

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

Date of decision: 6th March, 2013

+ **CRL. A. 130/2013**

YOGENDER PRATAP SINGH Appellant

Through: Mr. Pardeep Gupta, Adv. with
Mr. Parinav Gupta, Adv.

versus

STATE (NCT. OF DELHI) & ORS. Respondents

Through: Ms. Rajdipa Behura, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant being victim of the offence invokes the provisions of the newly added proviso to Section 372 IPC by filing this Appeal against an order of acquittal dated 20.09.2012 recorded by the learned Additional Sessions Judge ('ASJ') in SC No.40/2011 arising out of FIR No.262/2009 dated 04.09.2009 under Section 328/34 IPC registered at Police Station (PS) Dabri.
2. As per prosecution version, DD No.45-A was recorded in PS Dabri on 03.09.2012 at 10:30 P.M. regarding admission of one Yogender son of Udayveer in DDU hospital with the history of having taken some unknown substance. ASI Omkar Singh was assigned the said DD entry. He along with Constable Laxman reached DDU hospital and found Appellant Yogender Pratap admitted in the hospital. He obtained

Appellant's MLC which recorded that the Appellant was a case of unknown poisoning. The Appellant informed ASI Omkar Singh that he was administered some substance in Limca by the three Respondents. He took just two sips and on finding its taste to be different declined to take the same and somehow reached his office at West Sagarpur where he started vomiting. He was then removed to the DDU hospital by his father and brother.

3. During the course of investigation, gastric lavage of the Appellant (the Complainant) on chemical examination by FSL was found to be dichlorvos.
4. Charges for the offence punishable under Sections 328/34 IPC were framed against the Respondents. In order to establish its case the prosecution examined 14 witnesses. PW-3 Yogender Pratap (the complainant), PW-5 Udayveer Singh (father of the Complainant) and PW-6 Lokesh (brother of the Complainant) are the material witnesses in as much as per the prosecution version, the Appellant was removed to the hospital by PW-5 and PW-6.
5. On appreciation of evidence, the learned 'ASJ' found the prosecution version to be doubtful and the Complainant to be unworthy of reliance. He accordingly acquitted, the Respondents giving them benefit of doubt. The details reasons given by the learned 'ASJ' are extracted from the impugned order hereunder:-

“17. From the deposition of PW3, it appears that he was administered some stupefying substance mixed in Limca, a soft drink, by the accused. He somehow, after taking two sips of the drink, managed to get out of accused Pradeep's office and reached his own office where he started vomiting vigorously. He had

reached the office of Pradeep Tiwari at 7.30 p.m. and as per his statement in cross examination remained there for 10 minutes. Then it took him another ten minutes to reach his office. Thus he might have reached his office at about 7.50 p.m., when he started vomiting even after becoming unconscious. He continued to vomit even around 9.15 p.m. when he was taken to hospital by PW5 and PW6. By such account of PW3, PW5 and PW6, impression is gathered that vomitted matter must have spread on the clothes of PW3 and in his office also. He admits that he was taken to the hospital in the same clothes which he was wearing. However, intriguingly, PW4, who examined PW3 in DDU Hospital, did not find any vomitted matter or vomit stains on his clothes or on his body. According to her, the patient was not having fever, B.P was normal and did not complain of any stomach ache. She did not notice any smell from the mouth of the patient. The history given to her was that the patient has ingested some unknown substance. PW5 has deposed in his cross examination that he saw vomitted material on the shirt of PW3 and also on the floor. Then where did the vomitted material go. How did it vanish before the patient (PW3) was examined by the doctor (PW4) at DDU Hospital.

18. Another important contradiction is found in the testimony of PW5 and PW6. PW5 states that PW3 did not vomit in the car while being taken to the hospital whereas PW6 states that he vomitted in the car also two or three times.

19. ASI Omkar Singh, who had reached the office of PW3 after the registration of the case, appearing as PW12 for the prosecution, stated in his cross examination that he did not find any traces of vomit in the office. He also stated that when he met the complainant (PW3), he did not notice any traces of vomit on his clothes.

20. All this raises a well founded doubt regarding the veracity of the prosecution case. Vomitted matter or traces of vomit are the material pieces of evidence in cases u/s.328 IPC. However, in this case neither any vomitted matter nor vomit traces were found on the body/clothes of PW3. No such vomited matter or vomit traces were even found in office of PW3 where he is stated to have vomitted in large quantity. Neither PW3 nor his father (PW5) and brother (PW6) have stated that his office was cleaned before the

visit of police officials (PW12). Thus, it is clear that PW3 has concocted only a false story in this regard with the ulterior motive to implicate the accused falsely in this case.

21. The conduct of the complainant PW3, after the alleged incident of poisoning is very suspicious. He did not call anybody including his father and brother, even though he was having a mobile phone. He did not visit the clinic of Rohit Gupta, which was on the way to his office from Pradeep's office. He did not inform his brother, who was on the stationery shop adjacent to his office.

