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

+ **CRL.A. 80/2016**

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Date of Judgment : 04.04.2016

STATE (GOVT OF NCT OF DELHI)

..... Appellant

Through : Ms. Aashaa Tiwari, APP for State
with SI Ramesh Kumar, PS – Sultan
Puri.

versus

AMIT & ANR

..... Respondents

Through : Mr. M. K. Gahlot, Advocate for R-1.
Mr. Pramod Kumar Dubey and
Mr. Shiv Chopra, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. The present appeal has been filed by State against the judgment of the trial court dated 20.10.2014 by which respondent Naresh has been acquitted.
2. The necessary facts to be noticed for disposal of the present appeal are as under :

“A boy namely Krishan s/o Jagmer aged about 14 years r/o Village Karala was admitted in Saroj Hospital on 09.03.11 with the history of sustaining a bullet injury in marriage procession (barat). DD no. 18A was registered at 12.15 pm and its investigation was assigned to SI Dhirender Singh who alongwith staff reached the hospital but Krishan was unfit for statement. No witness was available there but SI came to know that firing incident had taken place in the lane of house no.

450-456 of P4 Block Sultanpuri. No eye witness was available even at the spot. SI Dhirender Singh prepared rukka and sent Ct. Sribhagwan to PS who got case FIR registered u/s 307 IPC.

During investigation, SI came to know that Ravi s/o Vijender Singh r/o Village Karala was married with Asha d/o Naresh R/o P-4/450, Sultanpuri on 08.03.11 and a person namely Amit alongwith his friends was dancing in the marriage party and was also firing in the air simultaneously. He was the son of bua of Ravi. Amit was arrested at 1.50 am on 10.03.11 and he pointed out the place of incident. Co-accused Naresh was arrested at the instance of accused Amit on 11.03.11 and a mouser was removed from his personal search. He also pointed out the place of firing. Accused Abhimanyu @ Mintu @ Musa was arrested on 04.09.11.

Injured Krishan remained unfit for statement. After recuperation, he was discharged from the hospital on 03.04.11. His statement u/s 161 Cr.P.C. was recorded on 02.04.11 in which he told IO that he was studying in 8th class. He joined the barat of Ravi in the night of 08.03.11 in P-4 Block Sultanpuri. Several boys including Mintu, his friends and Amit, a relative of Ravi, were dancing in marriage procession. Mintu, his friend and Amit were firing in the air. While dancing, accused Mintu started abusing him in indecent language and when he was going to complain to the elders of the village, accused Amit took a revolver from his friend and fired a bullet which hit in his head and he fell down. He regained consciousness after several days. He could not recollect the name of the boy who had given revolver to accused Amit after loading the same but he told his description as a long boy wearing black jeans jacket. Accused Mintu was his co-villager.”

3. Charge under Sections 307/34 IPC was framed against all the accused

on 10.07.11. Additional charge against accused Amit and Naresh is under Section 27 and 25 Arms Act respectively. All accused claimed trial.

4. In order to prove its case, the prosecution examined 21 witnesses. Accused examined three witnesses in defence.
5. Ms. Aashaa Tiwari, learned APP for State submits that the trial court has failed to appreciate that the testimonies of PW-3 Bijender and PW-9 Rakesh, a photographer, who was covering the Barat function on 08.03.2011 would show that Naresh was present at the spot and he was loading the gun which was fired by Amit which led to hitting the victim on his head resulting in grievous injuries.
6. Ms.Tiwari further submits that the testimonies of PW-3 and PW-9 clearly establish the presence of Naresh at the barat. Ms.Tiwari further contends that the testimonies of the above witnesses also establish that Naresh was loading the revolver while dancing in the party and Amit was firing from the weapon. Counsel next contends that minor discrepancies and inconsistencies in the testimonies of the witnesses should be overlooked as the discrepancies, if any, are on account of the fact that witnesses have deposed after a considerable long gap. Counsel also submits that merely because Amit was acquitted under the Arms Act cannot be a ground by itself to acquit Naresh under Section 307 of the IPC. Ms.Tiwari also contends that the trial court has overlooked the material evidence and not appreciated the evidence of the witnesses of the prosecution.
7. Learned APP further submits that the trial court has also overlooked the material testimonies of the witnesses which would show that

Naresh was loading the gun and thus he would be held liable under Section 34 of the Indian Penal Code along with Amit who fired the shot, which hit the victim on his head and who has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo imprisonment for four years.

