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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th November, 2014

+ **CRL.A. 142/2012**

TEJRAM

..... Appellant

Through: Mr. Chetan Swarup, proxy counsel for
Mr. Naresh C. Sharma, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. M.N.Dudeja, Additional Public
Prosecutor for the State along with ASI
Bijendra Singh, Police Station
Mehrauli.
Mr. R.P. Khatana, Adv. for
respondents no. 2 to 6.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This criminal appeal u/s 372 Cr.P.C has been filed by the victim Shri Tej Ram, feeling aggrieved by the judgment dated 29.11.2011 in case FIR No.548/2004 u/s 308/34 IPC, P.S. Mehrauli, vide which respondents 2 to 6 were acquitted.

2. Succinctly stated, prosecution case is as follows:-

D.D.No.19 dated 05.09.2004 was recorded on the basis of an information received from HC Rohtash of PCR regarding quarrel at the house of Dev Ram at Village Chandanhola. HC Hanuman Sahai(PW7) along with HC Manohar (PW8) reached the spot at village Chandanhola

and came to know that Tej Ram (PW3) with whom quarrel had taken place had received several injuries and was taken by PCR officials to hospital. Accordingly both the police officials went to AIIMS where Tej Ram was found admitted. However, on MLC, the Doctor declared him unfit for statement. No eye witness was present at the scene of crime or in the hospital, as such HC Hanuman Sahai wrote *Tehrir* Ex. PW7/A and got the FIR u/s 308 IPC registered which was entrusted to SI Devender (PW12) for further investigation. SI Devender recorded the statement of Naveen (PW2), son of injured Tej Ram on 06.09.2004. Statement of Tej Ram was also recorded on 06.09.2004. During the course of investigation, the accused were arrested. Iron rods and hockey were recovered. After investigation, charge sheet was submitted against them.

3. In order to substantiate its case, prosecution examined as many as 15 witnesses. All the incriminating evidence was put to the accused persons while recording their statement u/s 313 Cr.P.C wherein they denied the case of prosecution and pleaded innocence. Accused Sushil submitted that 15 to 20 days prior to the occurrence, a quarrel had taken place between his brother and Jagat who was cousin brother of Tej Ram. Jagat had complained to police and police registered the case u/s 107/151 Cr.P.C. It was further alleged that no quarrel took place with Tej Ram and the accused were falsely implicated in this case. Accused Manoj took the same plea as that of Sushil. All the remaining accused pleaded their

innocence. Accused Sanjay examined Manoj Kumar (DW1) and Sandeep Kumar, Junior Judicial Assistant, Record Keeper, Delhi High Court, (DW3). Besides that, he examined himself as DW2 for taking the plea that he was not present at the place of incident. After examining the evidence led by the prosecution and the defence evidence, vide impugned judgment, the learned Trial Court acquitted all the accused by granting them benefit of doubt.

4. Feeling aggrieved, the present appeal has been preferred by the appellant. I have heard learned counsel for the parties, perused the written submissions filed by them and the Trial Court record.

5. In the written submission filed by the appellant, it was submitted that the victim identified all the accused persons to be the assailants of the crime and has also proved that he has sustained grievous injuries. The medical evidence corroborates the oral evidence. The weapon of offence were also recovered at the instance of accused persons. Despite that respondents were acquitted. The impugned judgment is perverse and deserves to be set aside.

6. Per contra learned counsel for respondent no.2 to 6 supported the findings of the learned Trial court for submitting that the impugned judgment does not call for any interference. It was further submitted that it is a settled law that the High Court is not to interfere in the order of acquittal unless the order of Trial Court is perverse, totally against the

evidence and is rendered in complete breach of settled principles underlying criminal jurisprudence.

7. The law relating to an appeal against an order of acquittal was succinctly laid down by Hon'ble Supreme Court in ***State of Goa v. Sanjay Thakran and Another***, (2007) 3 SCC 755 and it will be advantageous to reproduce the observations made by the Supreme Court as under:-

“By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in ***Tota Singh and Anr. v. State of Punjab*** (1987) 2 SCC 529, as under:

“6....The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.”

8. Further in ***Ramesh Babulal Doshi v. State of Gujarat***, (1996) 9 SCC 225, it was observed:

“7....This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first

required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably

unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then- and then only-reappraise the evidence to arrive at its own conclusions....”

