

Reserved

Court No. - 71

Case :- CRIMINAL APPEAL No. - 362 of 1986

Appellant :- Nagar Palika

Respondent :- Gauri Shankar

Counsel for Appellant :- Swami Dayal,Devendra Kumar

Counsel for Respondent :- R.P.Goyal,A.G.A.,Bharat Pratap Singh

Hon'ble Raj Beer Singh,J.

1. This criminal appeal has been preferred on behalf of Nagar Palika, Atrauli, District Aligarh against judgment and order dated 28.07.1981, passed by learned A.C.J.M.- 3rd, Aligarh, in Case No. 296 / 1980, under Section 185 of Nagar Palika Adhiniyam, whereby respondent Gauri Shankar has been acquitted of charge under Section 185 of Nagar Palika Adhiniyam.

2. Heard learned counsel for the appellant and learned AGA for the State. None has appeared on behalf of respondent.

3. As per prosecution version, on 19.03.1976 one Mridul Arora has made a complaint against respondent to the effect that he was having some land at 'Jukkhan Ki Sarai', Bhanpara, Atrauli and respondent has started illegal construction on that land without any permission of Nagar Palika, Atrauli. The Nagar Palika officials visited the spot and found that respondent has made illegal construction. A notice was issued to the respondent for demolition of said construction but the reply of respondent was not found satisfactory and thus, complaint Ext. ka 4 was filed against respondent. The respondent has taken plea that he has not made any construction and in fact the alleged construction belongs to his uncle Kallu Singh and it was an old construction. The complainant has produced four witnesses. Learned trial Court has found that there are material

contradictions in the statements of witnesses and that the alleged construction was made earlier. On the basis of evidence, learned trial Court observed that evidence of complainant was not reliable and it could not be proved that respondent has made the construction in question, rather the defence version that alleged construction (room) was already there, was found more plausible. On the basis of these observations, the respondent was acquitted.

4. Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered. In the case of **Babu v. State of Kerala**, (2010) 9 SCC 189, the Apex Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 14, it is observed and held as under:

“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 subjectmatter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (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 AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohan v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State

of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)”

5. In **Chandrappa v. State of Karnataka** (2007) 4 SCC 415, the Apex Court reiterated the legal position as under:

“(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.”

6. In **Ghurey Lal v. State of U.P.** (2008) 10 SCC 450, the Apex 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.

7. 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.

8. Keeping in view the aforesaid legal position, in the instant matter, it appears that learned trial Court has considered evidence in correct perspective and rendered findings on the basis of evidence that complainant has failed to prove that the disputed room was constructed by respondent / accused. There were material contradictions in the statements of witnesses. On the basis of evidence, learned trial Court held that the version of respondent-accused that said room was not constructed by him and it was already there, appears quite plausible. As stated above, if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court. The impugned judgment of acquittal is based on evidence. No material illegality or perversity could be pointed out in the impugned judgment. It would also be relevant to mention that alleged dispute pertains to the year 1976 and the impugned judgment was passed on 28.07.1981. Considering entire facts and position of law, no case for any interference is made out. The appeal lacks merit, thus liable to be dismissed.

9. The appeal is hereby **dismissed**.

Order Date :- 12.8.2025

'SP'/-