

Neutral Citation No. - 2025:AHC:26831-DB

Reserved on 06.01.2025

Delivered on 25.02.2025

Case :- CRIMINAL MISC. APPLICATION U/S 372 CR.P.C (LEAVE TO APPEAL) No. - 39 of 2014

Applicant :- Laxmi Devi

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- Ashish Kumar Sinha,R.K. Shahi

Hon'ble Siddharth,J.

Hon'ble Subhash Chandra Sharma,J.

1. Heard Sri Neeraj Singh, learned counsel for the appellant; Sri Prem Shankar Prasad, learned AGA for the State-respondent no.1; Sri R.K. Shahi, learned counsel for respondent no.2; and perused the material placed on record.

2. The above noted criminal appeal U/S 372 Cr.P.C. has been preferred by the informant-appellant praying for modifying the judgement and order dated 16.11.2013 passed by Additional Sessions Judge, Room No.7, Deoria in S.T. No. 65 of 2010 (State Vs. Satish Singh and another) arising out of Case Crime No.698 of 2009, under Section 364, 302/34, 504, 201 IPC and under Section 25 Arms Act, Police Station Salempur, District Deoria, whereby trial court has acquitted the co-accused, namely, Akhilesh/opposite party no.2.

3. Learned counsel for the appellant submits that there was sufficient evidence against respondent no.2 for implicating him in this case. The prosecution proved the case against respondent no.2 beyond all reasonable doubt, but the trial court has illegally acquitted the respondent no.2 of all charges. He has further submitted that respondent no.2 accompanied the main accused, Satish Singh and both committed the alleged offence.

4. Learned counsel for respondent no.2 has vehemently opposed the submissions advanced by learned counsel for the appellant and submitted that the trial court has recorded the clear finding of fact that there was motive for the respondent no.2 to commit the alleged offence. It has further been found that the prosecution witnesses have not implicated the respondent no.2 clearly for committing the alleged offence. Hence the trial court has only convicted the co-accused, Satish Singh and has acquitted the respondent no.2.

5. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. in ***State of M.P. Vs. Sharad Goswami,(2021) 17 SCC***

783; State of Rajasthan Vs. Shera Ram, (2012) 1 SCC 602, Shivaji Sahabrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793.

6. The Supreme Court in the case of **Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 9 SCC 225** has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

7. The Supreme Court in the case of **Sadhu Saran Singh Vs. State of U.P., (2016) 4 SCC 357** has observed that an appeal against acquittal has always been on an altogether different pedestal from 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.

8. The Supreme Court in the case **Basheera Begam Vs. Mohd. Ibrahim, (2020) 11 SCC 174** has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the

accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

9. The Supreme Court in the case of **Kali Ram Vs. State of H.P., (1973) 2 SCC 808** has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

10. The Supreme Court again examined in **State of Odisha v. Banabihari Mohapatra & Ors, (2021) 15 SCC 268** the effect of the probability of two views in cases of appeal against acquittal and held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused, and the other to his innocence, the view which is favourable to the accused should be adopted.

11. The Supreme Court in **Sujit Biswas v. State of Assam, (2013) 12 SCC 406** has reiterated the position that suspicion, however strong, cannot replace proof. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt.

12. In the background of the law discussed herein above, we have examine the trial court's findings and evidence adduced during the trial by the witnesses to test the legality and validity of the impugned order.

13. Learned counsel for the appellant could not point out any perversity in the findings recorded by the trial court. The trial court's judgement is a well merited one, this Court need not re-appreciate the evidence.

14. The conviction of co-accused, Satish Singh, by the trial court has been upheld by us by order of date passed in connected Criminal Appeal No.5668 of 2013 by considering the entire evidence on record.

15. The above noted criminal is **dismissed**.

16. Let the record of the trial court be returned and this judgement to be notified to the trial court, within two week.

Order Date :- 25.2.2025
Ruchi Agrahari

(Subhash Chandra Sharma,J.) (Siddharth, J.)