

## State vs Manoj on 24 December, 2024

IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS-02, NORTH EAST DISTRICT, KARKARDOOMA  
COURTS, DELHI  
PRESIDED BY: SH. ANMOL NOHRIA

### JUDGMENT

State Vs. Manoj & Ors.

FIR NO. : 164/1999, U/s 325/34 IPC  
PS : NEW USMANPUR

A. CIS No. of the Case : 462823/2015  
B. FIR No. : 164/1999  
C. Date of Institution : 25.03.2000

D. Date of Commission of Offence : 10.11.1999 E. Name of the complainant : Bharat S/o Charan Singh, R/o B-248, Bhajanpura, Gali no.11, Delhi-53 F. Name of the Accused, his : (1) Manoj S/o Dhannu, (2) Parentage & Addresses Ajay S/o Prakash (abated), (3) Sonu S/o Ram Saran(already acquitted vide judgement dated 19.08.2023), (4) Pramod S/o Dhoom Singh (CCL), all R/o Gali no.11, Garhi Mendu, Delhi G. Representation on behalf of : Ms. Amandeep Kaur, Ld. APP State H. Offence complained of : U/s 325/34 IPC I. Plea of the Accused : Pleaded not guilty and claimed trial.

J. Order reserved on : 20.12.2024  
K. Date of Order : 24.12.2024  
L. Final Order : ACQUITTED u/s 325/34 IPC  
and Convicted section 174A  
IPC.

FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.1 of 20 Brief Statement of Reasons for Decision of the Case

1. The present FIR is based on DD No.32B dated 10.11.1999 which was kept pending by SI Avtar Singh and on 03.12.1999 HC Subodh Kumar on acting the same recorded statement of the complainant. It has been stated by the complainant that on 10.11.1999 at about 07:30 pm when he was occupied in electricity work at his shop four accused persons Sonu, Manoj, Ajay and Pramod all residents of Garhi Mendu started beating him with hockey sticks and killi and stole 22,000/- from his cash box at his shop. One of his neighbour called 100 number, PCR van came took him to the GTB hospital. The accused persons were chargesheeted for the offence under section 325/34 IPC.

2. FIR was registered and has been investigated by the officials of Police Station New Usmanpur and IO/SI Subodh Kumar filed the charge sheet against the accused persons upon which cognizance was taken by the Court on 25.03.2000.

3. Accused persons appeared before the Court and copy of chargesheet alongwith other documents under Section 207 Cr.P.C. was supplied to them.

4. Charge was framed vide order dated 15.02.2002 for the offence punishable Under Section 325/34 IPC against all the accused persons by Ld. Predecessor of this Court to which accused persons pleaded not guilty and claimed trial. Additionally, 2 charges under section 174A IPC were framed FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.2 of 20 against accused Manoj who was apprehended in kalandara bearing DD No.56A/19 dated 25.03.2019 and charged under section 174A IPC was framed against him on 04.06.2019 and was again apprehended in kalandara bearing DD No.46A/19 dated 28.05.2024 and charged under section 174A IPC was framed against him on 15.07.2024.

5. Thereafter, matter was listed for Prosecution Evidence. The Prosecution has examined 11 witnesses in support of its case. In nutshell, the testimony of the prosecution witnesses are as follows :-

(i) PW1 Bharat is the complainant in the present case. He has deposed that on 11.10.1999 he was at his shop and four boys came there having hockey and dandas and entered in his shop and gave beatings to him. He became unconscious he got fracture on his chin. He identified the accused persons present in Court as the same person who had given him beatings. When he regained consciousness he found a sum of 20,000/- missing from his cash box. PCR officials came there and took him to the hospital.

He remained in the hospital for nine days. When he came back to his shop from the hospital, police officials recorded his statement. The witness identified the danda, stump and hockey stick in Court. In his cross-examination the witness identified accused Sonu, Manoj and Pramod. He has further stated that at the time when the accused persons came to his shop, accused Ajay was having hockey and accused Pramod was having a danda. He was hit from behind by Ajay and Pramod while Sonu FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.3 of 20 and Manoj were talking to him.

