

Court No.-9

Case :- APPLICATION U/S 378 No. - 425 of 2008

Applicant :- State of U.P.

Opposite Party :- Rakesh Kumar

Counsel for Applicant :- G.A.

Hon'ble Vivek Chaudhary,J.

Hon'ble Narendra Kumar Johari,J.

1. The present application under Section 378 (3) Cr.P.C. alongwith criminal appeal has been filed by State of U.P. challenging judgment dated 14.08.2008 passed by Additional Sessions Judge, District Ambedkar Nagar in S.T. No.90/2002, arising out of Case Crime No.51/2002, under Section 302 I.P.C., Police Station Ahirauli, District Ambedkar Nagar.

2. According to prosecution case, informant Mewa Lal Verma lodged an FIR in Police Station Ahirauli, District Ambedkar Nagar mentioning that his son named Pawan Kumar was in love relation with Shanti Devi, the daughter of Chote Lal Verma. His son had gone to the house of Chote Lal Verma for some work. In the night hearing voice of his son as well as sound of fire the informant alongwith Shyam Lal and other persons of village reached at the house of Chote Lal Verma. There they saw that accused persons Chote Lal Verma, Ramsuresh and Rakesh Verma have beaten and Ramsuresh Verma opened fire on his son Pawan Kumar by country made pistol, resultantly, he became injured and died on spot. When the informant and other persons of village demanded the body of Pawan Kumar, the accused Ramsuresh told that Pawan has died and he will not give the dead body to them.

3. The above FIR was registered on 03.05.2002 at 2.45 am under case Crime No.52/2002 under Section 302 IPC. The case was investigated by Investigating Officer- Brahmdev Upadhyaya, who recovered the dead body of deceased Pawan Kumar (son of informant) from the roof of accused persons. He sent dead body for autopsy, prepared the recovery memo and after completing the investigation filed chargesheet in the

court of Chief judicial Magistrate, Ambedkar Nagar, who committed the case to the session court. The trial court framed the charges under Section 302 IPC against accused persons, who abjured with the charges and requested for trial.

4. On behalf of the prosecution, Mewa Lal Verma as PW-1, Shayam Lal Verma PW-2, Virendra Kumar Verma, PW-3, Constable Ramkewal PW-4, Dr. Ramashanker PW-5, Investigating Officer, Brahmdev Upadhyay PW-6, Dr. Jai Shree Gupta, PW-7 have been produced to record their oral evidence.

5. After completion of the prosecution evidence, the statement of accused persons was recorded under Section 313 Cr.P.C. in which they have stated that deceased Pawan Kumar entered into their house silently climbing the wall, he reached on the roof, where the sister of accused, Ramsuresh and Rakesh Verma, namely, Shanti Devi was sleeping. Pawan Kumar tried to outrage her modesty and rape her. Hearing the cry of their sister the accused persons Rakesh Verma and Ramsuresh reached on the roof. There they saw that their sister was in objectionable condition, the accused persons lost their control and scolded Pawan Kumar. Pawan Kumar became angry he took country made pistol which was kept by him on the cot. The accused persons tried to snatch the firearm in their defence. In scuffle, the bullet was released and entered in the body of Pawan Kumar himself, as a result of above firearm injury, he died on spot.

6. The accused persons also produced Shanti Devi in evidence as DW-1. Apart from that they produced certified copy of affidavit of Mewa Lal Verma filed in Criminal Case No. 1/2000 as also certified copy of the FIR and Tehrir of above criminal case. They have also submitted certified copy of the statements given by witnesses in above case.

7. Learned trial court considered the case, heard the argument and after due discussion, convicted and punished accused Chote Lal Verma under Section 302 IPC, whereas, the court acquitted the accused persons

Ramsuresh and Rakesh Verma from the charges under Section 302 IPC, as, the prosecution could not prove the charges against them.

8. The acquittal order of the trial court has been challenged by the prosecution/State of U.P. by filing the present criminal appeal alongwith application under Section 378(3) Cr.P.C.

9. Learned AGA has submitted that the accused Ramsuresh was named in the FIR to open fire on deceased Pawan Kumar. The dead body of deceased has been recovered from the house of accused persons. The prosecution have given sufficient evidence against the accused persons also but learned trial court failed to consider the fact and evidence of the case and acquitted the accused persons Ramsuresh and Rakesh Kumar Verma illegally, whereas, their role were equivalent to accused Chote Lal Verma also who was convicted by the trial court.

10. Learned AGA further submitted that acquittal order of the trial court is bad in the eyes of law. There are chances that the appeal be allowed and accused persons be convicted hence the application of State Government under Section 378(3) Cr.p.C. deserves to be allowed.

