

Court No. - 86

Case :- GOVERNMENT APPEAL No. - 400 of 2023

Appellant :- State of U.P.

Respondent :- Shyam Mohan Singh S/O Devkinandan Singh

Counsel for Appellant :- A. K. Sand

Counsel for Respondent :- Manish Kumar Jain

Hon'ble Nalin Kumar Srivastava,J.

1. The instant Government Appeal under Section 378 (3) Cr.P.C. has been filed against the impugned judgement and order dated 01.06.2023, passed by Chief Judicial Magistrate, Jhansi, in Criminal Case No.149 of 2008, under Section 29 of Police Adhiniyam, Police Station Nawabad, District Jhansi, whereby accused-respondent was acquitted.

2. Heard learned A.G.A. for the State-appellant, learned counsel appearing for the accused-respondent and perused the entire material available on record.

3. The prosecution story, in brief, is that accused-respondent in a drunken condition broke the lock of the Mess at Police Line Jhansi, entered into it and created nuisance. He was medically examined and found to be in a drunken condition. A preliminary inquiry of the matter was conducted by Sri Anil Kumar, Circle Officer (City), Jhansi, wherein he was found guilty. FIR was lodged and after initiation of the prosecution, he was acquitted by the Court of Chief Judicial Magistrate, Jhansi, by impugned judgment and order dated 01.06.2023.

4. Aggrieved with the said judgement and order, the present appeal on behalf of the Sate/appellant, has been filed.

5. Learned State Counsel, relying upon the prosecution witnesses, has submitted that the trial court has failed to appreciate the evidence in its true perspective and acquitted the accused-respondent by wrong appreciation of the evidence available on record. Findings recorded by the trial court in the impugned judgment and order are illegal and perverse warranting interference by this Court.

6. Since it is a an appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard

to the appreciation of evidence in the appeal against the acquittal. Recently in ***Mallappa v. State of Karnataka, 2024 SCC OnLine SC 130***, the Apex Court has held as under :-

"37. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

7. Assessing the aforementioned analysis and evaluation of the evidence with the aforesaid guidelines given by the Hon'ble Apex Court in the judgement of ***Mallappa (supra)***, we are of the considered opinion that the learned trial court has taken legally plausible view, which favours the accused and thus it does not deserves any interference by this court in exercise of powers under Section 378 Cr.P.C.

8. In the case of ***Bannareddy v. State of Karnataka, (2018) 5 SCC 790***, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that :-

"the High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities".

9. In ***Jayamma v. State of Karnataka, (2021) 6 SCC 213***, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court.

10. In a recent judgment of this Court in ***Virendra Singh v. State of UP, 2022 (3) ADJ 354***, the law on the issue involved has been considered.

11. Similar view has been reiterated by Hon'ble Apex Court in ***Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471***.

12. In the light of the submissions made by learned counsel for the appellant/informant, I have carefully gone through the evidence available on record, analysis and appreciation thereof and conclusion arrived at by the trial court in the impugned judgment and order dated 1.6.2023.

13. So far as the evidence rendered in this case is concerned, total number of five witnesses have been examined and the prosecution has also relied upon eight documents i.e. Written report (Exhibit Ka-1), Chick FIR (Exhibit Ka-2), G.D. (Exhibit Ka-3), Map (Exhibit Ka-4), Charge-sheet (Exhibit Ka-5), copy of order passed by Senior Superintendent of Police, Gorakhpur dated 18.12.2008 (Exhibit Ka-6), report sent by Sri Dinesh, Police Station Nawabad to Senior Superintendent of Police, Jhansi dated 22.04.2019 (Exhibit Ka-7), photocopy of letter/report sent by R.I. Jhansi to Senior Superintendent of Police, Jhansi dated 06.11.2007 (Exhibit Ka-8).

14. The accused-respondent in his statement under Section 313 Cr.P.C. stated that oral and documentary evidence adduced by the prosecution is false and frivolous and no case is proved against him on the basis of the said evidence.

15. PW-1 Awadh Bihari Gupta is the informant of this case, who has proved the written report (Exhibit Ka-1), but has made a categorical statement in his cross-examination that at the time of the occurrence he was not present on the spot hence, he is unable to state whether any incident, in fact, happened or not.

16. PW-2 HCP 18 Ramprakash is the scribe of FIR, who has proved the chick FIR (Exhibit Ka-2) and a report regarding weeding of the original as (Exhibit Ka-3).

