A.F.R.

RESERVED ON 29.10.2025
DELIVERED ON 17.11.2025

2025:AHC:204014-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. APPLICATION U/S 419 BNSS No. 230 of 2025

Sanjay Kumar — Complainant-Appellant

Versus

State of U.P. And Others — Accused-Opposite Parties

Counsel for Appellant : Jata Shankar Pandey
Counsel for Respondent : G.A.

Court No.-47

HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.

(DELIVERED BY HON'BLE DR. AJAY KUMAR-II, J.)

1. Heard Mr. Jata Shankar Pandey, the learned counsel for appellant, the learned A.G.A. for State-opposite party-1.

2. Challenge in this Criminal Appeal is to the judgment dated 15.09.2025 passed by Additional District and Sessions Judge, Court No. 18, Agra in Sessions Trial No. 1823 of 2022, State vs. Anand Kumar and Others, under Sections 307, 323, 504 and 506 IPC, Police Station Tajganj, District Agra, whereby the accused-opposite parties 2 to 4 have been acquitted by Court below of the charges framed against them.

3. Brief facts of the case are that on 28.05.2018, at about 5:30/5:45 p.m., the complainant Sanjay Kumar was going at his work place, as usual, as soon as he reached near the house of accused persons, all the accused persons (opposite parties 2 to 4) surrounded the complainant, opposite party 4 Anand Kumar took out his knife and by brandishing his knife remarked that he will not leave him alive, at this, other accused persons,

(opposite parties 2 to 4) started beating the complainant with kicks and fist, and then opposite party 4 tried to give a knife blow on the chest of the complainant, the complainant saved his chest by forwarding his left hand, at this, he received serious injuries on his left hand. On hearing the screams of complainant, the witnesses, Jagvir, Anil Kumar, Krishna Kumar and Vipin Kumar came there and saw the incident, thereafter, all the accused-opposite parties 2 to 4 ran away from the spot by extending threats. The injured complainant approached Police Station Tajganj for registration of the FIR but his report was not lodged. Thereafter, the complainant filed a complaint in Court.

4. On the aforementioned complaint of appellant against the accused persons, Complaint Case No. 1485 of 2018, under Sections 307, 323, 504 and 506 of IPC, Police Station Tajganj, District Agra was registered. After recording the statements of the complainant and his witnesses, the A.C.J.M., Court No.3, Agra, summoned the accused-opposite parties 2 to 4 to face trial under Sections 307, 323, 504, 506 IPC.

5. The accused-opposite parties 2 to 4 appeared before the jurisdictional magistrate. Subsequently, the case was committed to the Court of Sessions. After hearing both the parties, charges were framed against them on 30.07.2019, under Sections 307, 323, 504, 506 of IPC. The accused pleaded not guilty and claimed trial.

6. In order to prove it's case, prosecution adduced two witnesses, namely, P.W.-1 Sanjay Kumar (the complainant) and P.W.-2 Dr. K.C. Dhakar (Doctor who had medico legally examined the complainant).

7. After completion of the prosecution evidence, the statement of the accused persons (opposite parties 2 to 4) were recorded under section 313 Cr.P.C., they denied the charges as alleged by the prosecution and claimed for trial. They stated that P.W.-1 has given false evidence against

them on account of previous enmity of egress/ingress regarding the pathway.

8. By the impugned judgment dated 15.09.2025, Court below has acquitted the accused-opposite parties 2 to 4 of the charges under Sections 307, 323, 504 and 506 of IPC.

9. Thus, feeling aggrieved by the impugned judgment passed by Court below, the present criminal appeal has been preferred by the complainant-appellant.

10. Mr. Jata Shankar Pandey, the learned counsel for appellant submits that the impugned judgment is illegal and erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the evidence adduced by the injured complainant-appellant, has illegally and erroneously, acquitted the accused-opposite parties 2 to 4 of the charges levelled against them. The prosecution version also stand corroborated by the medical evidence, but Court below by ignoring the same, has reached at the conclusion that no case as alleged by the prosecution, is made out against the accused opposite parties, hence, wrongly acquitted them. As such, the impugned judgment is illegal and perverse and therefore, liable to be set-aside by this Court.