(ii) PW2 Vijay turned completely hostile and did not support the case of the prosecution at all. He stated that he does not know anything about the case and no quarrel ever happened in his presence. Ld. APP put questions in the nature of cross- examination to him, however, he denied the suggestion that accused persons present in Court had given beatings to complainant Bharat. He also denied the suggestion that he was present at the spot at the time of quarrel. The witness was not cross examined by accused persons despite being given an opportunity.

(iii) PW3 Dr. Vinita Rathi examined the x-ray plate of Bharat and found fracture near inferior margin of left side of body of mandible. She submitted her report Ex. PW3/A. The witness was not cross examined by accused persons despite being given an opportunity.

(iv) PW4 HC Santosh was the Duty Officer. On 06.12.1999 at about 01:25 pm he received rukka sent by HC Subodh through Ct. Krishanbir on the basis of which he registered the present FIR. The witness was not cross examined by accused persons despite being given an opportunity.

(v) PW5 Davender Singh Tomar on 10.11.1999 he was going to Bhajanpura market for purchasing household articles and at about 07:30 pm when he reached gali no.11 he saw four persons present in Court, beating one person by hockey, danda in gali no.11 on the matter of urinal. They were saying to the person that he might urinate at some place else and as to why he obstructed them to do the same. In his cross-examination by Ld. counsel for FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.4 of 20 accused persons he has stated that he remained at the spot for half an hour. Many persons were gathered at the time of incident. He denied the suggestion that he never went to the spot.

(vi) PW6 SI Avtar Singh DD No.32B dated 10.11.1999 was handed over to him regarding quarrel. He alongwith Ct. Brij Bhan went to the spot i.e. B-248, Gali no.11, B-Block, Bhajanpura where he came to know that the injured was taken to GTB hospital by PCR van. He alongwith Ct. Brij Bhan went to GTB hospital and collected the MLC of injured Bharat on which doctor opined unfit for the statement. No eye witness met him at the hospital. No eye witnesses were found at the spot. He kept DD No.32 pending after that the same was marked to HC Subodh for further investigation. In his cross-examination by Ld. counsel for accused he has stated that he denied the suggestion that DD No.32B was never handed over to him for investigation.

(vii) PW7 ASI Kanhaiya Lal was incharge PCR Van B-53 on 10.11.1999. He received a call regarding quarrel at H. No. B-248, Bhajanpura. He went to the spot and met injured Bharat and took him to GTB hospital. The witness was not cross examined by accused persons despite being given an opportunity.

(viii) PW8 SI Subodh Kumar the case was marked to him for investigation on 03.12.1999. On 05.12.1999 he went to the house of complainant and recorded his statement. He prepared rukka on 06.12.1999 after receiving the opinion on the MLC. He prepared site plan at the instance of complainant. On the identification of the complainant he arrested the accused persons recorded their disclosure statement on the basis of disclosure one lathi was recovered. The accused persons were released on bail. He FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.5 of 20 recorded the statement of public witnesses Devender Kumar, Ajay Kumar and Vijay Kumar. In his cross-examination he denied the suggestion that investigation was not done fairly.

(ix) PW9 Ct. Brij Bhan Singh Yadav on receiving DD No.32B on 10.11.1999 he alongwith SI Avtar Singh went to the spot and came to know that the injured had been moved to GTB hospital. They went to GTB hospital, collected MLC of injured wherein doctor opined him unfit for statement. No eye witness was found at the hospital or at the spot. The witness was not cross examined by accused

persons despite being given an opportunity.

(x) PW10 HC Krishanvir on 06.12.1999 at about 01:45 pm he was handed over the original rukka and copy of FIR by Duty Officer by handing it over to HC Subodh Kumar at the spot i.e. B-248, Gali no.11, Bhajanpura, Delhi. He reached the spot met the IO and the complainant. He handed over the copy of FIR and original rukka to the IO. Thereafter, he went in search of accused persons and on the pointing of the complainant apprehended the four accused persons. Recovery of stump was effected on disclosure of Manoj, recovery of lathi on disclosure of accused Ajay and hockey from accused Pramod. IO recorded statements of other public persons and complainant. In his cross-examination he denied the suggestion that he did not join the investigation of the present case.

(xi) PW11 HC Vijender was the Duty Officer on 10.11.1999 and recorded DD No.32B on the said date. The witness was not cross examined by accused persons despite being given an opportunity.

