

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

+ CRL. L.P. 37/2009

% Decided on: 9th September, 2010

STATE (NCT of Delhi) Appellant

Through: Mr. Saleem Ahmad, Additional
Standing Counsel (Crl.) for the
State along with Ms. Stuti
Singh, Adv.

Versus

SHER KHAN & ANOTHER Respondents

Through: Mr. A.A. Qureshi, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

A.K. PATHAK, J. (ORAL)

By this petition, petitioner seeks leave to appeal against the judgment dated 10th September, 2008 passed by the Additional Sessions Judge (Trial Court), Delhi whereby respondents have been acquitted of the charge under Sections 392/34 IPC; respondent no. 2 has also been acquitted of the charge under Section 397 IPC.

2. As per the prosecution, the respondents, who were not known to the complainant Nasiruddin, had robbed Rs.240 from him on the point of knife at about 6 pm on 28th January, 2007 near Lal Bahadur Shastri Hospital on Kalyanwas Road within the jurisdiction of Police Station Kalyan Puri. Complainant raised alarm

and also apprehended respondent no. 1. He snatched knife from him. In the meanwhile, two police officials namely Constable Subhash Chand and Constable Rambir, who were on patrolling duty, incidentally arrived there and on seeing them respondent no. 2 ran away. Though, Constable Rambir chased respondent no. 2 but could not succeed in apprehending him. Respondent no. 1 was handed over by the complainant to both these constables. Knife was also handed over to them.

3. On receipt of information regarding the incident DD No. 4A was recorded in the Police Station Kalyan Puri and handed over to ASI Abdul Wahid for enquiry, who reached the spot and met Constables Subhash Chand and Rambir. He recorded statement of the complainant and wrote tehrir on the basis whereof, FIR in question was registered. Knife was measured and its sketch i.e. Ex.PW2/B was prepared. Thereafter, it was sealed in a pulanda and seized vide seizure memo Ex.PW2/C. Complainant was medically examined at Lal Bahadur Shastri Hospital vide MLC Ex.PW6/A. Respondent no. 1 was arrested vide arrest memo Ex.PW2/E. After two days of the incident, respondent no. 2 was apprehended on the pointing of complainant and was arrested vide arrest memo Ex.PW2/G. Charge-sheet was filed in the court of learned Metropolitan Magistrate, who took cognizance of the offence and committed the case to the Sessions Court.

4. Charge under Sections 392/34 IPC was framed against both the respondents. Separate charge under Section 397 IPC was also framed against respondent no. 2. Complainant Nasiruddin was

examined as PW2. Constable Subhash Chand and Constable Rambir, who according to prosecution had reached the spot while the incident was going on, were examined as PW3 and PW4 respectively. As per the prosecution, respondent no. 2 was arrested by the Investigating Officer on the pointing of complainant in presence of Constable Ram Milan. This witness was examined as PW5. ASI Abdul Wahid, Investigating Officer of this case, was examined as PW7 and he gave overall picture of the investigation conducted by him. Dr. Parmesh Sharma, who had medically examined the complainant, was examined as PW6. This witness has proved the MLC of the complainant as Ex.PW6/A, according to which no visible injury was found on the person of complainant. PW1 HC Deshraj Singh had recorded the FIR and has proved the same as Ex.PW1/A.

5. After prosecution closed its evidence, statements under Section 313 Cr.P.C. of the respondents were recorded separately on 27th August, 2008 wherein entire incriminating evidence, which had come on record during trial, was put to them. The case of the respondents was that of simple denial. However, it was stated by them that the complainant was related to Investigating Officer and thus, they were falsely implicated in this case by him. However, no evidence has been led by the respondents in their defence.

6. Trial Court appreciated entire evidence on record and found the same to be discrepant, untrustworthy and insufficient to prove beyond reasonable doubt that it is the respondents who had robbed the complainant at the point of knife. Trial Court found the

