

Reserved on 06.10.2023

Delivered on 6.11.2023

Chief Justice's Court

Case :- GOVERNMENT APPEAL No. - 265 of 1995

Appellant :- State of U.P.

Respondent :- Sarman And Others

Counsel for Appellant :- Ravindra Singh,A.G.A.

Counsel for Respondent :- Ajatshatru Pandey,Dharmendra Singh

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Shri Amit Sinha, learned AGA for the State-appellant and Shri G.S. Chaturvedi learned Senior Advocate, assisted by Shri Ajatshatru Pandey, learned counsel for the respondents-accused.
2. Present Government Appeal has been preferred against the judgment and order dated 09.09.1994 passed by the Additional Sessions Judge, Special Judge (EC Act), Jalaun in Sessions Trial No. 169 of 1991, arising out of Case Crime No. 278 of 1990, whereby the accused/respondents have been acquitted for the offence under Section 307 IPC read with Section 34 IPC.
3. As per prosecution case, vide written report (Ex. Ka 1), Kallu Lal Chaudhari lodged a First Information Report at Police Station-Kalpi, District Jalaun, on 10.07.1990 at 09:30 pm (Ex. Ka 3), against the accused, namely, Sarman, Rajjan and Lalji, alleging in it that when victim of the assault, namely, Kamlesh Kumar (Grandson of the complainant) was closing his tailoring shop situate at town Kalpi on 10.07.1990 at about 08:30 pm, all the three accused persons and one unknown person, armed with knife and lathis, surrounded the victim and accused-Sarman inflicted stab wounds on the person of the victim and the other accused beaten him with lathis. After hearing the cries of the injured, Gyanu @ Vivek, Ashok, Awadhesh and other persons came at the place of occurrence and saved the victim.
4. Injured Kamlesh Kumar was, thereafter, medically examined at District Hospital, Orai on 10.07.1990 at about 11:45 pm by Dr. T.D. Gupta

and the injury report (Ex. Ka. 2) was prepared. Following injuries were noticed on the person of the injured:-

- “1. Incised wound 2 cm x 0.5 cm in right hypoetondrum, 2cm below sub-costal margin at level of mid clavicus-line. Depth of wound could not be probed out. Fresh bleeding present.*
- 2. 2 cm x 0.5 cm incised wound on left side of abdomen at level of sub costal margin in places of left mid clavicus line. Depth could not be probed. Fresh bleeding present.*
- 3. 3 cm linear abrasion ever front of chest.*
- 4. 1.5 cm x 0.5 cm wound left side of hip joint, 6.5 cm below G.T. muscle deep.*
- 5. Incised wound 1.5 cm x 0.5 cm outer surface on left arm 3 cm from writ joint.*
- 6. Incised wound 0.5 cm area circular on front aspect of forearm 7 cm from writ joint muscle deep. Fresh bleeding present.*
- 7. 5 linear abrasions left side of chest wall on the outer side of injury No. 1.2.5. linear abrasion on the left side of the chest.”*

5. After investigation, Charge-sheet (Ex. Ka. 6) was filed by the Investigating Officer and while framing the charge, the trial Judge has framed charge under Section 307/34 of IPC against all the three accused persons.

6. So as to hold the accused persons guilty, the prosecution has examined six witnesses. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they, pleaded their innocence and false implication.

7. By the impugned judgement and order dated 09.09.1994, the trial Judge has acquitted all the respondents of the offence, as mentioned in Paragraph 2 of the impugned judgment. Hence, the present appeal, assailing the acquittal of the respondents.

8. Learned counsel for the State-appellant submits;

- (i) That the trial court has erred in law in acquitting the accused/respondents.
- (ii) That witnesses of the incident, PW-1 Kallu Chaudhary and PW-3 Ashok including the injured (PW-2) are fully reliable witnesses and the Court below has erred in law in disbelieving their statements.

(iii) That minor variations in the statements of the witnesses are required to be ignored.

(iv) That FIR is not an encyclopedia and thus, though in the FIR accused Sarman has been shown as the person causing knife injury to the injured, but in the Court statements, witnesses have made it clear that the said injury was caused by accused Rajjan.

(v) That the medical report of the injured duly supports the prosecution case.

9. Per contra, learned counsel for the defence-respondents has argued:

(i) That as per FIR, it is accused-Sarman who caused knife injury to the injured, but during trial, the said injured-Kamlesh Kumar (PW-2) has taken a somersault by saying that it is accused Rajjan who caused knife injury.

(ii) That as per the statement of Doctor, all injuries were caused by knife and there is no lathi injury.

(iii) That as per statement of PW-2-Kamlesh Kumar, initially he was admitted in Kalpi Hospital and thereafter, he was referred to Government Hospital, Orai and again he was referred to Jhansi Medical College, but there is no medical report on record of Kalpi Hospital.

(iv) That self-contradictory statements of the witnesses raise question upon the credibility of the witnesses.

