and PW-2 are rendered unworthy of reliance.

27. It is true that the initial input received through PCR was that the quarrel had taken place in house No.1528 and, in contrast, the investigating officer (PW-9) got the FIR registered on the basis of his rukka (Ex. PW-9/B) stating that he had reached house No.1530 to make inquiries, he eventually meeting the victim (PW-2) in the hospital whereupon it was confirmed, by his statement (Ex.PW-2/A), that the assault had occurred on the terrace of house No.1530. There is no mystery involved in these facts. It is conceded that no questions were asked to PW-9, or for that matter PW-13, to ascertain how they had reached house No.1530 during cross-examination. Be that as it may, judicial notice is taken of the fact that in walled city area of Delhi, generally speaking, the municipal numbers are assigned to the immovable properties consecutively such that even openings like staircase or door accessible from the public street are allocated separate numbers. This is

reflected even in the site plan (Ex.PW-9/C). The municipal number 1528 would obviously be close to house no.1530, both virtually abutting each other, and since the investigating officer had arrived there soon after receipt of DD No.14 (Ex. PW-6/A) at 12.40 p.m., the victim having already been taken to hospital, it would not have required a very extensive inquiry to find out that the incident had taken place not in property bearing municipal no.1528 but on the terrace of the next door house no.1530. Crl. Appeal No.64/2005 Page 16 of 22 28. It is admitted case of the prosecution, and of the complainant side, that PW-1 was employed in Delhi Police as constable. Some argument has been raised on account of such position held by PW-1 during those days. But, being a member of Delhi police force does not necessarily mean she had such clout that she could engineer a false case. She was placed too low in the hierarchy to manage or to influence investigation her way. There is no basis to the defence theory that she or her husband wanted to grab the property of the appellants. Such theory being propounded for the first time in the statements under Section 313 Cr.P.C. does not impress in absence of supportive evidence.

29. PW-1 may have been a constable in Delhi police. But this does not mean that the injuries suffered by her husband in her presence would invariably impel her to accompany him to the hospital for treatment. She was a young woman from a conservative background. She is on record to explain that she was devastated on account of the incident and had fallen down crying and consequently did not go to the hospital with her husband. Given the seriousness of the injuries suffered by PW-2, her explanation deserves to be accepted. She is not to be disbelieved only because some other witness assumed that she may have gone with her husband to the hospital.

30. It is not correct to criticize PW-2 or PW-3 on account of the names of the appellants being not disclosed to the examining medical officer. The purpose of visit to the hospital was to get medical aid and not to report the crime. For reporting the crime, and action under the Crl. Appeal No.64/2005 Page 17 of 22 law in such regard, the police was expected to step in. An intimation had already been given to police by DD no.14 and the police had promptly met PW-2 and PW-3 in the hospital. The medical officer would not have been interested in

ascertaining the identity of the perpetrator of the injuries. There is, however, sufficient corroboration in the MLC (Ex.PW-9/A) in that in the history it was clearly indicated by PW-2 and PW-3 that iron rod had been used by neighbours to cause the wound to the right eye. This was the earliest official record, purest in its form.

31. The learned trial court did not appreciate the evidence in proper perspective by observing that the nature of injuries suffered by PW-2 did not have corroboration from the medical evidence. The blunt injury inflicted in the right eye was duly noted in the MLC (Ex.PW- 9/A). There is an opinion recorded that the injury suffered was grievous. The deposition of PW-2, as noted earlier, that this injury had resulted in total loss of right eye, artificial eye having been planted, has gone unimpeached. In these circumstances, there is no escape from the conclusion that the injury inflicted was grievous in nature.

32. The witness (PW-13) who had accompanied the investigating officer at the time of recovery of sariya (Ex.P-1) had correctly deposed during his examination-in-chief about the place (house of A-

3) from where it was taken in possession, this being accordingly reflected in the seizure memo (Ex.PW-9/F). During cross- examination, he did falter to say that the police had gone to house Crl. Appeal No.64/2005 Page 18 of 22 No.1530 for such purposes. But then, the confusion on his part is clear from what followed in his deposition, i.e, the house from where the sariya was recovered is one where number of families were living. Though, there is no reason to doubt the word of the investigating officer (PW-9) with regard to the seizure of sariya, it being the settled law that non-recovery of weapon is inconsequential - Kartar Singh vs. State GNCT of Delhi 2018 SCC online Del 12247 - this Court is inclined to keep aside such part of the prosecution evidence. Yet, it does not materially affect the credibility of PW-1 and PW-2.