statement of the complainant at variance vis-a-vis police officials and the prosecution story with regard to the incident. As per the prosecution, complainant had apprehended respondent no. 1 and had snatched knife from him. After the two police officials, that is, Constable Subhash Chand and Constable Rambir arrived at the place of incident, complainant handed over respondent no. 1 to them along with the knife. This prosecution version has been supported by Constable Subhash Chand and Constable Rambir, who have deposed that when they reached the spot on hearing cries of the complainant, they saw that the complainant had already apprehended respondent no. 1 and had snatched knife from him. As against this version, complainant has deposed that it is the police officials who arrived there and apprehended respondent no. 1 and snatched the knife from him. That apart, as per the prosecution, respondent no. 2 was apprehended on the pointing of PW2, which fact was duly supported by PW5 Constable Ram Milan and PW7 ASI Abdul Wahid. As against this, PW2 Nasiruddin Malik has deposed that after two days of the incident he was called in the Police Station where he saw respondent no. 2 in the police custody and he had identified him as the same person, who was accompanying the respondent no. 1, at the time of incident. For the above reasons, Trial Court concluded that there was material infirmity in the prosecution case making the respondents entitled to benefit of doubt.

7. I am of the view that an order of acquittal cannot be interfered with lightly by the Appellate Court even though it is given wide

powers to review the evidence to come to its own conclusions. However, this power must be exercised with great care and caution. In order to ensure that the innocents are not punished, the Appellate Court should attach due weight to the lower courts' acquittal because the presumption of innocence is further strengthened by the acquittal of an accused. The Appellate Court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons." Appellate Court can interfere with order of acquittal in case it is shown that the findings of the Trial Court are perverse or suffer from manifest error resulting in miscarriage of justice. In case two views are possible on the evidence adduced before the Trial Court and the view taken by the Trial Court is a possible view, Appellate Court would not interfere and substitute its own view against the possible view taken by the Trial Court.

8. In **State of Karnataka vs. K. Gopalkrishna (2005) 9 SCC 291**, it has been held that in case of acquittal, Appellate Court has not to lightly disturb the findings of fact recorded by the court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the appellate court will be justified in setting aside such an

order of acquittal. In **The State of Goa vs. Sanjay Thakran (2007) 3 SCC 755**, it was held that generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. Similar view has been expressed in **Nepal Singh vs. State of Haryana JT2009(7)SC 172**.

9. In **Chandrappa & Others vs. State of Karnataka (2007) 4 SCC 415**, It has been held as under :-

- “(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption

in favour of the 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 the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

10. In the backdrop of the above settled legal position, I have examined the Trial Court Record and I do not find the view taken by the Trial Court to be perverse or suffering from any manifest error. In my opinion view taken by the Trial Court is a possible view and requires no interference by the Appellate Court. As per the prosecution, Constable Subhash Chand and Constable Rambir were on patrolling duty. On hearing the cries of the complainant they reached there and found that PW2 had already apprehended respondent no. 1 and had snatched the knife from him. They also noticed respondent no. 2 running away from the spot. PW4 Rambir tried to chase him but could not apprehend him. On receipt of information of incident, DD No. 4A was recorded and handed over to ASI Abdul Wahid, who reached the spot and recorded the statement of PW2 pursuant whereof, FIR in question was registered. He measured the knife and prepared its sketch and seized the same vide seizure memo Ex.PW2/B. Proceedings were conducted at the spot. After about two days of the incident, on the pointing of PW2, respondent no. 2 was apprehended in the presence of PW5 HC Ram Milan. However, this prosecution version has not been corroborated by the PW2. According to him, while complainant was being

robbed, Constable Subhash Chand and Constable Rambir, who were on patrolling duty, came there and apprehended respondent no. 1. Respondent no. 2 succeeded in escaping. After two days of incident, PW2 was called in the Police Station where he found respondent no. 2 already in police custody. His this version is not in consonance with the prosecution story. There is yet another discrepancy regarding the recovery of knife and arrest of the respondent no. 2. In his statement he deposed that from the spot they all went to the nearby police booth and from there to Police Station. According to him, he had signed all the papers in the Police Station. According to this witness, entire proceedings were conducted in the Police Station including recording of statement. However, as per PW3, PW4 and PW7 entire proceedings were conducted at the spot. These witnesses in their cross-examination have denied that first they went to the police booth and thereafter to Police Station from the spot, after the incident. According to them entire proceedings including arrest and seizure of weapon of offence were conducted at the spot.

11. In view of the above evidence, the view taken by the Trial Court cannot be said to be not a possible view or being perverse.

12. For the foregoing reasons I do not find it to be a fit case to grant leave to appeal to the petitioner.

13. Petition is dismissed.

A.K. PATHAK, J.

September 09, 2010/ga