11. Learned A.G.A. for State-opposite party-1 has vehemently opposed the present appeal by submitting that the impugned judgment passed by Court below does not suffer from any illegality of law or fact much less a legal error so as to warrant interference by this Court. Court below has examined the evidence of sole injured witness and after analyzing his evidence, in the light of the ocular and documentary medical evidence, has rightly arrived at the conclusion that the evidence given by the complainant-appellant is suspicious. No other witness of the incident was produced by the prosecution, inspite of fact that in pre-summoning evidence, the complainant-appellant earlier got examined P.W.-1 Vipin and

P.W.-2 Anil Kumar as independent witnesses. Court below has thus, rightly acquitted the accused persons. Lastly, it has been urged that no ground to interfere in the impugned judgment is made out, therefore, learned A.G.A. urged for the dismissal of present appeal.

12. We have heard the learned counsel for complainant-appellant as well as the learned A.G.A. for State-opposite party-1 and perused the record.

13. The trial Court while acquitting the accused-opposite parties 2 to 4, has recorded the following findings:

> (i) The incident took place on 28.05.2018 at about 05:30/5:45 p.m. but the complainant did not submit any written report at the police station concerned regarding the incident in question.
>
> (ii) The complainant has stated that his three fingers were cut in the incident whereas only one injury of incised wound was found in one of his fingers, therefore, his version of the incident was not supported by the medical evidence.
>
> (iii) There are material contradictions in the nature of injuries alleged to have been sustained by the injured and medico-legal examination report.
>
> (iv) The complainant-appellant failed to adduce any other witness regarding the incident and the place of occurrence.
>
> (v) The accused-opposite parties 2 to 4 had called the police by giving a phone call on dial 100 and the Police arrived at the spot. Thereafter, proceedings under section 107/116 Cr.P.C. were initiated against both the parties. The complainant-appellant as well as accused-opposite parties have obtained bail in the aforesaid proceedings, but the complainant-appellant did not disclose these facts in his complaint and examination-in-chief. The complainant has admitted in his cross-examination that he was challaned under section 107/116 Cr.P.C. and was also bailed out in same.
>
> (vi) The complainant-appellant has admitted that accused-opposite party 3 was also medically examined meaning thereby that accused Atul also received injuries in the incident.
>
> (vii) The complainant-appellant has moved the complaint after about 16 days of the alleged incident and no satisfactory explanation has been offered regarding lodging complaint with such inordinate delay.
>
> (vii) The above circumstances also not support the prosecution story.

14. After recording above findings, Court below came to the conclusion that prosecution has failed to prove the charges levelled against the accused persons beyond all reasonable doubt and thus acquitted them.

15. Thus, feeling aggrieved by the impugned judgment dated 15.09.2025 passed by Court below, the complainant-appellant has now approached this Court by means of aforementioned criminal appeal.

16. While considering the scope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by Court below. Reference in this regard be made to the judgment of Supreme Court **in Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat, (1995) 5 SCC 602**, which is most appropriately applicable to the facts of the present case. Paragraph-9 of the report is relevant for the controversy in hand and is accordingly, reproduced herein-below:-

> " *Law is now well settled that though the Cr.P.C. does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not disturb an order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle is not applicable where the approach of the trial Judge in dealing with evidence is manifestly erroneous and the conclusions drawn are wholly unreasonably and perverse. In the instant case, we find that the High Court was fully conscious and did not transgress the bounds, of its appellate powers while dealing and reversing the order of acquittal."*

17. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561,** has observed as under:

> *"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-*

> *(a) That the judgment of acquittal suffers from patent perversity;*
>
> *(b) That the same is based on a misreading/omission to consider material evidence on record;*
>
> *(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*
>
> *40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*

18. It has also been observed in above-mentioned judgment that an Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has further been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion, which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond all reasonable doubts and no other conclusion was possible.

19. The Supreme Court in **Gamini Bala Koteshwara Rao vs. State of Andra Pradesh, (2009) 10 SCC 636**, has observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusion arrived at by Court below. However, it is limited to those cases where the judgment of Court below was perverse. Apex Court went to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another

view in plausible, the Appellant Court will not be justified in interfering with the verdict of acquittal.