9. In *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, Supreme

Court held:

“7. 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 favorable 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 in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. {See *Bhagwan Singh v. State of M.P.* (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, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973) 2 SCC 793, *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225 and *Jaswant Singh v. State of Haryana* (2000) 4 SCC 484.”

10. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would

upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

11. Similar view was taken in *Govindraju @ Govinda v. State by Sriramapuram P.S. & Anr.* 2012 III AD (SC) 453, *Murlidhar @ Gidda & Anr. v. State of Karnataka*, 2014 IV AD (SC) 557 and *Ramesh Vithal Patil v. State of Karnataka & Ors.*, 2014 IV AD (SC) 565, *Ashok Rai v. State of U.P. & Ors.* 2014 V AD (SC) 1.

12. In view of this legal proposition, it is to be seen whether the impugned judgment suffers from any infirmity or is so perverse that it calls for interference.

13. Out of the 15 witnesses examined by the prosecution, PW3 Tej Ram is the victim while PW2 Naveen and PW4 Harish are his sons. PW2 Naveen claimed himself to be an eye witness to the incident as he had deposed that on 05.09.2004 while he was going to his house at 6/6.30 p.m and when he reached in front of STD booth, near plot of Gaje Singh, he saw some boys beating one person with hockey and iron rods and they

were saying that he should be killed. When he reached near them, on seeing him, those boys started running. When he went near the victim, he found the injured to be his father Tej Ram. He informed PCR at 100 no. PCR van came and he removed his father in the said PCR to hospital. Presence of this witness at the spot and witnessing the incident was rightly observed to be highly doubtful, inasmuch as according to him it was he who had informed the PCR and thereafter removed his father to the hospital. However, as per the MLC, the injured was brought to hospital by HC Amar Dayal Singh. Moreover, according to this witness, although he had not disclosed to the doctor as to how his father sustained injuries and who assaulted him, he went on stating that he had narrated the incident to the police. He even claims that he made his statement to the PCR officials. Not only that, he also claimed that the local police met him in the hospital on the date of incident at about 8/8.30 p.m and police recorded his statement and obtained his signature on the same. He further claimed that his statement was recorded prior to recording of statement of his father Tej Ram. However, his entire testimony does not find corroboration from the other evidence available on record as HC Hanuman Sahai (PW7) was the first person, who on receipt of DD No.19 regarding quarrel, had reached the spot at village Chandanhola, where no eye witness was available. Thereupon, he went to AIIMS and found injured admitted there who was unfit for statement. According to this witness, he remained in hospital till

around midnight but he did not meet any eye witness during his stay over there. Thereupon he made a *Tehrir* and got the case registered. Even in the *Tehrir*, Ex. PW7/A, it is recorded that no eye witness was available either at the spot or in the hospital. Not only that after the registration of FIR, investigation was entrusted to SI Devender Yadav (PW12) and even this witness has deposed that he did not meet any of the relatives of the injured in the hospital on 05.09.2004. It was only on 06.09.2004 that he met the sons of the injured and recorded their statement. Moreover, according to this witness, he himself had called the PCR and informed the PCR officials about the incident. However, HC Amar Dayal Singh who brought the injured to hospital was neither cited nor examined as a witness by the prosecution. In the MLC, there is no mention of PW2 Naveen having accompanied his father or informing the doctor as to how, where, why and by whom his father sustained injuries. If the testimony of PW2 Naveen is to be believed that he had informed the police officials about the incident, who had also recorded his statement, then where had that statement gone. Rather as per the police version, no eye witness was available in the hospital till midnight. Therefore, the FIR was registered on the basis of *Tehrir* sent by HC Hanuman Sahai. Even PW3 Tej Ram does not speak about the presence of this witness at the place of incident or his removing him to hospital. Under the circumstances, the presence of this witness at the spot or having witnessed the incident is highly doubtful.

14. As regards PW4 Harish is concerned, he has deposed that on coming to know about the hospitalisation of his father, he went to the hospital and, therefore, he does not claim to be an eye witness to the incident. According to this witness, he met his cousins Raju@ Raj Kumar and Satish with his injured father Tej Ram on the night of occurrence and these persons informed him that accused persons had caused injuries to his father. Surprisingly neither Raju nor Satish were either cited or examined by the prosecution.

