

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. REV. P. 949/2003

% Judgment decided on: 11th January, 2011

SMT. MANJU

.....PETITIONER

Through: Mr. S.C. Singhal, Adv.
Versus

SH. MUSTAFA MASTAN & ORS.

.....RESPONDENT

Through: Mr. Manish Vashisht and
Mr. Samee Vashisht, Advts. for
R1 & 2
Mr. O.P. Saxena, APP for the
State along with SI Ram Pal,
P.S. Uttam Nagar

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)

Present revision petition under Section 401 of the Code of Criminal Procedure (Cr.P.C.) has been filed by the complainant/injured (PW1) against the judgment dated 4th August, 2003, passed by the Additional Sessions Judge (Trial Court) whereby respondent nos. 1 and 2 (hereinafter referred to as "private respondents") have been acquitted of the charge under Section 307/34 IPC.

2. Factual matrix of the case as unfolded is that FIR No. 387/2000 under Section 307/34 IPC was registered at Police Station Uttam Nagar on the basis of statement of petitioner, wherein she stated that on 29th May, 2000 at about 9 pm there was electricity failure in the colony where she had been residing with her family. Her husband had gone to the chowk where transformer was installed to make enquiry about the reasons of electricity failure. After some time she heard noises of quarrel. Accordingly, she went towards the chowk with a kerosene oil lamp in her hand. On reaching there she noticed private respondents quarreling with her husband. When she intervened, respondent no. 1 got enraged and snatched kerosene oil lamp from her and threw it on her head. He also poured kerosene oil on her as a result whereof her clothes caught fire and she sustained burn injuries. Thereafter, respondent no. 1 ran away from the spot. Her husband doused the fire and removed her to hospital.

3. Charge under Section 307/34 IPC was framed against the private respondents; to which they pleaded not guilty and claimed trial.

4. Prosecution examined 10 witnesses in all. PW8 Dr. Anju Bala Dey from Safdarjung Hospital has proved the MLC of petitioner which shows that the petitioner had suffered burns on the interior surface of her neck, both the upper limbs,

interior chest and abdomen and total surface area of burns was about 35%. Petitioner was examined as PW1. Her husband was examined as PW3. All other witnesses are formal in nature being the police officials.

5. After prosecution closed its evidence statements under Section 313 Cr.P.C. of the private respondent were recorded separately wherein entire incriminating material, which had come on record, was put to them. Respondents denied their participation in the crime. They claimed themselves to be innocent. According to them, they had been falsely implicated due to political rivalry. They also produced Kishan Angad and Babloo in their defense, whose statements were recorded as DW1 and DW2. Both these witnesses claimed that they were present at the spot at the time of incident being residents of same area. These witnesses deposed that Raj Kumar was trying to hook a wire on the phase which was working while petitioner was standing beside him with a lamp. Raj Kumar received electric shock and fell over his wife. Petitioner lost balance and lamp fell over her resulting burn injuries to her. Besides them one J.C. Vashishtha, Record Clerk from DDU hospital was also examined as DW3, who has proved the MLC of the petitioner as Ex. DW3/A. Petitioner was initially taken to DDU Hospital and from there she was removed to Safdarjung Hospital where she

was treated by PW8 Dr. Anju Bala Dey. In DDU Hospital she did not name the private respondents.

6. On in-depth scrutiny of statements of PW1, PW3, DW1 and DW2, Trial Court came to the conclusion that prosecution had failed to prove its case beyond the shadow of reasonable doubt that it is the private respondents, who in furtherance to their common intention, had caused burn injuries to the petitioner. As regards respondent no. 2, Trial Court was of the view that deposition of PW1 and PW3, was shrouded with suspicion, inasmuch as material improvements were made by them, while in witness box, regarding role played by him. In the FIR role of catching hold was not ascribed to respondent no. 2. However, while deposing in court, it was alleged that respondent no.2 had caught hold of PW1 while respondent no. 1 poured kerosene oil on her. It was held that since PW1 and PW2 had made improvements on material points, their depositions could not have been preferred as against DW1 and DW2, who were independent witnesses. It has been further noted that petitioner had not disclosed the names of private respondents to the doctor in DDU hospital, where she was first taken for her medical treatment by one Shiv Narayan S/o Sukh Ram, even though she was conscious and well oriented at that time. She had left the hospital against the medical advice and was removed to Safdarjung Hospital by her husband at about 11:30

pm, thus, had sufficient time with her to deliberate with her husband. For the foregoing reasons, Trial Court concluded that prosecution had failed to prove its case beyond shadow of reasonable doubt, consequently, acquitted the private respondents.