20. Having heard the learned counsel for complainant-appellant, the learned A.G.A. for State-opposite party-1 upon evaluation of the impugned judgment including the reasons recorded therein, in the light of deposition of the sole injured witness i.e. complainant-appellant and keeping in mind the limitation with a Court of appeal dealing with a judgment of acquittal, this Court finds that following three questions arise for consideration in present appeal:

> i. Whether the inference drawn by Court below that there is material contradiction in the nature of injuries sustained by the injured/complainant and his oral evidence, is legally sustainable.
>
> ii. Whether in the facts and circumstances of the case, the prosecution of the accused cannot be sustained on the ground of unexplained delay of 16 days in initiating the criminal proceeding.
>
> iii. Whether reasons recorded by Court below in support of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusionary and against the weight of evidence on record, therefore, illegal and perverse.

21. The present case is based on the sole testimony of injured complainant-appellant Sanjay Kumar P.W.-1. The injured complainant-appellant in his cross-examination (as recorded in paragraph 14 of the impugned judgment) has stated that his three fingers were cut by the knife and his cut injuries were also stitched. From the testimony of P.W.-1 as well as from a plain reading of complaint also, it is apparent that only one blow of knife was there, resulting in three fingers of complainant being cut. Perusal of medical evidence as analysed in the impugned judgment reveals that the injured complainant-appellant got five visible injuries on his body, first injury was of lacerated wound found on his index finger, second injury was of lacerated wound found on his middle finger, third injury was of incised wound found on his ring finger, fourth injury was of contusion found on his head and fifth injury was of

contusion found on his chest. The injured reported pain in his stomach, which was recorded as injury no.6. Injury nos. 4 and 6 were found to be simple in nature and rest of the injuries were kept under observation. However, no supplementary report regarding injury nos. 1, 2, 3 and 5 was placed before Court below. In the opinion of the Dr. K.C. Dhaker, P.W.-5 who had examined the injured except injury no. 3 all other injuries were likely to be caused by some hard and blunt object, whereas injury no. 3 was likely to be caused by some sharp edged weapon. In our opinion, lacerated wounds may have been caused by stones or bricks but, it is not the case of prosecution. Injured complainant himself has stated that accused were trying to ground him, but he did not fall. It is not the case of prosecution that injured complainant fell down on road, therefore, possibility of getting injuries of laceration is again ruled out. In our considered opinion, the version of manner of incident as narrated by the complainant does not find support from medical evidence available on record. The Court below relied upon the judgment of Supreme Court in **Thaman Kumar vs. State of Union Territory of Chandigarh (2003) 6 SC 380,** wherein Apex Court had laid down the parameters regarding appreciation and examination of ocular version and medical evidence. Accordingly, Court below has discussed in detail the contrast emerging in the ocular version and medical evidence after a parallel is drawn. Court below has, therefore rightly come to the conclusion that there are material contradictions in injuries as mentioned in injury report and deposition of complainant. The finding so recorded by Court below, is legally sustainable. Therefore, question no.1 is answered in the affirmative.

22. As per prosecution story, the alleged incident took place on 28.05.2018 and the complaint in this regard has been instituted on 12.06.2018 with delay of 16 days. The Court below in paragraph-16 of the impugned judgment came to the conclusion that no justifiable explanation for explaining the delay in filing the complaint has come forward. The complainant-appellant has not produced any written application/Tehrir,

which might have been given at concerned Police Station for registration of FIR. An effort was made to explain the delay by stating that the complainant-appellant went to the Police Station Tajganj but no FIR was registered there, and thereafter an information was sent to the S.S.P. However, when no action was taken thereon, only then a complaint was filed before Court below. A photocopy of the alleged application dated 01.06.2018 was brought on record which was allegedly sent to S.S.P. concerned. However, the said application was also not proved. For the sake of arguments, even if it is presumed that the said application was moved by the complainant on 01.06.2018, still there is unexplained delay of 11 days in filing the complaint.

