

Government Appeal No.19 of 1998

State of U.P. ----- Appellant

Vs

1. Aliyar Khan (since deceased)

2. Mohd. Yar Khan

3. Pappu Khan

4. Smt. Najma ----- Respondents

For Appellant : Sri S.N. Tilhari, AGA

For Respondents : None.

Hon'ble Pritinker Diwaker, CJ.

Hon'ble Rajan Roy, J.

Per: Pritinker Diwaker, CJ.

1. Challenge in the present Government Appeal is to the impugned judgment and order dated 8.10.1997 passed by III Additional Sessions Judge, Kheri in Sessions Trial No. 556 of 1995 (State Vs. Aliyar Khan and others), acquitting the respondents of the offences under Sections 498-A, 364 of IPC.

2. Brief facts of the case are that in the night intervening 13/14.9.1994, one Rabia, daughter of Liyakat Ali (PW-1), was kidnapped by the accused persons. It is alleged that prior to the incident, she was subjected to cruelty by her-in-laws for which Liyakat had lodged a report on 16.9.1994, based on which FIR was registered against the accused persons u/s 498-A, 364 IPC.

During investigation, statements of Liyakat Ali (PW-1), Irshad Ali (PW-2) and Smt. Kaishar Jahan (PW-3) were recorded and these witnesses have also been examined in the court.

3. While framing charge, the trial judge has framed charge against the accused persons u/s 498-A, 364 IPC.

4. So as to hold accused respondents guilty, prosecution has examined four witnesses. Statement of accused respondents were also recorded u/s 313 Cr.P.C. in which they pleaded their innocence and false implication.

5. By the impugned judgement, trial court has acquitted all the accused respondents on the ground that the prosecution witnesses have not fully supported the prosecution case. Hence the present appeal by the State.

6. We have heard learned counsel for the appellant and perused the record.

7. Liyakat Ali (PW-1) is a father of victim Rabia, has stated that since the marriage of Rabia, she was subjected to cruelty by her mother-in-law, father-in-law and brother-in-law (Devar) for demand of dowry. He has further stated that other items were also demanded by the accused persons. Whenever, her daughter (victim) came to his house, she used to inform about the said demand of dowry. In the night intervening 13/14.9.1994, his daughter was abducted by the accused persons and they informed the persons residing in the vicinity that she had eloped with someone. She was searched and when she could not be traced, the FIR was lodged.

In the cross-examination, there are material contradictions in the statement of this witness from that of his diary statement. Even he has failed to establish the fact as to what dowry was given during marriage.

8. Irshad Ali (PW-2) is a brother of the victim. His statement is almost on the same lines as has been deposed by PW-1. He too, while making general statement, has stated that his sister was subjected to cruelty for demand of dowry by the accused persons.

Though this witness was cross-examined at length, but from his statement, it appears that possibility of he, being tutored by Liyakat Ali (PW-1) or lawyer, cannot be ruled out.

9. Smt. Kaishar Jahan (PW3) is a sister-in-law (Bhabhi) of the victim. She has also made allegation of dowry on the basis of suspicion.

10. P.K. Agnihotri (PW-4) is an Investigating Officer of the case.

11. Close scrutiny of the evidence makes it clear that there are material contradictions in the statements of prosecution witnesses. They failed to depose as to in what manner, the victim was harassed by the accused persons. Merely on the basis of general allegation, which these days has become very common, this Court is of the view that statements of witnesses are not reliable and after due appreciation of the evidence, the trial judge was fully justified in acquitting the respondents. Moreover, offence is alleged to have been committed about 29 years back; accused no.1-Aliyar Khan has also expired and appeal with regard to this accused, has already been abated and therefore also, the impugned judgment cannot be interfered with.

12. The view taken by the trial court is one of the possible and plausible view and it cannot be said to be perverse.

13. 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 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."

14. 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 emphasis 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."*

15. 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**."*

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

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

Date: 16.05.2023

RK

(Rajan Roy,J) (Pritinker Diwaker, CJ.)