15. Coming to the testimony of injured himself, he has deposed that on 05.09.2004 at 6.30 p.m when he was going from STD booth to his house, someone caught hold of him from behind. When he turned back, he saw accused Sushil catching him from behind. In the meantime accused Sanjay and Pawan armed with iron rod and hockey came and attacked him. Accused Jitender and Manoj also armed with iron rod and hockey started beating him. He became unconscious, fell down and regained consciousness in the hospital. According to him, on the next day of occurrence, he talked to his son Naveen when he regained consciousness. Although, it is true that the testimony of an injured witness stands on a higher pedestal than any other witness, his presence at the spot cannot be doubted and generally his statement is to be considered reliable in view of the injuries sustained by him, however, sustaining of injuries on the person

of the injured in the incident stands proved but the question for consideration is involvement of the accused persons in the crime.

16. The learned Trial Court scrutinised the testimony of the injured and found the same to be falling in the category of a witness who is not wholly reliable and not wholly unreliable as observed in the case of ***Vadivelu Thevar v. The State of Madras***, AIR 1957 SC 614 in view of the fact that the testimony suffers from material omissions inasmuch as in his statement u/s 161 Cr.P.C, the victim had attributed the role of exhortation to Sushil Kumar besides catching him from behind by uttering “*Aa Jai Aaj Iska Kaam Tamam Karna Hai*” and thereafter exhortation by accused Sanjay Kumar “*Aaj Ise Khatam Karna Hai*” and thereafter it is alleged that the remaining accused gave him lathi and hockey blows. In that statement he had not even specified which accused was having which weapon in his possession. In his deposition before the Court, there is no mention of any exhortation by accused Sushil Kumar or Sanjay. Moreover, it has come in the testimony of PW4 that he met Raju and Satish in the hospital who informed him that accused persons had caused injuries to his father. It was observed that in the absence of specifying any role to any accused in his statement u/s 161 Cr.P.C, the narration of the incident specifying the role of the accused in his deposition before the Court may be at the instance of family members or at the instance of these persons.

17. Even as regards recovery of weapon, hockey Ex.P-12/C was stated to be recovered from room of house of accused Jitender at Village Chandanhola on 28.10.2004. Iron rods Ex.P-12/A and Ex.P-12/B were stated to be recovered on 21.10.2004 and 02.11.2004 at the instance of accused Sanjay and Manoj. There was no specific identification mark on these weapon of offences. No independent persons or neighbours were joined at the time of recovery. Moreover, it was highly improbable that the accused persons would retain the weapon of offence with them for a period of about two months after commission of the offence and after having knowledge that FIR has been registered against them.

18. Even it was doubtful whether offence u/s 308 IPC was made out or not. The MLC Ex. PW12/DA was prepared by PW14 Dr. Ruby Sharma and following injuries were found:

- (1) Laceration 3 cm over(or near) left side of skull;
- (2) Abrasion over right eyebrow;
- (3) Tenderness in right palm;
- (4) Tenderness and swelling over left forearm;
- (5) Puncture wound over right lower 1/3rd tibia;
- (6) Puncture wound over left lower 1/3rd tibia.

19. Although the nature of injuries were opined to be grievous with minor head injury, however, in cross examination the doctor admitted that the nature of injuries were neither written by her nor at her instance nor in her presence. According to her she had advised for X-ray forearm, spine,

hand, right leg, left leg, right knee, left knee and skull. PW 15 Dr. Imtiakum, also admitted that the opinion regarding nature of injury given as grievous on the MLC is not having any signature or name of the doctor who had given such opinion. On the basis of X-rays of the injured he stated that there was no evidence of any fracture in the said X-rays. The doctor who gave this opinion has not been examined by the prosecution, as such it is not established that the injuries sustained by the injured were grievous in nature or were of such nature which could attract Section 308 IPC.

20. In view of the aforesaid discussion, the order of the Trial Court while acquitting respondent nos. 2 to 6 cannot be said to be perverse, patently illegal or wholly untenable so as to call for interference. The appeal is accordingly dismissed. Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

NOVEMBER 19, 2014
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