17. PW-3 Head Constable Rahmanul Haq is said to be a witness of fact and he has corroborated this fact that accused-respondent in a

drunken condition was making nuisance in the mess and he had gone to the spot on receiving the information regarding this. He has proved the charge-sheet, map and prosecution sanction order as (Exhibit Ka-4), (Exhibit Ka-5) and (Exhibit Ka-7, respectively, as secondary witness for I.O. of the case.

18. In his cross-examination, he has admitted that when the lock of the mess was broken by the accused, he was not present on the spot. He was unable to state as to on which date prosecution sanction was given by Sri R.K. Srivastava and the said sanction was not prepared before him. He has also stated that the accused was taken to the R.I. from his barrack and not from the place of occurrence.

19. PW-4 Manoj Kumar Sachan is a pharmacist in a District Hospital and as a secondary witness he has proved the handwriting and signature of Dr. A.K. Tripathi over the medico legal report, but however, in his cross-examination he has made an admission that he is deposing on the basis of the record of the hospital. The medico-legal examination was not conducted before him nor he had been ever posted with Dr. A.K. Tripathi who is now retired.

20. PW-5 R.I. Vinod Singh has corroborated this fact that when, on 5.11.2017 at 22:30 p.m., the accused was brought before him catching hold by Head Constable-Rahmanul Haq and constable Surendrapal Singh he had consumed liquor. He was sent to the police for medical examination and the medical report, which was received by him contained an endorsement that the accused-respondent had consumed alcohol. He has further deposed that an administrative report dated 06.11.2017 was forwarded by him to Senior Superintendent of Police, Jhansi and the then Circle Officer (City) conducted the preliminary inquiry into the matter. He has further stated that all the relevant documents have been weeded now and the report to this effect has been proved by him as (Exhibit Ka-7) and (Exhibit Ka-8). However, he is not an eye-witness of the incident and he was informed about the incident by Head Constable Rahmanul Haq and constable Surendrapal Singh.

21. Learned trial court, after making a detailed analysis and scrutiny of the evidence on record, has made a conclusive finding that there is no eye-witness to the fact that the accused made any nuisance after breaking the lock of the police line mess. All the witnesses are only hearsay witnesses and the hearsay evidence is not admissible in evidence. Even the medico-legal report has not been proved in proper manner and it has not been exhibited in the evidence of PW-4 and a non-exhibited document cannot be read into evidence, as per law. The prosecution case rests upon the

testimony of the eye-witnesses of fact as per story of the FIR, but no such eye-witness has been produced by the prosecution and no duty constable has also been produced in evidence. The prosecution thus, miserably failed to prove its case beyond reasonable doubt and this fact has been highlighted by the trial court on the basis of the appreciation of evidence on record.

22. Learned AGA has, vehemently, submitted that there is ample, cogent and sufficient evidence on record to prove the guilt of the accused-respondent and the trial court recorded his acquittal in an illegal manner.

23. It was controverted by learned counsel for the accused-respondent that it has been vehemently submitted that the prosecution has failed to show as to why no eye-witness was produced as prosecution witness in this case. Due to lack of production of eye-witnesses of the incident and the proper medical evidence as well the prosecution case cannot be said to be proved beyond reasonable doubt only on the basis of hearsay evidence.

24. The trial court has elaborately discussed the oral and documentary evidence on record and reached the right conclusion and committed no mistake in recording the acquittal of the accused-respondent.

25. The learned trial Court after analyzing and scrutinizing the evidence on record recorded the acquittal of the accused respondent and has given logical and plausible findings in the judgement and has rightly concluded that the prosecution has miserably failed to prove its case beyond reasonable doubt. The judgment and order of the trial court under judicious scrutiny is just and proper, which does not warrant any interference by this Court. The reasoning adopted by the learned Trial Judge is just and proper which needs no interference by this Court in exercise of power under Section 378 CrPC. If the findings recorded by the trial court in the impugned judgment and order are minutely analysed with the facts and evidence in consonance with submissions raised by learned A.G.A., no illegality, infirmity or perversity is found in it.

26. Thus, the application moved by the appellant-State of U.P. to grant leave to appeal for the reasons discussed here-in-above is not liable to be allowed and the same is refused.

Re: Government Appeal

Since, the application for grant of leave to appeal has been refused, the Government Appeal is also not liable to be admitted and the

same is **dismissed**, at this stage.

Order Date :- 3.7.2024

m.a.