

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2024:AHC-LKO:14868-DB

Court No.-10

Case :- GOVERNMENT APPEAL No. - 1000144 of 2013

Appellant :- State of U.P.

Respondent :- Smt. Phoolan Devi @ Phoolmati

Counsel for Appellant :- Govt. Advocate

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Oral)

1. By means of the present application under Section 378(3) of the Code of Criminal Procedure¹, the State has sought leave to appeal to challenge the judgment and order dated 16.05.2013 passed by the then Special/ Additional Sessions Judge, Lakhimpur Kheri in Sessions Trial No.52 of 2007 titled as State of U.P. vs. Hori Lal and another arising out of Case Crime No.77 of 2006, under Section 302 of the Indian Penal Code², Police Station Pasgawan, District Kheri, whereby the accused/ respondent herein, Smt. Phoolan Devi @ Phoolmati has been acquitted of the offence under Sections 302. However, the co-accused, Hori Lal has been convicted and sentenced to undergo life

¹ hereinafter referred to as "Cr.P.C."

² hereinafter referred to as "I.P.C."

imprisonment with a fine of Rs.5,000/- for the offence under Section 302 I.P.C. and in default of payment of fine, he has further been directed to undergo two months' simple imprisonment.

2. We have heard the learned Additional Government Advocate appearing on behalf of the State-appellant on the application for grant of leave to appeal and perused the record available before this Court.

3. The brief facts are that Hori Lal submitted a written application on 10.01.2006 at Police Station Pasgawan, District Kheri saying that his wife Phoolan Devi @ Phoolmati was all alone in the house on 09.01.2006 in the night and at around 01:00 PM, Mewa s/o Dwarika and Pramod s/o Natthu inquired about the whereabouts of Hori Lal from Phoolan Devi @ Phoolmati. Phoolan Devi @ Phoolmati being unaware of the whereabouts of her husband could not tell Mewa and Pramod about the whereabouts of Hori Lal. Mewa and Pramod started beating up Phoolan Devi @ Phoolmati, as a result of such attack on the person of Phoolan Devi @ Phoolmati, the foetus that was inside her womb as she was 8 months' pregnant died and the baby was still born. Some villagers who had heard the noise came to the house of Hori Lal and saved the life of Phoolan Devi @ Phoolmati from the attack of Mewa and Pramod. As a result of such application dated 10.01.2006, an F.I.R. as Case Crime No.77 of 2006 was registered under Sections 316 & 452 of the I.P.C. initially against Mewa and Pramod at Police Station Pasgawan, District Kheri at

10:45 AM. During the course of investigation, an Ultrasound and Medical Examination of Phoolan Devi @ Phoolmati was done. The postmortem of the deceased/ child was also conducted by P.W.-3, Dr. S.P. Verma. On the basis of such investigation, the Charge-sheet was filed by the Investigating Officer against Hori Lal and Phoolan Devi @ Phoolmati under Section 302/34 I.P.C. Mewa and Pramod, who were initially named in the first information report were exonerated.

4. It is contended by the learned A.G.A. for the State/ appellant that the impugned judgment and order dated 16.05.2013 is against the weight of evidence available on record.

5. His submission is that the learned trial court, while convicting the co-accused, Hori Lal, has recorded finding of acquittal in respect of another co-accused, Smt. Phoolan Devi @ Phoolmati, the sole respondent herein, on the basis of same set of evidence, which is legally impermissible.

6. Learned A.G.A. for the State/ appellant, thus, submits that the impugned judgment and order dated 16.05.2013 is perverse and, therefore, the application seeking leave to appeal deserves to be allowed.

7. Having heard the learned A.G.A. for the State/ appellant and upon perusal of record available before us, we find that according to postmortem report, Ex. Ka-1,

following ante-mortem injuries were reported on the body of the deceased/ child :-

"1- खराश दार नीलगू निशान 2 सें०मी० x 1 सें०मी० गर्दन पर दाहिनी तरफ दाहिने कान से 3 सें०मी० नीचे।

2- खराशदार नीलगू निशान 2 सें०मी० x 1 सें०मी० गर्दन पर बायीं तरफ बायें कान से 1 सें०मी० नीचे। चोट का विच्छेदन करने पर गर्दन के सब कुटेनियम टिशूज एमार्डमोज्ड पाये गये तथा ट्रैकिया कन्जेस्टेड पायी गयी।

3- नीलगू निशान 1 सें०मी० ग .5 सें०मी० ऊपरी हाथ पर दाहिनी तरफ।"

8. We also find that the cause of death of the deceased/ infant/ child is reported to be asphyxia as a result of ante mortem strangulation. The fact that the co-accused, Hori Lal is the husband of the accused-respondent, Smt. Phoolan Devi @ Phoolmati is not disputed. It is borne out from the record that the co-accused, Hori Lal, who has been convicted by means of impugned judgment and order dated 16.05.2013, was in jail for a period of about one and a half years and when he was released from jail and returned to his home, he came to know that the accused-respondent, Smt. Phoolan Devi @ Phoolmati was pregnant and was carrying eight months' foetus. He, thus, was having motive to commit the crime-in-question in order to get rid of the child, who, as he thought, was conceived by the accused-respondent, Smt. Phoolan Devi @ Phoolmati during the period when the co-accused, Hori Lal was in jail. The entire prosecution case was based on circumstantial evidence. As stated above, motive to

commit the crime was with the co-accused, Hori Lal only. It is relevant to mention that ante-mortem injuries reported on the persons of the deceased/ child are of such nature, which could not have been inflicted in the manner as stated in the first information report. The cause of death of the deceased/ child also suggests that the child was done to death after her birth.

