Court No. - 16

Case :- GOVERNMENT APPEAL No. - 2837 of 2007

Appellant :- State of U.P.
Respondent :- Padum Kumar Pathak @ Raj Pathak
Counsel for Appellant :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

The case is taken up in the revised call.

Heard learned counsel for the parties.

The **present appeal** under Section 378 Cr.P.C. has been filed against the judgment and order dated 31.07.2007 passed by the Court of Additional Session Judge Fast Track Court No. 32, Barabanki in S.T. No. 338/2006, under Section 8/21 N.D.P.S., by which the respondent was acquitted from the charge levelled against him.

The prosecution story is that on 31-7-2006, at around 12:00 PM, Ram Behosth, Miraj Shankar, Rajendra Krishna Dev Singh, Bir Bahadur Yadav, Ramanuj Ram, and Balak Raj, who were engaged in government duties and searching for a wanted criminal, were traveling on the National Highway from Bokha Bhadak to Lucknow. Before reaching Bapur Mod, they saw a person coming from the direction of Lucknow, walking briskly along the road's shoulder and heading north at Bapur Mod. The person was intercepted approximately 78 meters north of Bapur Mod.

When the detained person was asked for his details, he identified himself as Pawan Kumar alias Raju and was found to be carrying illegal substances. The accused was informed that a search would be conducted and consent for the search was obtained in writing. Before the search, the police officers assured each other that no objectionable items were in their possession.

During the search of the accused's clothing, a packet containing approximately 500 grams of a suspicious yellow substance was recovered from the outside of his pants. Upon testing, the substance was identified as a narcotic. The substance was weighed and found to be 500 grams. The accused was arrested,

and the recovered material was sealed in a cloth bag at the scene and marked. The seal was prepared, and signatures were obtained from the witnesses. The matter was reported to the concerned authority, and necessary formalities were completed.

The court below after taking into consideration the facts and circumstances of the case and evidence available on record, passed the judgment and order of acquittal dated 31.07.2007.

Learned A.G.A. for the State submits that the court below did not appreciate the evidence on record. He further submits that prosecution has successfully proved the offence against the accused on the basis of evidence. The judgment was passed without considering the statement of witnesses and the case set up by the prosecution and the judgment of the acquittal was passed on surmises and conjectures

Learned A.G.A. submits that the present appeal is of the year, 2007. Moreover, there appears no illegality or infirmity in the judgment and order of acquittal passed by the court below, therefore, leave to appeal may be refused.

I have heard the learned counsel for the parties and considered the ground and gone through the judgment passed by the court below.

In the present case from the statements given by the witnesses produced by the prosecution, I found that prosecution has failed to establish that the crime in question has been committed by the accused and there was no direct evidence produced by the prosecution regarding involvement of the respondent in the crime.

Further, learned counsel for the appellant could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of respondents which is before this Court.

Further, this Court observed that an appeal against acquittal 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 raise 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."*
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> *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 court below 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 court below 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 court below, I am of the view that the view taken by the court below was a probable and logical view, which is based on valid reasons. The judgment of the court below 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 appeal does not survive, and in view of above, the appeal is **dismissed.**

No order as to costs.

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

Order Date :- 30.7.2024
Arvind

Digitally signed by :-
ARVIND KUMAR SRIVASTAVA
High Court of Judicature at Allahabad,
Lucknow Bench