6. PE was closed on 06.11.2015, and the statement of accused FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.6 of 20 persons under Section 313 Cr.P.C. was recorded on 20.11.2015. Accused persons did not wish to lead DE and the matter was listed for final arguments; however owing to the additional charges against the accused u/s 174 A IPC addition witness were examined by the prosecution as follows:-

(i) PW12 HC Sachin on 28.05.2024, he along with SI Amar Singh received secret information that Manoj will come to Khajoori Chowk, after which he along with SI Amar Singh went there vide DD no. 25A; and apprehended the accused Manoj.

After informing of the PO declaration he was arrested by the IO. Personal search of the accused was conducted by the IO and the accused was produced before the court after medical examination vide DD no. 46A dated 28.05.202, PS GTB Enclave. Witness correctly identified the accused in court. In his cross examination, he has denied suggestion of false implication.

(ii) PW 13 Si Amar singh, has also deposed on the same lines as PW12, being the IO of the arrest of the accused on 28.05.2024. Witness correctly identified the accused in court. In his cross examination, he has denied suggestion of false implication.

7. PE was closed on 20.12.2024 and the statement of accused persons under Section 313 Cr.P.C. was recorded on 20.12.2024. Accused persons did not wish to lead DE and the matter was listed for final arguments. Case record perused meticulously.

8. This Court has thoughtfully considered the material on record and arguments advanced with due circumspection.

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9. Proceedings against accused Ajay had abated on 29.11.2013. File regarding qua accused Pramod was sent to JJB for trial on 23.01.2019. Accused Sonu has already been acquitted vide judgement

dated 19.08.2023. Accused Manoj was present before this Court to face trial. The present judgment is limited to the examination of the role of accused Manoj only.

10. In the present case the prosecution has charged the accused persons for offence punishable under section 325 IPC. Section 323 IPC deals with punishment for voluntarily causing grievous hurt.

11. "Grievous hurt" has been defined in Section 320 IPC, which reads as follows:

"320. Grievous hurt.--The following kinds of hurt only are designated as 'grievous':

First.--Emasculation.

Secondly.--Permanent privation of the sight of either eye.

Thirdly.--Permanent privation of the hearing of either ear.

Fourthly.--Privation of any member or joint. Fifthly.--Destruction or permanent impairing of the powers of any member or joint.

Sixthly.--Permanent disfiguration of the head or face.

Seventhly.--Fracture or dislocation of a bone or tooth.

Eighthly.--Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

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12. In Mathai v. State of Kerala, (2005) 3 SCC 260 : 2005 SCC (Cri) 695 : 2005 SCC OnLine SC 87 at page 263, Hon'ble Supreme Court has observed that:

"Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly."

13. In the present case, the prosecution has solely relied on the testimony of complainant/PW1 Bharat. In his deposition PW1 has stated that on 11.10.1999 four boys entered in his shop having hockey and dandas and gave beatings to him. He became unconscious, got a fractured chin. He identified the accused persons in the Court as the persons who gave beatings. He has stated that he

remained at the hospital for nine days and when he came back to his house, police officials recorded his statement. Nowhere in his examination in chief has mentioned any details as to which accused, by which weapon caused him injury on which body part. The said witness was recalled for cross-examination and he has clarified that he did not mention the name of accused persons in his examination in chief as same was not asked. He identified accused Sonu, Manoj and Pramod in Court on 25.10.2016. He has further clarified that at the time when the accused persons came to his shop accused Ajay was having hockey, accused Pramod was having danda and accused Manoj and Sonu were not having any weapon. He was hit from behind FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.9 of 20 by Ajay and Pramod while Sonu and Manoj were talking with him. He lost consciousness due to the beating. PW2 turned completely hostile and did not support the case of the prosecution at all. He refused to identify the accused persons and denied his presence at the spot. PW5 stated that on 10.11.1999 at 07:30 pm when he reached gali no.11, Bhajanpura, he saw four persons beating one person by hocky, danda in gali no.11 on the matter of urinal.