8. Mr. Pramod Kumar Dubey, learned counsel appearing on behalf of respondent no. 2 Naresh submits that there is no infirmity in the judgment passed by the trial court. He further submits that firstly Naresh was not present at the spot and secondly, assuming he was present, there is no evidence to show that the bullet which he had loaded, was in fact the bullet which hit the victim and, thus, the trial court has rightly acquitted Naresh.
9. We have heard learned counsel for the parties, considered their rival submissions and also examined the trial court record including the impugned judgment passed by the learned trial court.
10. In this case, the star witnesses are PW-3 Bijender and PW-9 Rakesh. PW-3 Bijender has testified as under :

“The marriage of my son Ravi was solemnized on 08.03.2011 and the marriage procession went to Sultan Puri. The marriage procession at about 10:00 P.M. from village Karala and reached at Sultan Puri at about 10:30-11:00 P.M.....When the barat reached at the gate of marriage venue, then I saw some object in the hand of accused Amit (present in the court correctly indentified) who is my nephew (bhanja). After about 30-45 minutes, I came to know that Krishan, one of the barati, had received injuries and he was taken to doctor. I also heard that Krishan had suffered Daura. I did not care specifically that what object was in the hand of accused Amit but he was having some object in his hand. Many persons were

present around accused Amit during the marriage procession. I had not talked with Amit that what object he was carrying in his hand. No one told me that what object Amit was carrying at that time.

Videography of the marriage (barat procession) were made and photographs were also taken. The same were performed by photographer Rakesh. On the next day in the morning, I came to know that Krishan had received bullet injury due to which he received injuries.

Next day to the marriage, I have come to know that Krishan who was in the barat of my son, had received bullet injury during the barat procession. I did not go to the spot with police. I had narrated them orally about the location of Pandal and barat. Police made inquiries from and also recorded my statement. I do not remember if police had obtained my signatures on my statement or not. I was called in the police station from the next day of marriage.

Attention of the witness is drawn towards all the accused present in the court. Witness states that accused Amit (present in the court identified) is his Bhanja and was present in the procession of his son Ravi. Witness states that he had not seen accused Naresh and Mintu (present in the court) in the barat of his son. Witness states that he knows accused Mintu @ Abhimanyu (present in the court correctly identified) as accused resides in the same village in which witness is residing. Witness states that he cannot identify accused Naresh as witness has seen accused Naresh first time in the court during his evidence. Photographs Ex.P-1 to Ex.P-7 (Ex.P-6 are in duplicate) are on judicial record and are shown to the witness. Witness identifies those photographs and states that these photographs are of barat of his son Ravi. Witness identifies the photographs of accused Amit (present in the court) in photo Ex.P-1 and Ex.P-4 carrying gun in his hand in the barat and also identifies the photograph of accused Amit in other photos and states that accused Amit was dancing and was present in the barat. Witness also identifies his

photograph in the marriage procession. Witness also identifies the photograph of accused Naresh and on Ex.P-5 and states that Naresh was present in the barat in photograph but witness had not seen him during the barat procession. Accused Naresh is correctly identified.

At this stage, CD which is already on the judicial records is now Ex.P-8 is played on the laptop which is brought by IO. After viewing the CD witness states that it is same recording on CD of the marriage of son of witness dated 08.03.2011. Witness identified accused Amit and Naresh (present in the court) in the CD. Accused Amit is dancing while holding and firing from revolver carried by him in his hand in the barat and accused Naresh is loading the revolver while dancing in the barat. Clipping of accused Amit is at 59-46 and accused Naresh is at 59-54 and 1.00-11 and Amit is visible with the pistol in CD from time 59-46 to 1.00-11.”

11. PW-9 Rakesh has testified as under :

“I am running studio under the name Narwal Studio at my residence. Ravi, son of Vijender of my village had booked me for Rs. 4,000/- for videography and Rs. 14/- per photo for covering his marriage (barat programs) which were to be held on 08.03.11. As per the booking, I reached at the barat program and did the videography and photography of the program. Barat reached at Sultan Puri bus terminal P-4 block near the house of bride. At about 12.30 A.M. midnight, baraties were dancing in the barat. I have noticed 2-3 boys were dancing with the dhol and one of the boy was carrying revolver in his hand was firing in the air. That boy attempted one fire in the air but it was miss fire and did not shot and then, that boy fired that shot towards the earth and then, it was shot. I had seen that shot fired had hit the head of one boy Krishan who is residing in my neighbourhood. Witness points out towards the accused Amit, present in court, and states that he was the boy who had fired the shot from his revolver and hit the head of Krishan. The episode was shot by me in the videograph

