

Chief Justice’s Court

Government Appeal No. 2251 of 2010

State of U.P.	----	Appellant
Vs.		
1. Vijay Kumar Gupta		
2. Ajay Kumar Gupta		
3. Sushila	----	Respondents

For Appellant	:	Sri Pawan Kumar Mishra, AGA
For Respondents	:	Ms. Shreya Chaudhary (Amicus)

Hon'ble Pritinker Diwaker, CJ.
Hon'ble Jaspreet Singh, J.

Per: Pritinker Diwaker, CJ.

1. Sri Pawan Kumar Mishra, learned AGA for the appellant.
2. As there is no representation on behalf of respondents, we feel it appropriate to appoint Amicus. Ms. Shreya Chaudhary, Advocate, who is present in the Court, is appointed as Amicus to assist the Court in this case on behalf of the respondents.
3. Challenge in the present appeal is to the impugned judgment and order dated 28.01.2010 passed by Additional Sessions Judge, Court No. 2, Faizabad in Sessions Trial No. 162 of 2007 (State Vs. Vijay Kumar Gupta and Others) arising out of Crime No. 343 of 2007, P.S. Raunahi, District Faizabad, acquitting accused no. 1 Vijay Kumar Gupta, who is the husband of the deceased, accused no. 2 Ajay Kumar Gupta, dewar of the deceased and accused no. 3 Sushila, mother-in-law of the deceased, of the offences under Sections 498A, 304B of IPC and Section 3/4 of Dowry Prohibition Act.
4. Brief facts of the case are that the marriage of the deceased Poonam Gupta and Vijay Kumar Gupta, accused no. 1 was solemnized on 22.05.2005

and she died on 21.03.2007. Allegations have been made against the accused persons for harassing the deceased and for causing her death. After the incident, F.I.R. dated 21.03.2007, vide Ex.Ka.-2, was lodged against the accused persons and one juvenile accused Vickky, based on which investigation was carried out by the police.

5. The trial court framed charges against the accused persons under Sections 498A, 304B of IPC and Section 3/4 of Dowry Prohibition Act.

6. Postmortem of the deceased was conducted vide Ex.Ka.-4 on 21.03.2007. The cause of death of the deceased was due to septicemia as a result of ante mortem extensive burn injury.

7. Dying declaration of the deceased was recorded by the Executive Magistrate (DW-2) on 20.03.2007, wherein she has stated that she got burnt while she was cooking/frying 'nalki'.

8. So as to hold the accused persons guilty, prosecution has examined six witnesses, whereas three defence witnesses have also been examined.

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

10. By the impugned judgment, the trial judge has acquitted all the accused persons, mainly relying on the dying declaration of the deceased and also on the other evidences.

11. In this appeal, the State has challenged the acquittal of the respondents.

12. Learned counsel for the appellant-State submits:

- (I) that the trial judge has erred in law in acquitting the accused-respondents;
- (II) that there is enough evidence available on record based on which, the accused persons ought to have been convicted.
- (III) that the other evidence is also conclusive, based on which the conviction of accused persons can be made.

13. The dying declaration of the deceased was recorded on 20.03.2007 by the Executive Magistrate (DW-2), which reads as under:

“मैं पूनम गुप्ता पत्नी विजय कुमार गुप्ता आयु 23-24 वर्ष निवासी रायपुर जिला फैजाबाद की निवासी हूँ। मेरे शादी को दो वर्ष हो गये हैं। मेरे बच्चे नहीं हैं। ढाई-तीन बज रहा होगा जब मैं नलकी बना रही थी। तल रही थी। आंचल में आग लग गयी थी। घर में अकेली थी। सास-ससुर खेत है। उस समय कोई नहीं थी। जब मैं जली थी। मेरे पति बाहर थे। जलने पर मैं चिल्लाई थी। मोहल्ल वाले आये थे बचाने। पति भी बचाने आया था। पूँछने पर बताया कि किसी ने मुझे जलाया नहीं है। मुझे किसी का दबाव नहीं है। मैं 11 वां दर्जा पास हूँ। मुझे किसी से कोई शिकायत नहीं है। मुझे पति, ससुर, देवर सभी अस्पताल में भर्ती कराने आये थे। मैं जिस दिन जली थी, उस दिन बृहस्पतिवार था। मेरे मैके वाले और ससुराल वाले दोनों लोग आये।

किसी से कोई शिकायत नहीं है।”

14. From the dying declaration, it is apparently clear that the deceased has not made any allegation against accused persons and has categorically stated that she got burnt, while she was cooking/frying ‘nalki’. She submits that at the time of incident her husband was not at home, likewise other accused persons have also gone to the agricultural field and she was all alone in the house. She further stated that upon hearing her cries, neighbors rushed to the spot and likewise her husband also came there. All of them have extinguished the fire. She states that she was not burnt by anyone, nor she was under any pressure for making such dying declaration.

15. Bitana Devi (PW-1), mother of the deceased, has not made any specific allegation against the accused persons, likewise Krishna Nath Prasad (PW-2), father of the deceased, has also not made any specific allegation against the accused persons. In fact, none of the witnesses have made any serious allegations against the accused persons.

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

(I) that the incident occurred on 15.03.2007, whereas charges were framed on 21.06.2008 and despite several opportunities, prosecution has utterly failed to produce any witness.

(II) that in the dying declaration, the deceased has clearly stated that at the time of incident, she was all alone at the house and while cooking/frying 'nalki', her sari caught fire as a result of which, she sustained burn injuries.

(III) that at the time of incident, husband of the deceased was outside the house and it was the neighbors and husband of the deceased, who came after the incident and tried to save her.

(IV) that in the dying declaration itself, the deceased has stated that she burnt accidentally, and no one is responsible for this incident. She has further stated in her dying declaration that she has no complaint against anyone.

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

18. Considering all these aspects of the case, the trial judge has acquitted all the respondents granting benefit of doubt to the respondents. The view taken by the trial court is one of the possible views and it cannot be said to be perverse.

19. 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."

20. 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."

21. 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**."*

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

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

24. Ms. Shreya Chaudhary (Amicus), who has argued this appeal on behalf of respondents, shall be paid a sum of Rs.5000/- towards her remuneration by the High Court Legal Service Committee.

Date: 19.07.2023

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