

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

Date of Decision: 25th September, 2014

+ **CRL.A. 1479/2011**

STATE

..... Appellant

Through: Mr. M.N. Dudeja, Additional
Public Prosecutor for the State
along with ASI Tejram, PS
Nazafgarh.

versus

RAJPAL @ RAJU & ORS.

..... Respondent

Through: Mr. T.R. Kashyap, Advocate

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The present appeal has been preferred by the petitioner/State challenging the judgment dated 5th April 2010 in sessions case No.11/09 passed by learned Additional Sessions Judge, Dwarka Courts, New Delhi whereby all the accused/respondents were acquitted of the charges under Section 395/363/323/506/34 of the Indian Penal Code, 1806 (hereinafter referred to as IPC).

2. To appreciate the contention raised by learned counsel for the petitioner/State, a brief summary of the prosecution case is given below:-

On 9th August 2003 on receipt of DDno. 20/A SI V.P.Kochhar along with HC Mahipal reached Khatu Shyam Temple, Shyam Vihar where they found household articles including bed, TV, Fridge, Almiraha, kitchen articles, clothes etc lying scattered on the side of the road. No eye witness was found there and it transpired that the injured had been already removed to RTRM Hospital. HC Mahipal was left at the spot and V.P.Kochhar reached the hospital where he met Smt. Sheela Bhagat alongwith her children. MLC of the injured Sheela was collected and the Doctor opined injuries to be simple blunt injuries and declared her fit for statement.

3. Sheela gave her statement to the effect that three and a half years back, she purchased plot No.16/A Dharampura, Najafgarh, Delhi from a property dealer named Bijender for a sum of Rs2,33,000(Two Lakhs thirty three thousand only). Two shops, one room, one bathroom and a toilet were built on the plot. About two years ago, a shop adjacent to the house of Mahender was sold to the

son of Bhagwan. Thereafter, when they were in need of more money, they borrowed a sum of Rs.1,50,000 (One Lakh fifty thousand only) from Ramesh and as security of the loan amount, papers of house were prepared in the name of Indrawati(one of the accused), wife of Ramesh with the assurance that on the return of the loan amount, they shall hand over the papers back in the name of complainant i.e. Sheela Bhagat. At that time, rent agreement for eleven months was also executed in favour of Ramesh. However, they could not return the money and therefore, Ramesh, his wife Indrawati, Bhagwan and his wife Bharpai used to come to ask for return of the loan amount to which they sought a year's time. On 9.8.2003 at about 2 PM, she was present at home along with her children while her husband had gone to his clinic in Gurgaon. A tempo no. HR 38-DS-743 came in front of her house. In that Tempo, Ramesh, his wife Indrawati(accused No.6), sister in law Naresh(accused no.5), two sons of Bhagwan (accused No.1 &2) came and entered her house. On asking why they had entered the house, accused Indrawati caught hold of the complainant Sheela. Her daughter Priya (PW-2) was caught hold by accused Naresh. Accused Bharpai came and caught hold of her sons Ankit and

Chetan(PW-3). Thereafter, accused persons Krishan, Satpal and Rajpal started beating them. In the meantime, Tempo driver Rohtash alongwith 3-4 musclemen entered their house and started loading the household articles in the tempo and extended threats to her and her children to kill them and asked them to quietly sit in the tempo otherwise they will bury them. The complainant and her children were all frightened and accused persons took them and loaded them in the tempo. Three ladies were left in the house. They were kidnapped and reached Khatu Shyam Temple, Shyam Vihar where Complainant started making noise. On hearing the noise, public persons came there and accused persons pushed the complainant and her children from the tempo and left. Her articles like bed, TV, almirah, utensils, clothes, gas were also left there which came under the tempo and accused persons fled away in the tempo. Some articles were however left in the tempo. Somebody informed the police who came to the spot and removed the complainant to RTRM Hospital.