23. In the light of above and by placing reliance upon the judgments of Apex Court in **(i). Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393, (ii). Mehraj Singh vs. State of U.P. 1994 5 SCC 186, (iii). Kishan Singh vs. State of Punjab (2008) 16 SCC 73,** Court below has rightly observed that if the FIR has been lodged with delay, but no plausible explanation has come forward explaining the delay in lodging the FIR, then the criminal prosecution of an accused on the basis of such a delayed FIR cannot be sustained.

24. We may further add that Apex Court in **(i). P. Ramchandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, (ii). P. Rajagopal and others Vs. The State of Tamil Nadu, AIR 2019 SC 2866 (paragraph 8), (iii). Hasmukhlal D. Vora and Another Vs. The State of Tamil Nadu,2022 SCC OnLine 1732, (iv). Sekaran Vs. State of Tamil Nadu, (2024) 2 SCC 176 and (v) Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and Others, 2024 SCC OnLine SC 938,** has clearly observed that if the FIR has been lodged with delay but no plausible explanation has come forward explaining the delay in lodging the FIR, then the criminal prosecution of an accused on the basis of such a delayed FIR, cannot be sustained.

25. In the case of **Shivendra Pratap Singh Thakur (Supra)**, the Apex Court quashed the criminal prosecution of accused therein on the ground that there is an unexplained delay of 39 days in lodging the FIR. At the time of hearing of this appeal, we pointed out the aforesaid aspect and how the conclusion drawn by Court below on the question of delay is sought to be dislodged. Learned counsel for appellant simply contended that since the trial itself has concluded the question of delay is now irrelevant.

26. The Apex Court in the case of **Rajesh Patel Vs. State of Jharkhand, (2013) 13 SCC 791** quashed the conviction of accused therein on the ground that there is an unexplained delay of 11 days in lodging the FIR.

27. In view of above, the conclusion drawn by the Court below that the FIR has been lodged belatedly and the delay in lodging the FIR has not been explained sufficiently is an adverse circumstance against the prosecution. The same cannot be said to be illegal or perverse. Therefore, we are of the considered opinion that point of delay in initiating the criminal proceeding has been rightly considered by Court below and the conclusion drawn is a lawful conclusion based upon due appreciation of evidence. Therefore, in such a circumstance, the prosecution of accused opposite party-2 cannot be sustained on the ground of unexplained delay of 16 days in initiating criminal proceedings. Question no. 2 is also answered in the affirmative.

28. Court below has also referred to the judgments of Supreme Court in **(i). Lallu Manjhi vs. State of Jharkhand (2003) 2 SCC 401,** wherein it has been held that prosecution of an accused on the basis of testimony of sole injured witness can be sustained provided his testimony is not inconsistent with the medical evidence or suffers from serious infirmities and contradictions and **(ii). Muluwa vs. State of M.P., AIR 1976 SC 989,** wherein Court held that in absence of corroboration, it is unsafe to convict an accused on the basis of medical evidence. Considering the aforesaid caution given by Supreme Court, Court below analysed the oral

and medical evidence on record. It thereafter came to the conclusion that there was contradiction in the nature of injuries alleged to have been sustained by the injured and his medico-legal report. No other witness was produced regarding the incident and place of incident. The Police initiated the proceeding under Section 107/116 Cr.P.C. against the complainant-appellant also. No justifiable explanation has been offered for explaining the delay in initiating criminal proceedings. These are such circumstances, which are not supporting the prosecution story and therefore, the prosecution has failed to prove the charges levelled against the accused.

29. So far as the veracity of above reasons recorded by Court below to conclude that the conviction of accused does not stand established beyond reasonable doubt also cannot be said to be illegal or perverse. The findings/reasons returned by Court below are based upon due evaluation of allegations made in the complaint in the light of evidence on record. Court below has assigned specific reasons for coming to the conclusion that no offence under any of charging Section is made out against accused. Upon examination by us of the said findings in the light of depositions of the prosecution witnesses as noted in the impugned judgment, we could not come across of any such fact on the basis of which, any of the findings qua the charging sections can be said to be illegal, perverse or erroneous, inasmuch as the complainant himself could not prove the very story which he set out to prove against accused by his own evidence. As such, the conclusion drawn by Court below that no criminality as alleged to have been committed by the accused-opposite parties 2 to 4 is borne out from the record is neither illegal nor perverse.