14. The offence of grievous hurt is an aggravated form of the offence of hurt as defined in section 319 IPC. For a hurt to be a grievous hurt it has to form either of the eight clauses of section 320 IPC. Prosecution has placed his reliance on the testimony of complainant/PW1. In his examination in chief PW1 / complainant has given a bald statement that the four boys entered in his shop and gave him beatings by hockey and dandas. He did not mention the name of the accused persons, weapons used by individual accused or injuries caused to him by which accused by which weapon and on which body part. In his cross-examination dated 25.10.2016 he has categorically stated that "I was hit from behind by Ajay and Pramod while Sonu and Manoj were talking with me". PW5 has stated that he saw four persons beating one person in gali no.11 on the issue of urinal.

15. There are apparent contradiction in the testimonies of the PWs. PW1 in his cross-examination has stated that no injury has been caused by Manoj and Sonu and they were only talking with him. Nowhere in his deposition the complainant has stated as to FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.10 of 20 what was the reason of the quarrel or if there was any existing feud between the accused persons and the complainant. PW5 who is an independent public witness has stated that he saw four accused persons beating the complainant at gali no11 whereas complainant in his own deposition he stated that accused persons came to his shop. Therefore, contradiction is also found as to the place of the incident. Therefore, considering the totality of the circumstances, the prosecution has failed to establish that it was a case of hurt caused by accused Manoj.

16. In the present case during the trial accused Manoj had stopped appearing. Process under section 82 Cr. PC against him vide order dated 20.02.2018 and 23.02.2023; after recording the statement of process server he was declared a proclaimed offender vide order dated 07.01.2019 & 08.08.2023 respectively. The accused was formally charged for having committed offence under section 174A IPC on 04.06.2019 and 15.08.2024. He did not plead guilty and preferred trial. The prosecution has examined HC Sachin and SI Amar Singh as the prosecution witness in this regard.

17. Section 174A of the Penal Code, 1860 reads as under:

"174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.-- Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-

section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.11 of 20 imprisonment for a term which may extend to seven years and shall also be liable to fine."

18. Section 174A IPC is divided into two parts. First part deals with the situation where the proclamation is issued under Section 82(1) Cr.P.C. and when the accused failed to appear despite its publication, he is to undergo imprisonment upto three years or with fine or with both. The second part of Section 174A relates to the declaration issued by the Court under Section 82(4) Cr.P.C. wherein serious offences have been prescribed and despite declaring a person as proclaimed offender, when he fails to appear, the punishment provided is imprisonment upto seven years and payment of fine.

19. An argument was raised by Ld. Counsel for accused that Section 195 Cr.P.C. clearly barred the Court from taking cognizance of any offences punishable under Sections 172 to 188 IPC. Provision of Section 195 Cr.P.C. is mandatory and the Court has no jurisdiction to take cognizance of any offence mentioned therein unless there is a complaint in writing by the public servant.

20. In Maneesh Goomer vs. State, 2012(1)JCC 465 (Crl.M.C. 4208/2011) decided on 04.01.2012 Hon'ble Delhi High Court has categorically held that Section 195 Cr.P.C. has not been correspondingly amended so as to include Section 174A IPC which was brought into the Penal Code with effect from 23.06.2006.

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21. Section 174A IPC was introduced in the Code with effect from 23.06.2006 and Section 195A Cr.P.C. which provides that no Court shall take cognizance of offences punishable under Sections 172 to 188 IPC (Both inclusive) or of the abetment of committing the offence, except by complaint in writing by the public servant or of some other public servant to whom he is administratively subordinate, was a part of the Criminal Procedure Code since 1974 when the new Criminal Procedure Code came into force. No corresponding amendment was brought into Section 195 (1) (a) in the year 2006 when a new offence, by adding Section 174A was introduced in Indian Penal Code. By no stretch of imagination, it can be inferred or presumed that Section 174A would be deemed to be included in between Section 172 to Section 188 IPC.