4. Charge under Section 395/363/323/506/34 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined 10 witnesses. All the incriminating evidence was put to the accused persons while recording their statement under Section 313 Cr.P.C. wherein they denied the allegations levelled against them and claimed innocence and alleged false implication in the case. Accused persons did not lead any defence evidence.

6. Learned Additional Sessions Judge after scrutinizing the evidence on record observed and came to the following conclusions:

- The Tempo in which the goods and the family of the complainant were allegedly taken and thrown could not be seized despite the fact that number of the Tempo had been mentioned in the FIR. The explanation given in the chargesheet is that the record of the Tempo was destroyed in the office of RTO. Learned Judge held that such an averment cannot be accepted as the tempo is a commercial vehicle and fitness certificate of a commercial vehicle has to be taken at least once in a year and as such even if earlier record is destroyed, still the name of the owner of the tempo could have been ascertained and then the tempo could have been seized.
- The Investigating Officer of the case has not been examined.

- The complainant also has not been examined as she had expired by the time chargesheet was filed and as such her statement cannot be read in evidence.

- As per the prosecution, stones were hurled at the tempo as a result of which the tempo was made to come to a halt but such stones have also not been taken into possession.

- It is a case where only two children of the complainant in the shape of PW2 Priya and PW3 Chetan have been examined and the third child Ankit who was present at the time of incident was not examined.

7. Learned Judge also pointed out the material contradictions in the testimonies of PW2 and PW3, some of which are extracted below:

- PW2 stated that initially accused Satpal, Rajpal and Bharpai entered the house and thereafter Inderawati, Naresh and Krishan also entered but as per PW3 only Naresh and Krishan entered the house.

- PW2 had stated that a cloth was placed in the mouth of her mother Sheela but as per PW3, hands were placed in the mouth of all the family members excluding his father who was not present at the house.

- As per PW2, two or three musclemen who had accompanied the accused persons were placing the goods in the tempo but as per PW3, it is the accused persons who had placed the goods in the tempo.

- As per PW2, after the tempo travelled a certain distance, public persons intervened and accused persons threw away goods and them from the tempo, the place according to her was near a Mandir. However, PW3 had stated that after travelling 2-3 km when they reached near a *ganda nala*, there was a dead end and the tempo could not move any further and being placed in such a situation, the accused persons finding no option, threw away their goods and also them near the *ganda nala*. Learned Judge further held that not only was there a contradiction but it is a vast one and even the IO had stated that there was no dead end near the house of the complainant.

- As per PW2, she and her mother were sitting on the front seat of the tempo but as per PW3, all four of them were on the front seat. Also, as per the case of the prosecution, only complainant i.e. Sheela was on the front seat while her children were at the back side of the tempo.

- As per PW2, all the accused persons ran away in a tempo and all of them were in the tempo which is again contrary to the prosecution case as the case of the prosecution was that the lady accused persons remained in the house while the male accused persons went in the tempo.

- PW2 had stated that it was her brother who opened the gate when Satpal, Rajpal and Bharpai entered the house, however, according to PW3, the accused persons entered the house on their own.

- As per PW2, they were caught hold by all the accused persons and were given beatings but there is no injury on their person as reflected in their MLC.

- As per the case of prosecution, statement of PW3 was recorded at the hospital but PW3 stated that his statement was recorded in the Police Station.

8. Learned Judge also pointed out other inconsistencies in the prosecution case:

- PW2 had stated that she heard a noise and she was confronted in this regard from her statement recorded u/s 161 Cr.P.C.

(Ex.PW2/DA) as such the same was an improvement. As per PW2 Priya, Naresh caught hold of her and Bharpai caught hold of Ankit and Chetan and she was again confronted in this regard from her statement recorded u/s 161 Cr.P.C.

- PW4 Kanwar Lal and others who had been made witnesses by the prosecution to the panchnama whereby the goods of the accused persons were seized, had stated that no incident happened in their presence and it is actually the goods of the complainant which were placed in the house and they signed the panchnama on such representation being made to them by the IO. So, the prosecution witnesses have also contradicted the version of PW3 that their goods were taken to the Police Station.

