

Court No. - 16

Case :- APPLICATION U/S 378 No. - 298 of 2018

Applicant :- Km. Anuradha Bharti

Opposite Party :- Babloo Awasthi And 2 Others

Counsel for Applicant :- Hari Kunwar Rai

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

Even the case is taken up in revised call, no one is present on behalf of opposite party.

Heard Sri Hari Kunwar Rai, the learned counsel for the appellant and perused the material available on record.

The present appeal under Section 378 Cr.P.C. has been filed against the judgment and order dated 28.09.2018 passed by learned IInd Additional Sessions Judge, Sitapur, in Session Trial No. 693 of 2015, State Vs. Babloo Awasthi & anr., arising out of Case Crime No. 472 of 2013, under Sections 323/34, 504, 506, 354-B, I.P.C. and Section 3(1)(x), Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as 'the S.C./S.T. Act'], Police Station Kotwali City, District Sitapur, for enhancement of sentence awarded to them under the aforesaid sections, vide the said order.

The prosecution case starts with an F.I.R. lodged by the complainant- Anuradha Bharti/appellant herein at Police Station Kotwali City, District Sitapur, on 25.09.2013, stating therein that her father is confined in jail this time. On the said date, date was fixed in her father's case. The opp. party Nos. 2 and 3 caught hold of her neck and *Dupatta* and abusing her with caste language, said that your father will be rotten in jail and you all will be killed. Saying this, they pulled her clothes, because of which her clothes wore off. The persons present there saved her and the opp. party Nos. 2 and 3 ran away from there.

Learned counsel for the appellant submits that the trial court did not correctly appreciate the evidence on record. He further submits that the opp. party Nos. 2 and 3 are members of the organized gang. They and the members of their gang wanted to kidnap the appellant for killing her. The appellant anyhow changed the root of college and went there. Application was given to the Police. Father of the appellant is a practicing Advocate and his carrier is clean, but due to the fear of opp.

party Nos. 2 and 3 and members of their gang he is not able to attend the court properly. There is every hope to kill father of the appellant, if the opp. party Nos. 2 and 3 are released early, hence this appeal be allowed and the sentence awarded to the opp. party Nos. 2 and 3 in the aforesaid sessions trial, be enhanced.

I have heard the submissions advanced by the learned learned counsel for the appellant and gone through the judgment passed by the trial court.

In the present case from the statements given by the witnesses produced by the prosecution, I found that the judgment and order passed by the trial court is perfectly just, legal and valid and based on the evidence available before it.

Further, learned counsel for the appellant could not point out any illegality or infirmity in the impugned judgment and order passed in the said Sessions Trial, which is before this Court.

Further, this Court observed that an appeal against acquittal/enhancement of sentence stands on a different footing from the appeal against conviction. Hon'ble the Apex Court in a very recent judgment in the case of **Sadhu Saran Singh Vs. State of Uttar Pradesh and Others** reported in **(2016) 4 SCC 357** has considered this difference and has observed in paragraph nos.20 and 21 as under:

"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in Sambasiva V. State of Kerala 1998 SCC (Cri) 1320 has held:

"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

21. The Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the trial court is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative."

In the light of the aforesaid guidelines, the impugned judgment has to be considered from the point of view whether the view taken by the trial court was a probable view based on the material on record or it is an absolutely erroneous judgment devoid of merits.

A criminal trial proceeds with the presumption of innocence of the accused persons. With the acquittal of the accused persons this presumption of innocence stands fortified. So very strong and cogent reasons must exist in interfering the judgment of acquittal.

Keeping in view the aforesaid weakness of the prosecution case, as noted by the trial court, I am of the view that the view taken by the trial court was a probable and logical view, which is based on valid reasons. The judgment of the trial court cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

Accordingly, the present appeal against acquittal is **dismissed**.

No order as to costs.

Copy of this judgment be sent to the trial court for its compliance.

(Shamim Ahmed, J.)

Order Date :- 25.7.2024

A.Nigam