7. It may be noted here that during the pendency of this petition, respondent no. 2 has died and the proceedings against him stood abated on 22nd July, 2010.

8. Learned counsel for the petitioner has vehemently contended that the Trial Court has not appreciated the testimony of PW1 and PW3 in correct perspective. It has erred in discarding their testimony on the ground that it was discrepant or that they had made material improvements. Statement of the petitioner before the Trial Court has to be preferred as against the averments made in the FIR, history given in the MLC and testimony of defence witnesses. In nutshell, it has been contended that in view of the testimonies of PW1 and PW3 Trial Court ought to have concluded that the private respondents, in furtherance to their common intentions, had set PW1 on fire after pouring kerosene oil, thus, had committed the offence under Sections 307/34 IPC.

9. In this case, State has not filed any appeal against the acquittal of private respondents. It is the complainant/injured

who has filed this revision under Section 401 Cr.P.C. I am of the view that while exercising revisional jurisdiction High Court does not function as court of appeal and cannot re-appreciate the evidence and substitute its view as against the view taken by the Trial Court. Powers of the High Court in exercise of its revisional jurisdiction under Section 401 Cr.P.C. in a revision petition filed by a private party against the acquittal of an accused are very limited. It cannot interfere with an order of acquittal unless it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and which results in a flagrant miscarriage of justice. Even if, High Court, on appreciation of the evidence on record, were to reach a conclusion different from that of the Trial Court, that by itself would be no justification for exercise of the revisional jurisdiction under Section 401 Cr.P.C. In **Thankappan Nadar & Ors. Vs. Gopala Krishnan and Another 2002 (9) SCC 393**, Supreme Court has held that re-appreciation of evidence by the High Court in revision petition filed by the complainant against acquittal order is impermissible where the acquittal order did not suffer from any procedural illegality or manifest error of law and the court passing that order had not overlooked the evidence clinching the issue, High Court cannot re-appreciate the entire evidence and take a view to the contrary for setting aside the acquittal

order. In the said case trial court had convicted the accused persons, whereas the appellate court had acquitted them. In the revision application filed by the private complainant, High Court, after appreciating the evidence, observed that although the injured persons belonged to the rival party, but that did not render their evidence interested and partisan and set aside the acquittal order. Supreme Court while, allowing the appeal against the order of High Court, observed that although it was unfortunate that such a serious offence inspired by rivalry over election matter would go unpunished, however, that would not be a valid ground for ignoring or not strictly following the law as enunciated by the Apex Court, which does not empower the Court exercising the revisional jurisdiction to reappraise the evidence.

10. In **Akalu Ahir Vs. Ramdeo Ram 1973 (2) SCC 583**,

Supreme Court has observed as under:-

“No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.”

11. What can be culled out from the above pronouncements is that the powers of the High Court in its revisional jurisdiction under Section 401 Cr.P.C. in a revision petition by a private party against a judgment of acquittal are very limited. High Court in exercise of its revisional jurisdiction does not function as a court of appeal and cannot re-appreciate the evidence. It can interfere with the order of acquittal only if it is shown that Trial Court had committed some procedural irregularity or overlooked the material evidence or misread the same which resulted in a flagrant miscarriage of justice.

12. As regards the present case is concerned, none of the aforesaid circumstances exist so as to compel this Court to interfere with the impugned judgment and direct the re-trial. Trial Court has considered the evidence in detail. It has found itself unable to return a finding of guilt in view of the evidence lead by the parties. According to Trial Judge the prosecution case was shrouded with suspicion. Improvements were made by PW1 and PW3 while deposing in court than what they had stated earlier, during the investigation. Not only this, two independent witnesses, who were present at the spot, made a statement that husband of the petitioner was trying to fix a wire in electricity mains while the petitioner was standing by his side with a kerosene oil lamp in her hand. Petitioner's husband received electric shock and fell over the petitioner resulting in

falling of kerosene oil lamp on her, as a consequence of which, she sustained burn injuries. I do not find any procedural irregularity or manifest error of law in the judgment passed by the Trial Court. There is nothing to show that Trial Court had shut out or over looked the evidence which clinches the issue. Entire evidence cannot be re-appreciated to form a different opinion than what had been formed by the Trial Court on appreciation of the evidence.

13. For the foregoing reasons, this petition is dismissed being devoid of merits.

A.K. PATHAK, J.

JANUARY 11, 2011

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