- PW7 HC Mahipal who was associated in the investigation has demolished the case of prosecution in its entirety and the fact remains that the IO has not been examined as he has not come forth to depose. In his cross examination, PW7 had stated that he had left the police station at 1 PM and it was because of receiving a call regarding a quarrel near Khatu Shyam Mandir. This statement is incorrect as it is the case of the prosecution that the incident happened at 2 PM. As per

him, when they reached the Mandir, none of the persons present there made any statement. It gains significance as it is the case of the prosecution that the tempo was made to halt near a Mandir by public persons and the goods were thrown near a Mandir. Even if the family members had gone to the hospital, other persons who were witness to the incident must have been present near the goods but not only no such person has been examined by the prosecution, the fact remains that no such person has been cited as a witness i.e. to say that no independent persons has been cited as an eye witness though available in plenty. PW7 has further stated that tehrir was handed over to him at 2 PM and he reached the Police Station within fifteen minutes and reached back the spot with the copy of the FIR at 2:45 PM. The same is incorrect and is contrary to the case of the prosecution as FIR has been lodged at 4:05 PM. He has further stated that accused persons were arrested from the house at 4 PM though in the arrest memo (Ex. PW7/B), the time shown is 10:50 PM.

9. Learned Additional Sessions judge after critically analyzing the material on record held that because of inconsistencies in statements of PW2 and PW3 regarding the incident and the manner in which it

took place, not only amongst themselves but even from the prosecution case and because there are improvements in their statements and even the investigation does not inspire confidence, the prosecution has miserably failed to prove any of the charges against any of the accused persons. Hence, all the accused are acquitted.

10. Feeling aggrieved, present appeal has been preferred by the State.

11. Assailing the findings of learned Trial Court, it was submitted by learned Additional Public Prosecutor for the State that discrepancies in the testimony of witnesses does not go to the root of the matter and occurred due to lapse of time. Court ignored the injuries on the person of complainant and the fact that when police reached the spot, household goods were found lying at the spot. Complainant could not be examined as she expired but prosecution case stands proved from the testimony of PW2 and PW3. Hence impugned judgment acquitting the respondent/accused deserves to be set aside.

12. Per contra, it was submitted by learned counsel for the respondent/accused that it was basically a civil dispute between the

landlord and tenant. Property was sold by husband of the complainant to respondent No. 6, however, possession was not handed over on the ground that their own house was under construction. As such, a rent agreement was entered into but complainant neither paid rent nor vacated the premises but in collusion with Investigating Officer of the case got this false case planted upon the accused. It was handiwork of Investigating Officer of the case who intentionally even failed to appear in the witness box. Independent witnesses did not support the case of prosecution. Entire case based on testimony of PW2 and PW3 who made material improvements and their testimony do not inspire confidence. Hence respondents were rightly acquitted by learned Additional Sessions Judge and no interference is called for.

13. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

14. Since this is an appeal against acquittal where parameters for evaluating the evidence is different from an appeal against conviction, it will be appropriate first to have a glance at the legal proposition

enunciated by Hon'ble Supreme Court. In *Mrinal Das vs. The State of Tripura*, AIR 2011 SC 3753, it was held as under:

6. In *State of Goa v. Sanjay Thakran and Anr.*, (2007) 3 SCC 755, this Court while considering the power of appellate court to interfere in an appeal against acquittal, after advertng to various earlier decisions on this point has concluded as under:

"16 ...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 characterised 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 reappreciate 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."