33. There has been no delay, muchless inordinate one, in reporting the incident. At the cost of repetition, it may be noted that the injuries having been inflicted sometime around noon time, PW-2 had been brought to the hospital by PW-3 by 12.30 p.m. In the meantime, information about the incident had been conveyed to PCR which brought it to the notice of police station by 12.40 p.m. The investigating

officer had met PW-2 in the hospital and recorded his statement (Ex.PW-2/A) immediately after he being declared fit at 3.45 p.m. and rukka (Ex.PW-9/B) was on its way to the police station by 4.45 p.m., FIR (Ex.PW-5/A) having been recorded at 5.05 p.m. There perhaps could not have been more prompt registration of the FIR.

34. The promptitude with which the police took note of the crime deducing the version of the victim, at the earliest opportune moment, provides the additional assurance that his word, as indeed that of his wife (PW-1) deserves to be believed and acted upon. After all, there is no reason as to why they would leave alone the actual perpetrator(s) Crl. Appeal No.64/2005 Page 19 of 22 and falsely frame those who were innocent, it being an admitted case that there was no past enmity of such kind.

35. It does appear that PW-1 was being stalked and illicitly propositioned by A-3 to the extent of he uttering words to the effect of demanding sexual favours, indecently exposing himself to her. But, it is unbelievable that, in order to take revenge for this, she would persuade her husband to get blinded in one eye so that a false case could be set up.

36. Small contradictions, it is well settled, do not justify a case based on credible evidence to be thrown out. Discrepancies that do not go to the root or that do not shake the basic version cannot be allowed to demolish the entire case. [Govt. of NCT of Delhi vs. Sachin @ Suraj & Ors 2016 SCC Online Del 6479]..

68. This Court is inclined to accept the plea that the evidence as to complicity of A-2 in the incident has not been brought home beyond all manner of doubts and there are no reasons why the judgment of acquittal against him ought to be disturbed.

69. This Court, however, finds the evidence of PW-1 and PW-2 to be wholly worthy of reliance in so far as the case is directed against A- 1 and A-3. The trial court has unreasonably discarded their evidence which was not fair. The judgment of acquittal to that extent, being perverse, thus, must be vacated.

70. This court is satisfied that the prosecution has proved that A-3 had accosted PW-1 on the top terrace of her house around noon time on 27.10.2000 when she was present there to put the washing in the Crl. Appeal No.64/2005 Page 20 of 22 sun. He had climbed on to the terrace with the intent to molest her. This amounted to a criminal trespass punishable under Section 452 IPC. He caught hold of her with clear intent to outrage her modesty, this constituting offence punishable under Section 354 IPC. When she cried out and protested, her husband (PW-2) appearing on the scene, A-3 was joined by A-1. They (A-3 and A-1) together assaulted PW-2 wherein A-1 was holding on to PW-2 and A-3 had picked up a sariya using it to inflict the two injuries. In this sequence, however, it cannot be said that the intention was to cause death or such injuries as were likely to cause death, there being nothing to show that the blows (with the iron rod) were designedly aimed, particularly at such part of the body as was likely to result in injuries that could prove fatal. In this fact-situation, it would not be permissible to return a finding that the charge of attempt to commit culpable homicide not amounting to murder (punishable under Section 308 IPC) had been brought home. But, there is no doubt that the injuries inflicted were intended and voluntarily caused by A-3, his brother A-1 acting in his aid and assistance, his conduct of holding on to PW-2 reflecting he having shared the common intention. The injuries inflicted included wounding of the right eye rendering PW-2 permanently blind in that eye. Since the weapon of offence used in the crime was sariya, the acts of commission indulged in by A-1 and A-3 constitute the offence of voluntarily causing grievous hurt punishable under Section 325 IPC, both of them having shared common intention in such regard.

71. The offence under Section 325 IPC being a minor offence, it being included in the offence under Section 308 IPC within the Crl. Appeal No.64/2005 Page 21 of 22 meaning of Section 222 Cr.P.C., A-1 and A-3 can be held guilty and convicted under Section 325 read with Section 34 IPC even though no formal charge to that effect had been framed against them.

72. PW-1 and PW-2 were not called upon to depose as to utterances, if any, made by the respondents at the time of fleeing away from the scene. Thus, there is no evidence adduced in support of the charge of criminal intimidation, punishable

under Section 506 IPC.

73. In view of the forgoing discussion, the appeal of the State is partly allowed so as to upturn the impugned judgment dated 25.03.2004 against Sultani (A-1) and Mohd. Aslam (A-3) though declining to interfere against the acquittal of Naseem (A-2). A-1 Sultani and A-3 Mohd. Aslam are held guilty for the offences punishable under Sections 452 read with Section 34 IPC and Section 325 read with Section 34 IPC. Additionally, A-3 Mohd. Aslam is held guilty for the offence under Section 354 IPC. They are convicted accordingly.

74. The question of punishment shall be considered and decided upon after hearing both sides on the next date, as is being fixed. R.K.GAUBA, J.