30. Out of abundant caution, we have examined the depositions of P.W.-1 and P.W.-2 threadbare for seeking answer to question no. 3. Present case is based on the sole testimony of the injured complainant-appellant. No other witness of incidence and or place of occurrence was produced by

the prosecution before Court below. The complainant-appellant in his pre-summoning evidence got examined P.W.1- Vipin and P.W.-2 Anil Kumar under section 202 Cr.P.C., but during the course of trial, both those witnesses were got discharged. The fate of present case thus rests upon the sole testimony of injured complainant-appellant.

31. The law is well settled that the testimony of a single injured witness can be sufficient for conviction, if it is credible, trustworthy, and corroborated by other evidence. The testimony of an injured witness is given particular weight because such a witness is less likely to falsely implicate an accused, especially if the testimony is consistent and supported by medical or other evidence. Criminal jurisprudence attaches great weightage to the evidence of such a witness as it presumes that he is speaking the truth unless shown otherwise and the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

32. The testimony of a sole injured witness is given significant weight, but not automatically accepted, as his presence at the scene alone is established by his injuries. However, the conviction can be sustained if the injured witness's evidence is cogent, reliable, and consistent, inspiring confidence and free from major contradictions. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness.

33. In the present case there is a sole injured witness of the incident. His evidence is to be evaluated with caution and circumspection on the touchstone of the evidence tendered by other witnesses and the other evidence on record. It is true that evidence of injured witness has to be

placed at higher pedestal, however, this principle may not apply to a case when the accused is also injured. Injury on the person of a witness may be a guarantee of his presence on the spot, but it is no guarantee of the truth of his deposition.

34. As per medico-legal examination report, the medical evidence is not supporting the version as narrated by the injured complainant P.W.-1. However, no supplementary report was brought before Court below.

35. Perusal of the injuries as narrated by Dr. K.C. Dhakar, P.W.-5 the doctor who has medically examined the injured, reveals that nature of the injuries is neither grievous nor fatal. As there is no supplementary report available on record, the injuries so sustained by the complainant-appellant seems to be simple in nature. The injuries were not such that injured P.W.-1 could not immediately go to police station. Here, in the case in hand, there is absolutely no explanation for the delay at any stage, what to say, of plausible explanation. The delay, therefore, renders the circumstances questionable. This non-explanation is, thus, fatal for the prosecution.

36. It is apparent that it was accused-opposite parties 2 to 4 who had called the Police and the Police came on the spot on their call. Even proceedings under section 107/116 Cr.P.C. were also initiated against the complainant-appellant but this important fact has been concealed by the complainant-appellant in his complaint.

37. The injured complainant has admitted in his cross-examination that accused-opposite party 3 Atul was also medically examined meaning thereby that Atul also sustained injuries in the incident but this fact has been concealed by the injured complainant in his complaint as well as in his examination-in-chief. The complainant is completely silent on this aspect in his examination-in-chief. This fact of accused Atul sustaining injuries raises suspicion qua the version brought forward by the

complainant-appellant. Therefore, the testimony of the complainant-appellant Sanjay Kumar P.W.-1, who is the sole injured witness in the case, has been rightly discredited by Court below in paragraph-14 of the impugned judgment.

38. When read as a whole, the testimony of injured P.W.-1 can be classified in category of "neither wholly reliable nor wholly unreliable". The testimony of sole injured witness P.W.-1 is embedded with material contradictions, severe infirmities and inherent improbabilities as mentioned above. It would be extremely hazardous to convict the accused on the premise of neither wholly reliable nor wholly unreliable testimony of injured P.W.-1. The testimony of sole interested material witness injured P.W.-1, in absence of corroboration from any other cogent evidence; when such testimony is embedded with material contradictions, severe infirmities and inherent improbabilities; cannot be made basis for conviction of accused for offences alleged. Therefore, reasons recorded by Court below in support of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons. Question no. 3 is answered accordingly.

39. In view of the discussion made above, we do not find any perversity in the judgment so as to interfere with the findings returned by Court below. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has misconstrued any material evidence. However, we could not gather any new fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any

good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed.**

Date: 17.11.2025

Monika

(Dr. Ajay Kumar-II, J.) **(Rajeev Misra, J.)**