

Court No. - 42

Case :- GOVERNMENT APPEAL No. - 431 of 2023

Appellant :- State of U.P.

Respondent :- Jitendra Agnihotri And Others

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard Sri K.P. Pathak, learned A.G.A.for the appellant.
2. The Government Appeal has been filed praying to set aside the judgment and order dated 05.07.2023 in Session Trial Trial No.161 of 2016 (State Vs. Jitendra Agnihotri, Smt. Nidhi Agnihotri w/o Jitendra Agnihotri and Sanjesh Kumar) under Sections 302, 201 I.P.C. P.S. Hathras Gate, District - Hathras, related to Case Crime No.06/2016. By the impugned judgment and order, all the accused persons have been acquitted on the ground that chain of circumstantial evidence is not complete and, therefore, giving the benefit of doubt the learned trial court has acquitted all the accused persons.
3. We have heard learned A.G.A. and perused the impugned judgment. We find that the learned trial court has recorded detailed findings of fact after meticulous appreciation of evidences in paragraph nos. 29 to 66 of the impugned judgment. The entire case of the prosecution is based on some alleged photographs in an alleged pen drive allegedly found from the almirah of the deceased Satendra Sharma.
4. Neither the source of photographs contained in the pen drive could be proved nor mobile phone of the accused and the deceased were recovered. The accused Nidhi Agnihotri with whom illicit relation of the deceased has been alleged, has completely denied the photographs and stated that it is only on account of trick photography that her face has been affixed. The learned trial court has also found that so far as illicit relation on the basis of photographs contained in pen drive is concerned, if the deceased is a suspected one of having illicit relationship with Nidhi Agnihotri then guilty suspected is the Jitendra Agnihotri. Learned trial court has also found serious inconsistency in evidence of P.W. 3 and P.W. 4.
5. Considering the findings recorded in the impugned judgment, we find that the prosecution has failed to complete the chain of circumstantial evidence on the touch stone of golden principle settled by Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra, (AIR 1984 SC 1622)** which are as follows:

"(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

6. We do not find any apparent factual or legal error in the impugned judgment.

7. For all the reasons aforesaid, we do not find any good reason to grant leave to appeal. Therefore, the application for **leave to appeal is rejected**. Consequently, the appeal also stands **dismissed**.

Order Date :- 13.10.2023/vkg