22. The conduct of PW5 and PW6 also is not above board. When they realized the alleged serious condition of PW3, he having vomitted in large quantity in his office and was unconscious, they did not take him to a nearby clinic or nursing home for immediate treatment but travelled for one and a half hours in car upto DDU Hospital and got him admitted there. Manifestly, they did not feel perturbed or shocked on seeing the condition of PW3. They did not show any sense of urgency in providing treatment to PW3. It shows that they knew nothing is going to happen to him and hence did not attach any seriousness to the condition of PW3.

23. It is true that the FSL report Ex.PW8/A reveals that the gastric lavage of the complainant Yogender was found to contain substance known as 'dichlorovos'. However, no evidence has been led by the prosecution to demonstrate whether or not such substance is poisonous one and if so, to what extent and how much quantity is sufficient to cause death of a person. The IO has not made any attempt to seize the cold drink, in which the substance was allegedly mixed by the accused and administered to the complainant.

24. Even otherwise also, from the evidence led by the prosecution as discussed herein-above, it cannot be said with certainty that any poisonous substance was administered to the complainant by the accused in the office of accused Pradeep Tiwari. The complainant did not show any symptoms having been poisoned. The only symptom projected by the prosecution is that he started vomitting as soon as he reached his own office. The story about vomitting seems to have been totally concocted as no such vomits or vomit stains were found by the doctor or the IO either on the clothes of

the complainant which he was wearing at the time of incident or anywhere in the office of the complainant. The complainant did not vomit on the way from the office of Pradeep Tiwari to his own office. He did not intimate his family members including his father and brother about his having been administered some poisonous substance by the accused. He did not visit the clinic of the doctor which was on the way. His father and brother also did not show any urgency in providing treatment to him. They did not take him to a nearest clinic or nursing home. They preferred to travel for one and a half hours till they reach DDU Hospital and got him admitted there. In the hospital also, the doctor, who attended the complainant, did not notice any foul smell emanating from the mouth of the complainant. His BP was normal and he did not complain of any stomach ache.

25. More importantly, the complainant and his father told the doctor that the complainant has ingested some unknown substance. All the three accused were known to the complainant but still he does not take their names before the doctor.”

6. Thus, the learned ‘ASJ’ observed that the vomited substance was not seized by the IO from the office of the Complainant where he vomited on his way to hospital or from the clothes which the Complainant was wearing. The learned ‘ASJ’ observed that even the clothes which the Complainant was wearing at the time he was admitted in the hospital were not seized. The learned ‘ASJ’ observed that the Complainant’s conduct in not calling his brother or his father immediately after he was administered the poisonous substance and was proceeding to his office was very suspicious. He (the learned ‘ASJ’) held that there was a Clinic of Dr. Rohit Gupta on way to his office from Respondent Pradeep’s office; yet he did not prefer to visit the Clinic. The learned ‘ASJ’ observed that the anxiety of the real brother after such an incident (of administering poisonous substance) would be to remove the victim (his own brother) to the nearest Nursing Home/hospital instead of travelling to

DDU hospital which consumed 1½ hours. All the more, even at the time of his admission in the hospital, the Complainant was found to be conscious. Neither he nor his brother nor his father disclosed to the attending doctor at the time of preparation of the MLC that some poisonous substance has been administered by the Respondents. Rather, what is stated on the MLC at the time of admission of the Complainant is “*alleged history of ingestion of some unknown substance as told by him and B/B* (that is the person who brought by the patient, father in this case).” All these factors genuinely raise grave doubts in the prosecution version. Thus, the order passed by the learned ‘ASJ’ cannot be faulted.

7. The learned counsel for the Appellant relies on a judgment of Supreme Court in *Bhupender Singh v. State of Punjab* (1988) 3 SCC 513 where it was observed that an accused should not be acquitted on failure of the prosecution to prove possession of the poison with the accused, as murder by poison is invariably committed under the cover and cloak of secrecy and the person who commits such murder would naturally take care to eliminate and destroy the evidence against him. *Bhupender Singh* is not applicable to the facts of the present case. In this case, the Respondents have not been acquitted for want of recovery of poisonous substance from their possession but because the prosecution version from the circumstances as narrated by the learned ‘ASJ’ was found to be suspicious and doubtful.
8. It is well settled that powers of the Appellate Court while hearing the Appeal against acquittal are not limited. It has the same power as it has while hearing the Appeal against an order of conviction. However, the fact remains that the presumption of innocence which is attached to every

accused, unless he is proved guilty, is strengthened by an order of acquittal. Thus, the Higher Courts interfere in an order of acquittal where the finding of the Trial Court is perverse or there is gross misapplication of law. In other words, the Appellate Court interferes with the order of acquittal where there are compelling and substantial reasons. The Supreme Court in *Syed Peda Aowlia v. The Public Prosecutor, High Court of A.P., Hyderabad*, (2008) 11 SCC 394, summed up the law after referring to various earlier decisions as under:-

*“5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. 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 paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. See *Bhagwan Singh and Ors. v. State of Madhya Pradesh*, (2002) 4 SCC 85. 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 and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.”*

9. I do not find any substantial or compelling reason to interfere with the order of acquittal. Rather, the conclusion reached by the learned 'ASJ' is just and reasonable.
10. The Appeal, therefore, cannot be entertained; the same is dismissed in limini.

G.P. MITTAL, J.

MARCH 06, 2013

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