and photographs. I took around 300 photographs of the barat and videography was complied in two CDs. The accused Amit and the firing is visible in video and photographs. During the course of investigation, IO had met me and asked for the videography of the barat. I had handed over two CDs make Sony of the coverage of the barat. Those two CDs were sealed with the seal of DS and was seized by SI Dhirender. I had also handed over one bill from my bill book of the videography and photography of the barat program of Ravi. Witness identifies his signatures at point A on the seizure memo of CDs and Bill now Ex.PW9/A. Witness states that he had not seen accused Abhimanyu in the barat program and witness is not sure about the presence of accused Naresh in the barat program and witness states that he can tell with certainty after viewing the video CDs of barat program. Photographs already Ex.P-1 to P-7 (Ex.P-6 in duplicate) are on judicial record and are shown to the witness. Witness identifies those photographs and states that these photographs are of barat of Ravi and taken by the witness. He also identifies the photographs of Amit in photograph Ex.P-1 and P-4 carrying revolver in his hand in the barat and also identifies the photograph of Amit in other photographs. Witness also identifies the photograph of accused Naresh on photograph Ex.P-5 and states that Naresh was present in the barat and these photographs were snapped by the witness.

At this stage CDs brought by Ahlmad, which are already on judicial record. CD No. 1 already Ex.P-8 and CD No. 2 now Ex.P-10 are displayed on the laptop brought by the IO, after viewing the same witness states that these are the same CDs contains recording of the marriage of the Ravi dated 08.03.11. In CD No. 1 Ex.P-8 witness identifies accused Amit (present in court) and accused Naresh (not present) and states that accused persons are visible in the CD. Accused Amit is dancing while holding and firing from revolver carried by him in his hand in the barat and accused Naresh is loading the revolver while dancing in

the barat. Clipping of accused Amit is at 59.46 and accused Naresh is at 59.54 and 1.00-11 and Amit is visible with a pistol in CD from time 59.46 to 1.00-11.

.....Witness states that accused Naresh was present on the last date of his deposition and he had identified accused Naresh (identification of accused Naresh is not disputed by defence counsel).”

12. The first question, which comes up for consideration before this Court is as to whether Naresh was present at the spot of the incident.
13. PW-9 Rakesh, photographer identified the photograph Ex.P-5 of accused Naresh and also stated that Naresh was present in the Barat and he had snapped him. PW-9 identified accused Amit and Naresh in CD No.1 Ex.P-8 and also pointed them in the CD where accused Amit was seen dancing holding the revolver in his hand and accused Naresh was seen loading the revolver.
14. PW-3 Bijender identified Naresh from the photograph and also in the CD. He also identified accused Amit in the CD dancing and holding a revolver but he stated that he had not seen them in the Barat though they can be seen in the CD and he also stated that he had seen accused Naresh for the first time in court.
15. From the testimonies of PW-9, Rakesh, and PW-3, Bijender, it emerges that Naresh was present in the barat of Ravi, however, there is no evidence on record to show that the bullet, which caused injuries on the victim was loaded by Naresh. In our view, the trial court has carefully analysed the testimonies of all the witnesses and rightly acquitted the respondent, Naresh.
16. The law with regard to hearing of an appeal against acquittal is well-

settled. In the case of .G. Agarwal v. State of Maharashtra reported in [1963] 2 SCR405, it was held that :

“In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, ‘the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons’: vide Surajpal Singh v. State : 1952CriLJ331 . Similarly in Ajmer Singh v. State of Punjab : 1953CriLJ521 , it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are ‘very substantial and compelling reasons to do so’. In some other decisions, it has been stated that an order of acquittal can be reversed only for ‘good and sufficiently cogent reasons’ or for ‘strong reasons’. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in Clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in Sheo Swarup the presumption of innocence in favour of the accused ‘is not certainly weakened by the fact that he has been acquitted at his trial’. Therefore, the test suggested by the expression ‘substantial and compelling reasons’ should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan and Harbans Singh v. State of

Punjab 1962 Supp 1 SCR 104 and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

(emphasis supplied)”

17. In the cases of State of Maharashtra through CBI Vs. Ahmad Shah Khan @ Salim Durani and Anr., reported in **2013 (3) SCALE 272**, it was held as under :

“47. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived

at byignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

18. Resultantly, in the absence of any evidence which connects the respondent to the injury of the victim and also in the absence of any evidence to show that the victim was hit with a bullet loaded by Naresh, we find no infirmity in the judgment passed by the trial court. The present appeal is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 04, 2016

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