22. The Court in Maneesh Goomer (supra) held :

"....it may be noted that Section 174-A IPC was introduced in the Code with effect from 23rd June, 2006. Section 195(1) Cr.P.C. provides that no Court shall take

cognizance of offences punishable under Section 172 to 188 (both inclusive) of the IPC or of the abatement, or attempt to commit the said offences, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Section 195 Cr.P.C. has not been correspondingly amended so as to include Section 174-A IPC which was brought into the Penal Code with effect from 23rd June, 2006. The Legislature was conscious of this fact and that is why though all other offences under chapter X of the Criminal Procedure Code are non cognizable, offence punishable under Section 174-A IPC is cognizable. Thus the Police officer on a complaint under Section 174-A IPC is competent to register FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.13 of 20 and after investigation thereon file a charge-sheet before the Court of Magistrate who can take cognizance thereon. Thus, I find no merit in the contention raised by the Learned Counsel for the Petitioner. "

23. In Moti Singh Sikarwar vs. State of U.P. and Ors, MANU/UP/2481/2016, decided on 29.11.2016 by the High Court of Allahabad it has been observed that bar created by Section 195(1) (a) Cr.P.C. would not apply to the provisions of section 174AIPC. It held:

"21. The reasons are as follows:

"1. It is to be noted that all the offences under Section 172 to 188 I.P.C. (both inclusive) are non- cognizable and bailable, whereas Section 174-A I.P.C. which provides for punishment upto 7 years imprisonment and fine, in case the offender fails to appear at the specified place and the specified time, as required by the proclamation published under Section 82 Cr.P.C., is cognizable and non- bailable. The legislature was conscious of this fact and that is why while introducing Section 174-A in the I.P.C. in the year 2006, it made no corresponding amendment in Section 195(1)(a) Cr.P.C. so as to include Section 174-A I.P.C. in between all the non-cognizable offences and bailable from Sections 172 to 188 I.P.C.

2. It cannot be said that due to inadvertence, the corresponding amendment in Section 195(1)(a) Cr.P.C., was left to be made by the legislature. It is noteworthy that Section 195 has been correspondingly amended in the year 2006, by amending the exception clause of it. Had there been any intention on the part of the legislature to include Section 174-A I.P.C. in Section 195(1)(a) Cr.P.C. it would have definitely correspondingly amended Section 195(1)(a) Cr.P.C. also.

3. Section 154 of Code of Criminal Procedure provides for information in cognizable cases and the concept of "locus standi" has been completely washed off by this section, as any person can set FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.14 of 20 the law into motion, in case any cognizable offence is noticed by him, by registering a first information report. The public interest demands that criminal justice should be swift and sure and the court should not let the guilty scot free only on the basis of mere some technicalities. Section 460 Cr.P.C. is also



based on the same principle.

4. The basic principle of law is that one, who seeks equity should do equity. In other words the persons, who seeks equitable reliefs, should come before the court with clean hands. The accused has no right to choose the mode by which he is to be prosecuted specially in the circumstances when he has failed to comply with the orders of the court and is prolonging the matter by filing one case after another.

5. The Hon'ble Delhi High Court in Maneesh Goomer's case (supra) has held that Section 195 Cr.P.C. has not been correspondingly amended so as to include section 174-A I.P.C., which was brought into the Penal Code with effect from 23rd June 2006 and there is no reason to deviate with the view of Hon'ble Delhi High Court."

22. In view of the above discussion, this court is of the considered view that the bar of Section 195 (1)

(a) Cr.P.C. is not applicable to the present case and a private person is competent to lodge a complaint or even an F.I.R. under Section 174-A I.P.C."

24. In A. Krishna Reddy v. CBI 2017 SCC OnLine Del 7266 :

(2017) 3 DLT (Cri) 391, Hon'ble Delhi High Court in para 29 has observed that:

"No separate investigation is required to be conducted as the orders of the Court declaring the petitioner to be Proclaimed Offender are part of the record in the main challan. Object and purpose to incorporate Section 174A IPC primarily is to ensure that the accused / suspects do not scuttle investigation or trial by remaining absconding without valid or sufficient reasons. In such a scenario, when the suspects or accused abscond, FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.15 of 20 possibility of valuable evidence to be washed away cannot be ruled out."

25. In State vs. Proclaimed Offenders of Delhi and others, Crl.No.2021/2010, decided on 11.08.2010, Hon'ble Delhi High Court has held that supplementary charge-sheet under Section 174A IPC can be filed or the offence under Section 174A IPC can be added in the main charge-sheet. Apparently, no fresh investigation was required to be carried out.

26. In Sunil Tyagi vs. Govt. of NCT of Delhi and Another CRL.M.C. 4438/2013 & CRL.M.A. 15894/2013, Hon'ble Delhi High Court has observed that:

"21. The legislature by enacting Section 174A IPC has further penalised the non-appearance of a proclaimed offender. The very basis of fair trial is threatened if an accused/suspect is declared as a proclaimed offender without proper service, or if proclamations and non-bailable warrants are issued in a routine manner.

