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

+ **CRL.L.P. 284/2014**

Date of Decision: 25.04.2014

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through: Mr. Pranay Kishore Mishra, APP
for the State

versus

KULDEEP

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J.

1. The present Criminal Leave to Appeal has been preferred by the petitioner/State under Section 378 Cr.P.C. to challenge the judgment dated 13.12.2013 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi whereby the learned Additional Sessions Judge has acquitted the respondent from the charge framed against him under Sections 307 of the Indian Penal Code, 1806 (hereinafter referred to as IPC).

2. The facts and the circumstances which gave rise to the registration of the case against the accused person, as per the prosecution, is that :

“On 06.08.2011, Police machinery was set into motion on receipt of DD No.8A , SI Nar Singh (PW-14) along with SI Dheeraj(PW-12) went to the spot namely House No.13A, New Heera Park, where various articles were lying scattered in burnt condition. It transpired that injured Poonam was shifted to RTRM Hospital vide MLC No.-3210/11 from where she was shifted to Safdarjung Hospital, where she was admitted vide MLC No.-7120/11. As per opinion of the Doctor, the injury to Poonam was grievous. The statement of Poonam was recorded on the basis of which FIR No.131/11 dated 06.08.2011 was lodged under Section 307 IPC. As per the statement of the Complainant, Ms. Poonam(PW-13), she was residing with her parents and was doing stitching work. The accused Kuldeep, who is the brother-in-law of the Complainant and husband of her sister, Ms-Bharti(PW-2), used to beat her sister Ms. Bharti and also threatened to kill her. Whenever the accused used to beat her, the Complainant used to oppose such beating by the accused to her sister. The accused, therefore, was having a grudge against the Complainant. On 06.08.2011, the accused came to the house of the Complainant on his motorcycle bearing No.DL 4S BH 6923 at about 7AM under the influence of liquor and started quarrelling with the family members and insisted upon to take along with him her sister Ms. Bharti. The father of the Complainant tried to convince the accused but he started quarrelling with him and entered into the room where the Complainant, along with her sister Ms. Bharti, was present. The accused started beating her sister Ms. Bharti. The Complainant opposed such acts of the Accused. In the meantime, the Accused took out a bottle of petrol from the waist of his pant and sprinkled the same on the cloth and after lighting matchstick threw the same on Complainant, thereby, set the Complainant on fire. The Complainant raised alarm. The fire was, thereafter, doused by her family

members. In the course other articles of the house also caught fire. During the course of investigation I.O. recorded statement of the Complainant, wherein she had stated that the accused put her and her sister on fire by sprinkling petrol on them. Ms.Bharti, sister of the Complainant and wife of the Accused also got injured in the incident. That after completion of investigation, Charge-Sheet was filed by the police under Section 307 IPC against the Accused.”

3. Addressing the arguments in support of the present criminal leave to appeal, Mr. Pranay Kishore Mishra, Additional Public Prosecutor for the State submits that the impugned judgement passed by the learned Trial Court is contrary to the law and the facts on record. The counsel further submits that the learned Trial Court has erred in law by giving benefit of doubt, when the prosecution case is based on the evidence of eye witnesses and not on circumstantial evidence. Counsel further submits that the learned Trial Court has failed to appreciate that except PW-13, no other eye witnesses including the injured eye witness(Pw-2) have taken contrary stand to the prosecution story. Counsel further submits that the Learned Trial Court has failed to appreciate that PW-2, an injured witness and sister of the Complainant and PW-3, sister-in-law(Bhabhi) of the Complainant, who are the natural eye witnesses, with respect to the site of incident, have supported the case of the prosecution

in all respects including vital aspect of lighting the match stick by the accused. Counsel further submits that because the learned Trial Court has failed to appreciate that the discrepancies, if any, in the evidences are minor discrepancies, which ought not to have been taken into account to acquit the accused after giving him benefit of doubt. Counsel further submits that the learned trial court has failed to appreciate that it is the evidence of PW13 alone that is contrary to the evidence of the other prosecution witnesses, in regard to the incident. Counsel further submits, that the Learned Trial Court has failed to appreciate that the placement of the petrol cane in the room, where the incident took place, which according to the Complainant, PW-13 was picked up by PW-2, sister of the Complainant, who tried to pour on herself, not seems natural, especially when there is no case on the record of premeditated plan to immolate herself by PW-2. Counsel further submits, that the Learned Trial Court has failed to appreciate the evidence of the prosecution witnesses in the light of estranged relation of the accused with his wife, PW-2, who had left the matrimonial house much prior to the date of incident and living with her parents. The admitted presence of the accused at the site of incident in the early morning was not under the cordial environment. The hostile statement of the Complainant was,