7. In *Chandrappa and Ors. v. State of Karnataka*, (2007) 4 SCC 415, while considering the similar issue, namely, appeal against acquittal and power of the appellate court to reappreciate, review or reconsider evidence and interfere with the order of acquittal, this Court, reiterated the principles laid down in the above decisions and further held that:

42...The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate 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 emphasise 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 is 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.*

*The same principles have been reiterated in several recent decisions of this Court vide **State of Uttar Pradesh v. Jagram and Ors.** (2009) 17 SCC 405, **Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)** (2010) 6 SCC 1, **Babu v. State of Kerala** (2010) 9 SCC 189, **Ganpat v. State of Haryana and Ors.** (2010) 12 SCC 59, **Sunil Kumar Sambhudayal Gupta (Dr.) and Ors. v. State of Maharashtra** (2010) 13 SCC 657, **State of Uttar Pradesh v. Naresh and Ors.** (2011) 4 SCC 324, **State of Madhya Pradesh v. Ramesh and Anr.** (2011) 4 SCC 786.*

8. *It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court*

is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

15. What can be culled out from the aforesaid decision is 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.

16. 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.

17. In the light of the aforesaid principles laid down, we shall consider the evidence placed on record to find out whether the courts below have committed any error in dealing with the evidence, which can be said to be patently illegal, or that the conclusion arrived at is wholly untenable, calling for interference by this Court.

18. In the instant case, the complainant Sheela Bhagat could not be examined by the prosecution since she had expired before the filing of the charge sheet. Consequently, the statement made by her to the

police which resulted in registration of FIR cannot be read in evidence as it did not pertain to cause of her death or having been made in connection or in relation of her death. The Investigating Officer SI V.P. Kochar who might have recorded this statement had also not appeared in the witness box to prove the statement and in fact although the entire investigation was conducted by him but he failed to appear in the witness box for reasons best known to him. The submission of learned counsel for the respondent that the entire case was the handiwork of the Investigating Officer of the case against whom departmental inquiry was initiated and ultimately action was also taken against him cannot be brushed aside. As such, non-examination of the complainant and the Investigating Officer came as a severe blow to the prosecution case. Not only that, PW4 Kanwar Lal and PW5 Rajender Prasad are alleged to be independent witnesses but even they have not supported the case of prosecution. The entire case hinges upon the testimony of PW2 and PW3 who are none else but the daughter and son of the complainant and, as such, are her close relatives and, therefore, their testimony requires to be scrutinized with great care. They have not only made material

improvements in their statements but also contradicted each other on various aspects. Moreover, the submission of learned counsel for the respondent that it was basically a civil dispute between the landlord and the tenant. The property was sold by husband of the complainant to respondent No. 6 and he neither handed over the possession nor paid rent nor vacated the premises but instead planted a false case upon the respondent also cannot be lost sight of, in as much as, in the initial complaint made by Ms. Sheela, she had admitted that a sum of Rs.1,50,000/- was borrowed from Ramesh and papers of the house were prepared in the name of Indrawati with the assurance that on return of loan amount, they shall hand over the papers back in the name of complainant. She also admitted execution of rent agreement for eleven months and that she could not repay the loan amount which was being demanded time and again by Ramesh, Indrawati, Bhagwan and his wife Bharpai. PW2 also admitted in her cross-examination that her father had taken a sum of Rs.1 lac or 1½ lacs from accused Ramesh and had given the documents pertaining to the house to Indrawati. She also admitted that civil case regarding eviction and use and occupation charges has been filed by Indrawati against her

and her brothers. Filing of the civil suit by Indrawati has not been denied even by PW3. However, according to him the civil suit has been filed only against him and his brother and not against his sister. The fact remains that the civil litigation between the parties has not been disputed by even these two witnesses.

19. Keeping in view the totality of the facts and circumstances, the mere fact that MLC of Sheela Ex.PW1/A was prepared or according to PW7 Head Constable Mahipal, on reaching the spot, certain goods were found lying on the road are not sufficient to return a finding of guilt against the respondent in as much as, as held in ***Ramesh Babulal Doshi v. State of Gujarat***, (1996) 9 SCC 225:

"...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...."

20. In the instant case, it cannot be said that the view taken by the learned Trial Court was patently illegal or conclusions arrived at by it were wholly untenable.

21. That being so, there is no merit in the appeal. The same is accordingly dismissed.

Copy of the judgment along with Trial Court Record be sent back.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 25, 2014
nk/rs