(v) That there is no motive or intention against the respondents to commit the alleged offence.

(vi) That no blood stained clothes of the injured was produced before the Trial Court.

(vii) That no source of light had been mentioned in the FIR, though subsequently, the injured has stated that there was electric light at the place of occurrence.

(viii) That first Investigating Officer, namely, Suraj Pal Singh died during investigation and thereafter, second Investigating Officer had submitted the charge-sheet, but surprisingly, he was not examined during the trial.

(ix) That no weapon had been recovered from the pointing out or possession of the respondents at any point of time.

(x) That as per injury report, injured Kamlesh Kumar was examined by Dr. T.D. Gupta (PW-4) at District Hospital, Orai on 10.09.1990 at 11:45 PM, but the Doctor has signed it on 10.07.1990, whereas the date of examination has been shown in a different manner.

10. We have heard learned counsel for the parties and perused the record.

11. PW-1- Kallu Chaudhary, is the first informant. He states that injured-Kamlesh Kumar is his grandson and runs a tailoring shop in Mohalla Ganeshganj, Kasba Kalpi. He further states that on the date of occurrence, when he was in his house, he was called by someone and informed that someone has assaulted his grandson-Kamlesh Kumar (injured) by knife and lathi and then, he rushed towards the shop of injured and saw that the injured was groaning by sitting in front of his shop and blood was oozing. He states that he has been informed by local people that the injured was beaten by Sarman, Lalji, Rajjan and one unknown person.

12. PW-2- Kamlesh Kumar is the injured. He states that on the date of incident, when he was closing his tailoring shop at about 8:30 pm, all the three accused, namely, Sarman, Rajjan, Lalji and one unknown person came there. Accused Sarman was carrying knife, whereas Rajjan, Lalji and unknown person were carrying lathis. He further states that all the accused persons, including unknown person said that '*Maro Sale Ko Bahut Netagiri Karta Hai*' and thereafter, accused Rajjan assaulted him by knife, whereas others by lathi. He also states that two knife injuries were caused in his stomach, whereas one in hand and one in leg.

13. PW-3- Ashok, is an eyewitness to the incident. He states that on the date of incident at about 8:30 pm, when injured Kamlesh Kumar was closing his shop, all the three accused persons came near him and attacked upon him. He further states that accused Rajjan, inflicted stab wound on the person of injured and rest of the two accused namely, Sarman and Lalji assaulted with dandas.

14. PW-4- Dr. T.D. Gupta, has medically examined the injured and noticed seven injuries on the person of the injured, as mentioned in paragraph no.4 of this judgement.

15. PW-5- Babu Lal, Constable, has registered chik FIR. PW-6-Dr. P.K. Jain, has conducted the X-ray of the injured.

16. Considering the statements of the witnesses, including that of injured, the trial Court has reached to the conclusion that the statements of the witnesses are not reliable and on the basis thereof, the trial Court has not found them trustworthy and accordingly, disbelieved the same. Moreover, the incident occurred in the night at about 08:30 pm and the prosecution has also failed to establish as to whether there was source of light or not. The trial Court appears to be fully justified in disbelieving the statements of the witnesses, including that of the injured, as the credibility of the same appears to be doubtful, likewise the medical report of the injured also does not support the prosecution case. The view taken by the trial Court is one of the possible views and it cannot be said to be perverse.

17. While considering the scope of interference in an appeal or revision against acquittal, it has been held by the Supreme Court that if two views of the evidence are reasonably possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the trial Court. In the matter of **State of Karnataka vs. K. Gopalkrishna**, reported in (2005) 9 SCC 291, the Supreme Court, while dealing with an appeal against acquittal, observed as under:

"In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."

18. In **Sudershan Kumar v. State of Himachal**, reported in (2014) 15 SCC 666 the Supreme Court observed thus:

*"31. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled **Dhanapal v. State** which is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 37, propositions laid down in an earlier case are taken note of as under: -*

*"37. In **Chandrappa v. State of Karnataka**, this Court held: (SCC p. 432 para 42),*

(1) An appellate court has full power to review, reappraise 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."

32. Thereafter, in para 39, the Court curled out five principles and we would like to reproduce the said para hereunder:

"39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.""

19. In **Dilawar Singh v. State of Haryana**, (2015) 1 SCC 737, the Supreme Court reiterated the same in paragraph Nos. 36 and 37 as under :

"36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this

Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

37. *In Chandrappa v. State of Karnataka*, the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under: (SCC p.432 para 42)

"42....(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."

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in State of Rajasthan v. Shera Ram."

20. Considering the above legal position and the factual aspects of the case, we are of the view that the trial Judge was fully justified in acquitting the accused-respondents.

21. Hence, the Government Appeal sans merit and the same is, accordingly, **dismissed**.

Order Date :- 06.11.2023
Mukesh Pal

(Ashutosh Srivastava, J) (Pritinker Diwaker, CJ)