therefore, not natural and therefore not trustworthy. Counsel further submits that the learned Trial Court has failed to appreciate that acquittal of the accused giving benefit of doubt under the facts and circumstances and the evidence on record would be undue advantage to the accused. Counsel further submits, that the Learned Trial Court has failed to appreciate that cane of petrol, which the Complainant has mentioned in her hostile statement has not been recovered from the site of incident or anywhere else, however the bottle carrying petrol, which was used by the accused has been recovered at the instance of the accused himself in his disclosure statement and the same has been duly proved by the prosecution witnesses. Counsel further submits, that the Trial Court has failed to appreciate that even medical evidence support the case of the prosecution, apart from the ocular evidence.

4. We have heard learned counsel for the petitioner and given our thoughtful consideration to the arguments advanced by him. We have also gone through the impugned judgement and other material placed on record.

5. It is a settled legal position that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the finding of facts arrived at by the learned Trial Court unless the reasoning

given by the learned Trial Court is perverse or illegal on the very face of it. The Appellate Court should also bear in mind that with the acquittal of the accused persons by the learned Trial Court, the presumption of innocence of the accused persons has been given the legitimacy. It is also a settled legal position that where there is possibility of arriving at two different conclusions on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal arrived at by the Lower Court merely because the other possible view is a preferred view. It is useful here to refer to the judgment of the Hon'ble Apex Court in the matter of ***Rangaiah vs. State of Karnataka*** reported in **AIR 2009 SC 1411**. Relevant paras of the same are reproduced as under:-

"From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(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, restriction 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 emphasize 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 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."

6. In the aforesaid background of the legal position, let us examine the facts of the present case. The case of the prosecution is based on the evidence of eye witnesses and it is evident that there are material contradictions and vital discrepancies in the testimonies of the PWs and these testimonies cannot be reconciled with each other. The complainant (PW-13) being the material witness in the case has given statement in favour of the accused in cross examination, which causes material dent in the story of the prosecution. The prosecution has failed to lay down reasons as to why would the complainant change the statement in cross-examination, and as to why would the complainant support the accused, which thereby is against the story of the prosecution and therefore grossly negates it. PW-13 has stated that this incident has taken on account of the fact that her sister Bharti(PW-2) was unwilling to

accompany the accused and in order to extend the threat, she just tried to pose that she may set herself on fire, in case, the accused compelled her to accompany him but in the said accident, Bharti (PW-2) and PW-13 caught fire. It would be worthwhile to reproduce the operative para of the Trial Court judgement:-

"In cross-examination, she has stated that she has not told the police, that the accused beat her sister Bharti and PW-13 has tried to save her sister from accused and due to this reason, accused was jealous towards her. She further stated that earlier on 06.08.2011, the accused came to her parental home and started beating her sister and thereafter he tried to put PW-13 and Bharti on fire after sparking petrol and kerosene oil. She has not fallen in line with the story of the prosecution."

It is stated by PW-2 Bharti and PW-3 Sonu that the accused put PW-2 and PW-13 on fire, whereas PW-13 has stated in the cross examination that PW-2 was trying to extend threats to the accused and that is why she was trying to pose before the accused that she will set herself on fire, as the accused compelled her to accompany him, thereby, PW-2 tried to ignite the match stick and the said incident happened. This thereby, shows contradictions and discrepancies in the testimonial evidences, which makes the story of the prosecution weak in the eyes of the law.

7. **In Kalyan & Ors. v. State of U.P. (2001) 9 SCC 632**, it was held that, *"...the variance between the FIR and the depositions made in the*

court, the mention of gunshot injuries in the panchnama and their absence in the FIR, the conflict between the statements of eyewitnesses and the medical evidence and the major contradictions and improvements of the eyewitnesses, we are of the view that the prosecution failed to prove their case against the appellants beyond shadow of doubt. The appellants are, therefore, held entitled to the benefit of reasonable doubt...”

8. Therefore, we find ourselves in complete agreement with the said conclusion arrived at by the Learned Trial Court in observing that in the presence of material contradictions and vital discrepancies so far as the happening of the incident in question for which the accused has been charged in the case of the prosecution, deserves benefit of doubt. It is a settled law that criminal jurisprudence begins with the presumption that unless otherwise proved the person facing the trial would be deemed to be innocent. The burden to prove the charge against the accused is on the prosecution and not on the accused. The prosecution, if fails to connect the act of the accused with ultimate crime and where the material links constituting the evidence are found missing then the benefit of the same goes in favour of the accused.

9. In view of the above factual matrix and legal position, we find no

merit in the present leave to appeal petition and the same is hereby dismissed.

KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

APRIL 25, 2014

v