22. The legislature seeing the growing number of Proclaimed offenders inserted Section 174A IPC by way of Clause 44 of the CrPC. (Amendment) Act, 2005 (25 of 2005) which was brought into force w.e.f. 23rd June, 2006 vide Notification No. SO 923(E) dated 21st June, 2006, hoping that it would be a deterrent for persons fleeing from justice.

23. Section 174A IPC penalizes the non- appearance of a person as required by a proclamation published under. In case of non- appearance consequent to a proclamation under Section 82(1) of the Code for a term up to three years/fine/both and in case of a declaration under Section 82(4) of the Code (in respect of offences under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC for a term upto seven years with fine.

Since non-appearance of accused in response to FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.16 of 20 the proclamation under Section 82 CrPC has been made a substantive offence, the provisions of Section 174A IPC are required to be invoked against absconding accused. When the accused fails to appear before the court in response to the proclamation issued under Section 82(1) CrPC, within the period of 30 days from the date of proclamation, or fails to appear at the specified place and time required by the proclamation issued under Section 82(4) CrPC, he is punishable with imprisonment for a term which may extend to three years or with fine or with both and imprisonment for a term which may extend to seven years or with fine or both, respectively."

27. In the present case, proclamation under S. 82 Cr. P.C. was issued against accused Kalu @ Trilok on 08.06.2017 and he was directed to appear before this Court on 09.08.2017. The order passed by Ld. Predecessor is already on record. As per the order dated 27.02.2018, statement of process server Ct. Javed was recorded and after due consideration accused Kalu @ Trilok was declared a proclaimed offender. ASI Ram Mehar has deposed that he received intimation about the arrest of Kalu @ Trilok from the police officials of PS Geeta Colony on 07.06.2022 and he came to the Court and met ASI Rajeshwar Rao who handed over the entire kalandara bearing DD No.12A dated 23.05.2022, PS Geeta Colony. He formally arrested the accused, prepared the supplementary chargesheet and filed it before the Court.

28. In a criminal trial, the burden on the prosecution is beyond reasonable doubt. The reasonable doubt is a rule of caution laid down by the Courts of Law in respect of assessing the evidence in criminal cases. In Awadhi Yadav v. State of Bihar, (1971) 3 SCC 116 at page 117, Hon'ble Supreme Court has observed that:

FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.17 of 20 "Before a person can be convicted on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and the proved circumstances must bring home the offence to the accused beyond reasonable doubt. If those circumstances or some of them can be explained by any other

reasonable hypothesis then the accused must have the benefit of that hypothesis. But in assessing the evidence imaginary possibilities have no place. What is to be considered are ordinary human probabilities."

29. In Bhagirath (supra) at page 99 Hon'ble Supreme Court has observed that:

"But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused. 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."

30. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.18 of 20 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. 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."

31. 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."

32. The evidence brought on record by the prosecution, is not sufficient to link the accused Manoj to the commission of the crime. Prosecution has also failed to prove that the accused Manoj has caused the injury to the complainant which is sine qua FIR No.164/99 State vs. Manoj & Ors. PS New Usmanpur Page No.19 of 20 non for proving the offence under section 323 IPC. Sufficient doubt has been created by the accused. Moreover, the charge under section 174A IPC stands duly proved by the prosecution in the presence of the kalandara and the order declaring the accused Manoj a proclaimed offender.

33. Thus, in view of the above discussion, the Prosecution has not been able to discharge its burden beyond reasonable doubt. Accordingly, accused Manoj is found not guilty for offence punishable u/s 325/34 IPC in the present case and resultantly, stands acquitted in the present case for offences u/s 325/34 IPC. However, he stands convicted for having committing offence punishable under section 174A IPC.

34. Accused is directed to furnish bonds in the sum of 10,000/- with a surety of like amount u/s 437A Cr.P.C and is directed to be present before the Ld. Appellate Court as and when directed.

Announced in the open  
Court on 24th December, 2024

(ANMOL NOHRIA)  
JMFC-02/NE/KKD COURTS

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