

Neutral Citation No. - 2024:AHC-LKO:39052-DB

Court No. - 9

Case :- APPLICATION U/S 378 No. - 86 of 2024

Applicant :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.

Opposite Party :- Ritesh Kumar And 2 Others

Counsel for Applicant :- G.A.

Hon'ble Vivek Chaudhary, J.

Hon'ble Narendra Kumar Johari, J.

1. Present Application under Section 378 (3) Cr.P.C. has been filed along with Government Appeal assailing the judgment and order dated 07.02.2024, passed by the learned Sessions Judge, Barabanki in Sessions Trial No.85/2015 (State of U.P. Vs. Ritesh Kumar and others), by which the learned Session Judge, Barabanki has acquitted all the accused persons from the charge under Section 302/34 I.P.C.

2. The brief facts of the case are that the informant Chandan Lal informed the police station concerned that his son Swarn Singh @ Deepu , aged about 17 years had gone to Mahadeva yesterday, on 09.09.2012 at about 3.00 P.M. Thereafter he did not return back home till morning of 10.09.2012. When the informant along with his companions started search and reached at Mahadeva, they got the information about drowning of a boy in Abhran Pond at Mahadeva. He went there and found the dead body of his son Swarn Singh. He was told that his son had drowned in the pond.

3. After approximately two months, on 07.11.2012, the informant gave an application to the Police Station concerned that the accused persons Ritesh Kumar, Shiv Kumar and Satish Kumar had tried to outrage the modesty of his daughters while they were going to school. His son Swarn Singh had opposed their act, then the accused persons had threatened to kill him. Subsequently, the accused persons had apologized. Infact they were having enmity with the son of informant under the garb of false apology and in furtherance of the enmity, all the

accused persons took his son for bathing in Mahadeva Abhrn pond where they killed his son by pressing him into deep water.

4. On the basis of above application, an F.I.R. was lodged as Case Crime No.326/2012 on 07.11.2012 and the entry of the same was also made in G.D. The case was investigated by the Investigating Officer, who submitted Final Report concluding that Swarn Singh had died due to accident while bathing in Abhran Pond. Thereafter, at the instance of the informant, the case was further investigated by another Investigating Officer, who, after investigation, submitted charge sheet against the accused persons under Section 302 I.P.C.

5. Learned Trial Court framed the charge against the accused persons. In reply of charge, the accused/respondents denied the charge and requested for trial.

6. During the course of trial, on behalf of the prosecution, as PW 1 Chandanlal (informant), as PW 2 Sushma Devi @ Sushila (mother of deceased), as PW 3 Anjali Verma and as PW 6 Nisha Verma (both are real sisters of the deceased), as PW 4 Hari Shanker (eye witness), and as PW 7 Pradeep Kumar (eye witness) deposed as witnesses of fact. Other witnesses PW 5 Dr. Ajay Singh, PW 8 C.O. Ram Sanhighat, PW 9 Mithlesh Kumar Pandey, PW 10 Hriday Narain Chaturvedi, recorded their evidence as formal witnesses of prosecution.

7. After conclusion of the prosecution evidence, statement of accused persons was recorded under Section 313 CrPC, in which the accused persons denied the allegation leveled against them and stated that they were falsely implicated in the case due to enmity.

8. Learned trial court, considering the facts, circumstances and evidence on record, after proper discussion, acquitted the accused persons vide the judgment and order dated 07.02.2024, which has been challenged by the State/appellant by way of present Government Appeal along with application under Section 378 (3) Cr.P.C.

9. Learned A.G.A. has submitted that trial court has wrongly and illegally passed the judgment acquitting the accused person. There was sufficient evidence on record. The prosecution witnesses PW 1, PW 2, PW 3, PW 6 and PW 7 have fully proved the prosecution case showing the complicity of the accused persons; the death of informant's son by drowning is proved and is corroborated by the post mortem report. Learned trial court has adopted the hyper technical view. There are fair chances of success in appeal. Hence, the application of the State/ appellant under Section 378 (3) Cr.P.C. is liable to be allowed.

10. We have heard the arguments of learned A.G.A. and perused the record.

11. The witness PW 4 - Hari Shanker has deposed as eye witness of the occurrence but he has denied the presence of accused persons Ritesh Kumar, Shiv Kumar and Satish at the place of occurrence. Witness PW 7 has also not named the accused persons in his examination-in-chief. He has stated in his oral evidence that when the son of informant drowned in the pond, he informed his father, consequently, his father as well as other persons of the area gathered at the place of occurrence. The dead body of Swarn Singh was taken out from the pond and put him on the stairs. This statement of PW 7 is contrary to the statement of PW 1. The occurrence took place on 09.09.2012 and the information regarding the drowning of deceased was given to the police station on 10.09.2012 in which the informant had neither mentioned the name of accused persons, nor the name of eye witnesses PW 4 and PW 7. In the autopsy of Swarn Singh, no injury was found on his body. In post mortem report, the doctor has opined about the cause of death as asphyxia due to drowning.

12. The matter pertains to circumstantial evidence but neither the motive of occurrence could be proved, nor such chain of circumstantial evidence has been found completed. According to law, in the case of circumstantial evidence, the rings of incriminating

circumstances must be linked with each other to form the chain in all respect so as to indicate the guilt of the accused persons, ruling out any other theory of the crime. Taking into consideration the above facts, circumstances and evidence, the learned trial court has acquitted the accused persons/respondents of all the charges of offence.

13. Having regard to the above evidence and discrepancy in the evidence of the prosecution witnesses, the judgment passed by the learned trial court is just, proper and without perversity. The view taken by learned trial court is possible and justified which is in accordance with law.

14. While considering the interference in appeal against the acquittal, it has been held by the Apex Court that if two views are reasonably possible, one supporting the acquittal of accused and other indicating the conviction and the trial court has acquitted the accused, in such circumstances, the High Court should not reverse the order of acquittal recorded by the trial court.

15. In the case of *State of Karnataka vs. K. Gopalkrishna (2005) 9 SCC 291*, it has been held by Apex Court 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."

16. In the case of *Chandrappa Vs. State of Karnataka [2007 (4) SCC 415]*, the Apex Court has observed that :

(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 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."

17. Therefore, it can be concluded that the appellate court should not ordinarily interfere with the order of the trial court, unless the approach of the trial court is vitiated by manifest illegality. The appellate court should not interfere with the order of acquittal merely because on evaluation of the evidence different possible view may arise and the view taken by the trial court is not correct. There is a double presumption in favour of the accused. Firstly, the presumption of

innocence is available to him under the fundamental principle of criminal jurisprudence and the accused having secured his acquittal the presumption of his innocence is further reinforced and reaffirmed by the trial court.

18. Taking into consideration the submission of learned A.G.A. and also taking into consideration the facts, circumstances of the case in the light of fundamental principle of criminal jurisprudence, we are of the considered view that the trial court is justified in acquitting the accused/respondents. No illegality, irregularity or perversity is found in the judgment of learned trial court.

19. Hence, the prayer for leave to appeal, as made by State/appellant, is hereby rejected. Consequently, the government appeal is also dismissed.

20. Let a copy of this judgment be sent to the learned trial court.

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(Narendra Kumar Johari, J.) (Vivek Chaudhary, J.)

Order Date :- May 23, 2024

ML/-