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

+ CRL. Rev. P. 690/2002

% Judgment delivered on: 3rd January, 2012

NAVEEN KUMAR @ BABLOO. Petitioner

Through: Mr. Naresh Kaushik and
Ms. Amita Kalkal, Advocates

versus

SATYAVRAT PUNIA AND ORS. Respondents

Through: Mr. Javed Hashmi, Advocate
for R1 to R4.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The instant petition is being filed by the petitioner while challenging the judgment dated 15th September, 2001, passed by the learned Addl. Sessions Judge, whereby the learned Judge has acquitted all the accused persons/respondents from the charges.

2. The petitioners were charged under Sections 302/34 Indian Penal Code, 1860. Accordingly, under Section 212 of Indian Penal Code, 1860, Charges were framed.

3. In respect of the charges against the respondents/accused persons, prosecution produced for examination as many as 23 witnesses.

4. The learned trial judge has recorded that as per the prosecution witness PW8 Smt. Sev Wati and PW5 Naveen stated to be eye-witness,

however, PW8 Sev Wati declared hostile and has not supported the prosecution case.

5. Learned counsel for the petitioner has drawn the attention of this Court to the statement of PW5, being the eye witness. He stated that his mother threatened accused Satya Vrat to see him in the court of law and also lodged a complaint with the police on which accused Satya Vrat reported that she would not be able to do so because he would finish her. Then accused Satya Vrat, Sunita and Nirmala pushed his mother on the ground. Sunita got hold of both the legs of his mother and Satya Vrat caught both legs of his mother and gave blows on the head with 'Vasauli'. Thereafter accused Nirmala came and also gave blow on his mother. He was so scared that he ran away from there and on the way, his aunty Sev Wati met him and he told her about the incident. Then Sev Wati told that she would check about the incident from the neighbourers etc. He along with Sev Wati went to the place of occurrence where his mother was lying, and blood was oozing from her head. Then he with Sev Wati planned to go to the police station.

6. This witness was cross examined where he has stated that the incident took place at 10/10:30. He could neither tell the area of their plot i.e., the plot in dispute and nor could remember the name of the owners, who's plots were situated on two sides of the plot in dispute. Again he said that their plot is not situated near the plot in dispute but in Rajdhani Park. He did not know the names of the occupants of the houses on three sides of the plot in dispute.

7. However, it is admitted that there are houses constructed in front of plot in dispute where people lived. Further he stated that there was a

shop of a lala Daya Ram in the corner of Gali. No resident of gali came during the incident. He had raised alarm but none of the resident came to the spot. He could not tell for how long the incident continued. He could not try to save his mother during the incident. He did not approach to the police station which was at a distance of 1 kilometre from the disputed plot. He reached at the plot i.e. the place of incident after two hours of the incident. The police was already present there.

8. After some time this witness also declared hostile and learned APP cross examined him. Therefore, this witness also has not fully supported the case.

9. On the other hand learned counsel for the respondent submits that under Section 397 Cr.P.C, the revisionist Court has limited power to interfere with. The petitioner has not raised any procedural fault with the judgment on the correctness, legality or propriety of the finding, and as to their irregularity of any proceedings in the court.

10. Ld. Counsel further submits that under Section 401(3), the Revisionist Court has no power to convert acquittal into one of conviction. To this effect he has referred Section 401(3) and (4) reads as under:-

“(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

11. He submits, therefore, the maximum power with this Court is if

court thinks fit after satisfying itself as to the correctness, legality or propriety of the findings, this Court can send the matter back to pass a fresh order/judgment. Learned counsel has relied upon the judgment of this Court in **2010 (4) LRC 36 Delhi**, wherein it has been observed that:

“9. It is well settled that an order of acquittal cannot be interfered with the lightly and cannot be reversed merely because Appellate Court can arrive at a different finding than what had been rendered by the Trial Court on re-appreciating the evidence. Appellate Court will not reverse a decision of the Trial Court merely because different view may also be possible. After an order of acquittal has been made, the presumption of innocence of the accused is further strengthened by that order and that being so, the Trial Court’s decision can be reversed not on the ground that accused had failed to explain the circumstances appearing against him, but only for very substantial and compelling reasons. Appellate Court will be slow in interfering an order of acquittal and substitute its view as against the possible view taken by the Trial Court. If two reasonable views are possible then the view taken by the trial court cannot be disturbed, if it is a possible view.”

