

Neutral Citation No. - 2023:AHC-LKO:75575-DB

Chief Justice's Court

Government Appeal No. 312 of 1982

State of U.P.

Appellant

Vs.

1. Shamsuddin (since deceased)

2. Menhdi (since deceased)

3. Mohammad Ali (since deceased)

4. Ram Narain (since deceased)

5. Babu

6. Abdul Rashid (since deceased) ----

Respondents

For Appellant : Ms. Meera Tripathi, AGA

For Respondents : Sri A.R. Khan, Sri Ali Sheikh

Hon'ble Pritinker Diwaker, C.J.

Hon'ble Jaspreet Singh, J.

Per: Pritinker Diwaker, C.J.

1. Ms. Meera Tripathi, learned counsel for the State-appellant and Sri Ali Sheikh under the authority of Sri A.R. Khan, learned counsel for the respondents.

2. Challenge in the present Government Appeal is to the impugned judgment and order dated 16.10.1981 passed by IV Additional District & Sessions Judge, Sitapur in Sessions Trial No. 275 of 1980 (State Vs. Shamsuddin and Others), acquitting the respondents of the offences under Sections 147, 148, 323, 324, 307 read with Section 149 of IPC., P.S. Mahmudabad, District Sitapur.

3. Brief facts of the case are that on 11.09.1979, FIR, Ex. Ka.-2 was lodged by the nephew of injured Amar Singh (PW-2), alleging in it that there was some quarrel over irrigation of fields from a pond between the two groups during which deceased-accused Menhdi

asked the other accused persons to kill the members of the other party. It is stated that accused-respondent Babu gave lathi blows to Amar Singh on his thighs, whereas some of the other accused persons gave blows of 'ballam' and other weapons. Based on this FIR, offence under Sections 147, 148, 149, 323, 324, 307 of IPC was registered against the accused persons namely, Shamsuddin, Menhdi, Mohammad Ali, Ram Narain, Babu and Abdul Rashid.

4. In the medical examination, injuries were found on the body of injured Harnam (PW-1) and injured Amar Singh (PW-2). However, most of the injuries are said to have been caused by 'ballam'.

5. After filing the charge sheet, the trial court framed charges against the accused-persons under Sections 147, 148, 323, 324, 307 read with Section 149 of I.P.C.

6. It has been informed, at the Bar that during pendency of the appeal, out of six accused persons, five accused persons namely Shamsuddin, Menhdi, Mohammad Ali, Ram Narain and Abdul Rashid have expired and at present there is only one surviving accused i.e. accused-respondent no. 5 Babu. Appeal on behalf of respondent Nos. 1,2,4 and 6 namely Shamsuddin, Menhdi, Ram Narain and Abdul Rashid has already been abated, since they died, vide order of this Court dated 24.05.2022. As per office report dated 19.10.2023, accused-respondent no. 3 Mohammad Ali has also died, which fact has also been confirmed by the concerned C.J.M. Appeal on behalf of accused-respondent No. 3 Mohammad Ali is accordingly abated. Now, the present appeal confines to only accused-appellant No. 5 Babu.

7. So as to hold accused persons guilty, the prosecution has examined three witnesses namely Harnam Singh (PW-1), Amar Singh (PW-2) & Bindra (PW-3).

8. Statement of accused persons were recorded under Section 313 Cr.P.C. in which, they have pleaded their innocence and false implication.

9. By the impugned judgment, the trial judge has acquitted all the accused persons extending benefit of doubt to them.

10. Learned counsel for the appellant-State submits:

i) that the trial Judge has erred in law in acquitting the respondents by disbelieving the statements of prosecution witnesses, including that of injured witnesses.

ii) that apparently, there is injury on the vital part of the body of the injured persons and despite the fact that there is no casualty on the side of the injured, respondents cannot be given any benefit.

11. On the other hand, supporting the impugned judgement, learned counsel appearing for the accused-respondents has argued:

i) that the incident occurred on 11.09.1979 and it will not be proper for this Court to send the accused-respondents behind the bars after an expiry of about 44 years.

ii) that out of six accused-respondents, there is only one surviving accused-respondent i.e. Babu and he is sixty six years of age, therefore, no purpose would be served in sending him behind the bars in such an old age.

iii) that considering the statement of eye witnesses, at best, the accused-respondent can be liable to be convicted under Section 323 of I.P.C.

iv) that it is settled proposition of law that once the accused has been acquitted, unless the finding is perverse, the judgement impugned cannot be reversed.

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

13. Considering the totality of the case, in particular the fact that offence occurred in the year 1979 and after a lapse of about 44 years, it would not be appropriate for this Court to send the accused-respondent

Babu behind the bars and further considering the fact that the injuries caused by the accused-respondent are by lathi and that too on the thighs of the injured and the fact that at best the offence would not travel beyond under Section 323 of I.P.C., trial judge has acquitted all the respondents granting benefit of doubt to them. The view taken by the trial court is one of the possible views and it cannot be said to be perverse.

14. 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 reasonable 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 Hon'ble 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."

15. In **Sudershan Kumar v. State of Himachal** reported in (2014) 15 SCC 666 the Hon'ble 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 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 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 demeanor 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."

16. In **Dilawar Singh v. State of Haryana**, (2015) 1 SCC 737, the Supreme Court reiterated the same in paragraphs 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.

*36. 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."

17. Considering the above legal position and the factual aspect of the case, we are of the view that the trial Judge was justified in acquitting the

.respondents.

18. The appeal has no substance and the same is, accordingly, dismissed.

19. However, it is directed that the sole surviving accused-respondent Babu shall pay an amount of Rs. 20,000/- towards compensation to the complainant, within a period of three months from today.

Date: 27.10.2023

SK

(Jaspreet Singh,J) (Pritinker Diwaker, CJ.)