9. It is apposite to mention that even if acquittal is recorded in respect of some of the co-accused, yet conviction can be recorded in respect of the other accused if evidence indicating complicity of such convicted co-accused is found cogent and reliable against him. In this regard, a judgment rendered by Hon'ble the Supreme Court in **Balraje alias Trimbak vs. State of Maharashtra**³ may be usefully referred to.

10. Hon'ble the Supreme Court in **Ramesh and Others vs. State of Haryana**⁴ in paragraphs 24 and 26, has held as under:-

"24. We have duly appreciated the submissions advanced by the counsel for the parties on both sides. No doubt, the High Court was dealing with the appeal against the judgment of the trial court which had acquitted the appellants herein. The scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, sub-section (3) thereof mandates that such an appeal is not to be entertained except

³ (2010) 6 SCC 673

⁴ (2017) 1 SCC 529

with the leave of the High Court. Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to reappraise, review and reconsider the evidence before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible.

26. This legal position is reiterated in *Govindaraju v. State* [*Govindaraju v. State*, (2012) 4 SCC 722 : (2012) 2 SCC (Cri) 533] and the following passage therefrom needs to be extracted: (SCC p. 732, paras 12-13)

"12. The legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed on a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 CrPC has been introduced as an additional

stage between the order of acquittal and consideration of the judgment by the appellate court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-section (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the courts.

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law.”

(emphasis supplied by us)

11. Hon’ble the Supreme Court in **Anwar Ali and another vs. State of Himachal Pradesh**⁵ in paragraph 14.1, has held as under:-

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under

⁵ (2020) 10 SCC 166

Section 378 CrPC. In paras 12 to 19, it is observed and held as under : (SCC pp. 196-99)

"12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. [Balak Ram v. State of U.P., (1975) 3 SCC 219 : 1974 SCC (Cri) 837] , Shambhoo Missir v. State of Bihar [Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17 : 1990 SCC (Cri) 518] , Shailendra Pratap v. State of U.P. [Shailendra Pratap v. State of U.P., (2003) 1 SCC 761 : 2003 SCC (Cri) 432] , Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P.,

(2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , *Budh Singh v. State of U.P.* [*Budh Singh v. State of U.P.*, (2006) 9 SCC 731 : (2006) 3 SCC (Cri) 377] , *State of U.P. v. Ram Veer Singh* [*State of U.P. v. Ram Veer Singh*, (2007) 13 SCC 102 : (2009) 2 SCC (Cri) 363] , *S. Rama Krishna v. S. Rami Reddy* [*S. Rama Krishna v. S. Rami Reddy*, (2008) 5 SCC 535 : (2008) 2 SCC (Cri) 645] , *Arulveluv. State* [*Arulvelu v. State*, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] , *Perla Somasekhara Reddy v. State of A.P.* [*Perla Somasekhara Reddy v. State of A.P.*, (2009) 16 SCC 98 : (2010) 2 SCC (Cri) 176] and *Ram Singh v. State of H.P.* [*Ram Singh v. State of H.P.*, (2010) 2 SCC 445 : (2010) 1 SCC (Cri) 1496])”

13. In *Sheo Swarup v. King Emperor* [*Sheo Swarup v. King Emperor*, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under : (SCC Online PC : IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the

slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Balbir Singh v. State of Punjab [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Khedu Mohton v. State of Bihar [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under : (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 emphasise 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.'

16. In *Ghurey Lal v. State of U.P.* [*Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* [*State of Rajasthan v. Naresh*, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that : (SCC p. 374, para 20)

'20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'

18. In *State of U.P. v. Banne* [*State of U.P. v. Banne*, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

'(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.'

A similar view has been reiterated by this Court in Dhanapal v. State [Dhanapal v. State, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(emphasis supplied)"

(emphasis supplied by us)

12. Thus, having regard to aforesaid overall facts and circumstances of this case and in view of the law

laid down by Hon'ble the Supreme Court in **Balraje's case (supra)**, **Ramesh's case (supra)** and **Anwar Ali's case (supra)**, we are of the considered view that the impugned judgment and order dated 16.05.2013 insofar as it relates to the respondent, Smt. Phoolan Devi @ Phoolmati, who has been acquitted of the charge under Section 302 I.P.C., is based on proper analysis of evidence available on record. It is a possible view of the matter on the basis of evidence adduced before the learned trial court, therefore, the same cannot be said to be perverse.

13. On the basis of foregoing discussion, we are of the considered view that the application for leave to appeal lacks merit and is, accordingly, **rejected**.

14. Since the application for leave to appeal has been rejected, the appeal also does not survive and the same stands **dismissed**.

15. Let the record of trial court, if any, be transmitted forthwith to the learned trial court concerned.

Order Date :- 20.02.2024

N.PAL / cks/-