11. Heard learned AGA and perused the record.

12. Perusal of record shows that before the trial court, witness PW-1 has admitted in his evidence that his son was having illicit relationship with Shanti Devi (daughter of accused Chote Lal). On the date of occurrence at about 11.00 pm his son had gone at the house of Chote Lal Verma to meet his beloved Shanti Devi. At about 11.30, the informant as well as other residence of village heard cry of Pawan Kumar, they rushed towards house of accused person, where they saw that accused persons Rakesh Verma, and Chote Lal were beating his son by a wooden stick and Ramsuresh fired with country made pistol. They have seen the occurrence in the light of torch.

13. Witness PW-2 has not supported the prosecution case hence he was declared hostile.

14. Witness PW-3 has stated that at the time of occurrence, he was sleeping in his house and the cousin of Pawan Kumar namely Shiv Kumar told him that Rakesh Kumar Verma has killed Pawan Kumar. Then after that the witness reached at the place of occurrence and thereafter he informed to the police by telephone.

15. Other witnesses- PW-4 to PW-7 have deposed as formal witnesses.

16. Witness- DW-1 has stated that when she was sleeping at roof, a boy of her village reached there, he closed her mouth by capping his hand, she woke up and identified him as Pawan Kumar. He was carrying country made pistol in his hand and threatened her that if she will make noise, he will shot her. Thereafter, he kept his firearm at the cot and started to remove her cloth. Hearing the voice of her protest, her brothers Ramsuresh and Rakesh Verma reached on the roof when her brothers tried to attack on Pawan Kumar, he threatened them to shoot by his country made pistol. Her brothers raised Pawan Kumar's hand quickly in which he had carried the country made pistol, thereafter all the persons started scuffle and Maar-Peet. Pawan Kumar was carrying country made pistol in his hand which fired and hit Pawan Kumar himself. Seeing the occurrence, she ran away from the roof.

17. Learned trial court has held that witness PW-1 on the date of occurrence was in his house. At about 11.00 pm he heard the voice of his son and reached towards the house of accused Chote Lal alongwith other villagers, on the way, he heard the sound of fire. It shows that he was not the eye witness of occurrence. PW-2 also did not support the prosecution case. Witness PW-3 Virendra Kumar also was not present at the time of occurrence as at that time he was sleeping in his house and cousin of deceased informed him about the occurrence. The dead body of the deceased was found in the house of accused Chote Lal, hence, the burden of proof was on him to show that how Pawan Kumar received firearm injury and died. The accused Chote Lal failed to discharge his burden, therefore, the trial court convicted accused Chote Lal and sentenced him accordingly. On the other hand, in absence of any eye

witness as well as in absence of any specific evidence and investigation like fingerprint on firearm and any linked evidence, involvement of accused Rakesh Kumar Verma and Ramsuresh could not be provided, resultantly, the court concerned has acquitted them withholding that prosecution was failed to prove his case against accused persons Ramsuresh and Rakesh Verma beyond any shadow of doubt.

18. After perusal of record and on the basis of facts, circumstances and evidence of the case, the findings of trial court are proper and are not found perverse. The view taken by the trial court cannot be said illegal.

19. Undoubtedly in such a matter, while deciding the application for leave to appeal at this stage, an appellate court has full power to review and reconsider the evidence upon which the order of acquittal is founded. As a general principle, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to them under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent, unless they are proved guilty by a competent court of law. Secondly, the accused having been acquitted by trial court, the presumption of their innocence is further reaffirmed by the trial court. It is also to be kept in mind that if on the basis of evidence on record, two reasonable conclusions, one against and another in favour of accused, are possible and learned trial court chooses to go with acquittal of accused, the appellate court should not disturb the finding of acquittal recorded by the trial court.

20. On the basis of above norms set up by settled legal principles, 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. We have gathered the conclusion, after reviewing the impugned judgment and record, that the judgment of trial court is well discussed and is based upon material evidence available on record. The conclusion is based by the trial court upon proper reasoning too.

21. Keeping in view the aforesaid failure of the prosecution to prove the guilt of accused Ramsuresh and Rakesh Verma, as noted by the trial court, we are of the considered view that the judgment of the trial court cannot be said to be illegal, illogical and improbable. We find no hope of success in this appeal and, accordingly, no interference is called for.

22. Hence, the prayer for grant of leave to appeal is hereby refused. The application is dismissed accordingly. Consequently, the memorandum of appeal does not survive and stands **dismissed**.

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

Order Date :-27.4.2024

Reena/-