

**(2019) 07 DEL CK 0528**

**In the Delhi High Court**

**Case No : Criminal Leave Petition No. 426 Of 2016**

State

APPELLANT

Vs

Amar Pal

RESPONDENT

**Date of Decision : 24-07-2019**

**Acts Referred:**

Indian Penal Code, 1860 — Section 323, 354

**Citation : (2019) 07 DEL CK 0528**

**Hon'ble Judges : Mukta Gupta, J**

**Bench : Single Bench**

**Advocate : Rajni Gupta, S.P. Rana, V.V Arya**

**Final Decision : Dismissed**

## Judgement

Mukta Gupta, J

CrI.M.A. No.12560/2016 (Delay)

For the reasons stated in the application delay of 152 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 426/2016

1. Aggrieved by the judgment dated 20th November 2015 whereby the learned Metropolitan Magistrate acquitted the respondent Amar Pal for the offence punishable under Section 323/354 IPC, the State has preferred the present leave petition.

2. Brief facts of the prosecution case are that on 3rd April 2013, at around 1:20 P.M., when the complainant returned home from work she found that there was mud in front of her house which was caused due to water that was coming out from the house of the respondent. When she objected to it the respondent replied saying that "maine kar diya, ab tu mera kya karlegi". When she

requested him to remove the mud, the respondent came towards the complainant and insulted her. He put his hands on her breast and when she tried to remove his hand, he got annoyed, picked up a stone and hit her. She sustained injury on her head and started shouting due to which her husband who was inside the house came out. She then made a call to 100 number and was taken to the Hospital in a PCR Van.

3. On the basis of the above statement, FIR No. 241/2013 (Ex.PW-1/A) was registered at PS Sultan Puri for offences punishable under Sections 354/323 IPC. On completion of investigation, charge sheet was filed. Charge for offences punishable under Sections 323/354 IPC was framed against the respondent.

4. Prosecution examined six witnesses.

5. Complainant was examined as PW-2 wherein she deposed in sync with the complaint made to the police. In her cross-examination she stated that there were several quarrels between her family and the family of the respondent.

6. Husband of the complainant appeared as PW3 and stated that he was inside his house when he heard some noise from the street. He came outside and saw that the respondent was quarrelling with his wife and blood was oozing out from her head. In his cross-examination he stated that his family was not in talking terms with the family of the respondent.

7. Dr. Rajesh Dalal (PW-5), deposed that he had examined the complainant with alleged history of physical assault. On examination, her vitals were found stable and on local examination, abrasion was present over her forehead. He opined the nature of injury as simple in nature. In his cross-examination he stated that the nature of weapon has not been mentioned in the MLC but abrasion could be caused by hitting or falling.

8. Amarpal examined himself as DW-1 and his neighbours, Mithlesh as DW-2 and Malkhan Singh as DW-3.

9. Amar Pal (DW-1), the respondent stated that there were several quarrels between the complainant and his family members. On 3rd April 2013 at around 1:15 P.M. he was cleaning some mud/dirty water which was present in front of his house. Suddenly the complainant told him as to why he was doing so and started abusing him. Husband of the complainant after hearing the noise came out and tried to hit him with a stone, however, it hit the complainant who was injured by her own husband. He did not touch the complainant in any manner and has been falsely implicated in the present case. The complainant used to fight with him and other neighbors also.

10. Mithlesh (DW-2), neighbour of the complainant and respondent corroborated the statement of the respondent. He stated that on 3rd April, 2013 at about 1.15 pm, she heard the noise of quarrel and came out. There was some mud/dirty water in front of the house of Amarpal regarding which 'R' was quarelling. Thereafter, the husband of the complainant took a stone and tried to hit Amarpal

but unfortunately the stone hit the complainant.

11. Malkhan Singh (DW-3), neighbour of the complainant and respondent corroborated the version of DW-1 and DW-2 and also deposed that on hearing the noise of quarrel he came out and thereafter when the husband of the complainant tried to hit Amarpal with a stone, it hit the complainant.

12. From the evidence as noted above, it is clear that the version of the respondent/accused is duly supported by two independent witnesses who are the neighbours of both the parties. Though the claim of the complainant is that the bleeding started from her forehead, however, MLC notes an abrasion on the forehead and there is no observation in the MLC that there was bleeding from the wound. The weapon of offence i.e. stone which is claimed to be of one feet size by the complainant was neither pointed out nor seized by the police. There is some delay in recording of the statement of the complainant.

13. Considering the facts noted above, findings of the learned Metropolitan Magistrate acquitting the respondent cannot be said to be perverse warranting interference of this Court.

14. Leave to appeal petition is dismissed.

15. Trial Court record be sent back.