12. Learned counsel has also relied upon a judgment of **Punjab and Haryana High Court** passed in **Crl. Rev. Pet. 551/1999** on 5th May, 2006 whereby it is held that in a case of acquittal of accused by the trial court on revision being filed by the complainant, the revisionist Court has to see the defects of procedure or manifest error of law resulting in miscarriage of justice.

13. In a case of Supreme Court in **2002 (3) JCC 1691**, their

lordships have held that the revisionist court has limited powers and it prohibits it from converting a finding of acquittal into one of conviction and the interference in revision can be only in exceptional circumstances where the interest of public justice requires for correction of a manifest illegality and miscarriage of justice.

14. Learned counsel has further relied upon another Supreme Court judgment in **Gopal Singh and Ors v. State of M.P 2010 III AD Crl. SC 545** where it was held:

“7. We have considered the arguments advanced by the learned counsel for the parties. The High Court's power while converting an acquittal into a conviction is no longer a matter of speculation and debate. It is now well settled that if the trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused was possible thereof, the High Court would not be justified in interfering on the premise that a different view could also be taken and though the High Court was entitled to reappraise the evidence there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction.”

15. Therefore, it would not be justified for this court to interfere on the premise that different views should also be taken though the High Court was entitled to re-appreciate the evidence, there should be substantive reason for setting aside the acquittal and making it one of the conviction.

16. The trial judge has recorded in its impugned judgment that weapon of offence is a ‘vasauli’ which is being used by mason and labourers for the construction work of building and houses by the mason and labourers. This weapon has been shown in the possession of

the Satya Vrat and prosecution failed to explain as to why this instrument has been shown in possession of Satya Vrat. Admittedly, he is not a mason nor he was doing construction work on the place of construction and as per the prosecution Satya Vrat was employed as a clerk in Defence Department. It is also not the case of prosecution that Satya Vrat was himself doing construction work and was using this instruction for construction work but it is in the evidence of PW1 that it was not used by labourers who were raising construction on the disputed plot to the nuisance of Nirmal and they had a quarrel with Nirmala and neighbours and she was advised to lodge a report to the police and by that time she returned to this Court after informing the neighbours and relatives she had already been murdered. No collection of basauli has been shown to Satya Vrat.

17. Learned trial judge has also taken into consideration the statements of official witnesses who happened to be on duty where Satya Vrat was working and Satya Vrat was reported to mark his presence 10:05 AM while he had come to office only at 3:05 pm. Learned trial court has recorded that it can be seen that no much importance could be attached by this Court, in fact because the accused is coming to office at 3:05 pm and mark his presence at 10:50 a.m. does not mean that she would commit crime as to save from punishment he did so. Marking of present for earlier hours can be for various other reasons. The case of prosecution that accused committed murder of Nirmala has not been proved only because witness Naveen has not been produced to be the trustworthy witness, on account of conduct, at the time of occurrence and also on account of matters in

statement regarding introducing a quarrel between his mother and Nirmala and on account of his absence from the scene of occurrence.

18. The other witness of occurrence have not stated anything against the accused persons about their involvement in the alleged crime. Therefore, the trial judge was of the opinion that the prosecution miserably failed to bring home all the charges Satya Vrat Sunita and Anil and they all were acquitted of the charges.

19. I do not find any discrepancy procedural or otherwise in the order passed by the learned trial judge. Therefore, I am not inclined to interfere with the same.

20. Consequently, this criminal revision petition is dismissed.

21. No order as to costs.

SURESH KAIT, J

JANUARY 03, 2012

‘raj’