

Neutral Citation No. - 2023:AHC-LKO:55024-DB**Chief Justice's Court**

Case :- GOVERNMENT APPEAL No. - 2276 of 2010

Appellant :- State of U.P.

Respondent :- Virendra Singh

Counsel for Appellant :- Govt. Advocate

Counsel for Respondent :- Abdul Rafey Siddiqui, Rehan Ahmad Siddiqui

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Rajan Roy, J.

1. Heard Ms. Parul Kant, learned counsel for the State and Ms. Tanzeem Fatima (Registration No. 03989/2022) as Amicus.
2. Challenge in this appeal is to the judgment and order dated 27.04.2010 passed by Addl. Sessions Judge, Court No. 2, Faizabad, acquitting the opposite party for the offence under Section 302/201 I.P.C.
3. Brief facts of the case are that on 21.4.2004 a written report was lodged by Hari Krishna Tiwari (not examined) informing the police that his son Vinod Kumar Tiwari (since deceased), aged about 20 years, is missing since 19.04.2004. It was alleged in the report that deceased Vinod Kumar Tiwari had gone to a nearby house of Jai Pal Singh and Virendra Singh for giving tuition to their daughters. It was also alleged that after tuition his son was supposed to return to house but he did not. For about two days he was extensively searched but could not get any clue of his whereabouts. Based on this written report, entry was made in the general diary. On 23.04.2004 a written report was lodged by the brother of the deceased namely, Manoj Tiwari with the allegations that his brother Vinod Kumar Tiwari used to give tuition to the daughter of Virendra Singh and his brother was having affairs with the daughter of Virendra Singh and for this reason, Virendra Singh has committed murder of his brother and

disposed of his dead body. Based on the aforesaid written report, on 23.4.2004 a first information report was registered under Section 302 & 201 I.P.C. against accused Virendra Singh. During investigation, accused Virendra Singh had informed that after giving tuition to his daughter, deceased left his house. On the basis of the memorandum given by the accused, he was arrested and on his pointing out, dead body was allegedly recovered, which was buried near the hand pump of the lobby of his house and later the said dead body was identified as that of Vinod Kumar Tiwari. Inquest and map were prepared and some blood stained cloths were also seized. Postmortem was conducted by P.W. 4 Dr. R. Kesh and the cause of death, as opined by the Doctor, is due to asphyxia by suffocation.

4. So as to hold accused guilty, prosecution has examined eight witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. wherein he pleaded his innocence and false implication.

5. By the impugned judgement, the trial court has acquitted the accused opposite party. Hence, this appeal by the State.

6. Counsel for the appellant submits :

(i) that dead body was recovered on being pointed out by the accused and this evidence is sufficient to hold the accused opposite party guilty of committing murder of the deceased;

(ii) that there was a FSL report indicating presence of human blood on the cloths of the deceased and the trial court ought to have convicted the accused opposite party.

7. On the other hand, supporting the judgement, it has been submitted by learned Amicus :

(i) that there is hardly any evidence against the accused and therefore, his acquittal is in accordance with law;

(ii) that accused has been acquitted only on the basis of weak circumstantial evidence led by the prosecution, which was not sufficient to convict a person; and

(iii) that even otherwise, incident occurred 19 years back and sending the accused behind the bar at this stage may not be justified.

8. Undisputedly, there is no disclosure statement of the accused in terms of provision of Section 27 of the Indian Evidence Act. Recovery has been made from a place, which, according to the prosecution, is the house of the accused but there is no evidence to this effect and contrary evidence is on record to suggest that house of the respondent accused was away from the place from where the dead body was recovered. As per the FSL report, only blood has been found but there is no evidence regarding grouping of the said blood and in the absence of that, it cannot be held that it is the blood of the deceased. Further, according to the prosecution, injuries found on the deceased were caused by '*Shilbatta*' but there is no injury on the vital part of the deceased. Even identification of the body is not in accordance with law and the trial court has considered this aspect as well.

9. After considering all the evidence as adduced by the prosecution, the court below has reached to the conclusion of acquitting the accused person. The view taken by the trial court is one of the possible and plausible view and it cannot be said to be perverse.

10. 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."

11. 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, reappreciate 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."

12. 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."

13. 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 accused respondent.

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

15. This Court appreciates the assistance rendered by learned Amicus on behalf of the accused respondent. Accordingly, we direct the High Court Legal Services Sub Committee to pay a sum of Rs.5000/- (Five thousand) to Ms. Tanzeem Fatima (Registration No. 03989/2022), Mobile No. 6390316510 towards her remuneration.

Dated :- 18.08.2023

nd

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