

Court No. - 42

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 224 of 2025

Appellant :- State of U.P.

Respondent :- Bobi Alias Nitin S/O Vinod

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

Re- Order on Delay Condonation Application:-

1. Heard learned counsel for the appellant and perused the record.
2. As per report of Stamp Reporting Section the present appeal is delayed by 103 days.
3. For reasons shown in affidavit accompanying with the application for condonation of delay and keeping in view the short duration of delay and affidavit being uncontroverted, the delay is sufficiently explained.
4. Application for condonation of delay is allowed. The delay in filing the appeal is hereby condoned.
5. Office is directed to allot regular number to the present appeal.

Re: Criminal Misc. Application (Leave to Appeal):-

1. Heard Sri Jai Narayan, learned AGA appearing for the appellant-State of UP and perused the record.
2. Present government appeal has been preferred against the judgement and order dated 11.10.2024 passed by learned Special Judge (POCSO Act)/Additional District & Sessions Judge, Court No.-14, Saharanpur in Special Trial No.-1196 of 2021 (State of U.P. Vs. Bobi @ Nitin), arising out of Case Crime No. 890 of 2020 under Sections 201, 302, 377, 511 IPC and Section 5J(IV)/18 of POCSO Act, P.S.- Devband, District- Saharanpur.
3. Prosecution story, in brief, is that a written complaint was given on behalf of the complainant to the District Magistrate, Police Station Devband, District Saharanpur to the effect that the complainant is a resident of village Bhayla Khurd, Police Station Devband, District- Saharanpur. It is further stated in the complaint that on 15.12.2020 at about 2 P.M. his son Kartik went out of the

house to play and he has not returned yet, whose description is given as his age 13 years, whitish complexion, wearing blue jeans and black hoodie, black leather shoes, his height is about 4ft. The complainant has searched for him in the neighborhood and among the relatives but has not been found, therefore the complainant has come to report. On the basis of the aforesaid information a first information report was lodged. The Investigating Officer after completing all formalities and collecting sufficient material evidences submitted charge sheet against the accused respondent under Sections 302, 201, 377, 511 of I.P.C. and Section 5J(IV)/18 POCSO Act .

4. In support of prosecution case, PW-1 Pramod (complainant), PW-2 Sanoj Kumar, PW-3 Vinod Kumar, PW-4 Dr. Manish Pandey, PW-5 Head Constable Monu Kumar, PW-6 Inspector Dedhchhail Singh, PW-7 Inspector Ashok Solanki, PW-8 Sub-Inspector Sanjeev Kumar and PW-9 Sushil Kumar, Principal were produced and examined before the Court below.

5. The judgement of acquittal has been passed by the court below on the ground that the prosecution has failed to prove that the accused was last seen with the deceased and it is not certain that who committed the offence. Learned trial court has noticed that in the medical evidence of PW-4 Dr. Manish Pandey, who conducted the postmortem of the deceased boy, it has come that there was no decay in the dead body of the deceased and there was no sign of unnatural sex having been committed with him. There were five injuries on the person of the deceased, out of which four were ante mortem injuries and one was post mortem. The trial court has noticed that in the opinion of Doctor all the ante mortem injuries were caused by blunt object and the injuries could have been caused by bricks and in the post mortem injury, thigh and buttock were burnt. Learned trial court further noticed that PW-7, Investigating Officer has stated that during investigation he recorded the statements of witnesses who stated that they had seen that the respondent/accused Akash, Prashant and Vishal were smoking 'gaanja' and the deceased was standing there and thereafter the deceased went missing. Learned trial court further noticed that the respondent/accused along with other persons namely Akash, Prashant and Vishal were smoking 'gaanja' which has been supported by one witness Sanoj and other witnesses have not been produced. The learned trial court has also noticed that PW-6 Investigating Officer of the case has stated that initially the first information report was lodged against unknown person and they had not recorded statement of any witness who could have

stated that the deceased was last seen with the respondent/accused.

6. Challenging the impugned judgment, Sri Jai Narayan, learned AGA submits that the judgement of learned trial court acquitting the respondent/accused is against the weight of the evidence available on record and he further contends that the learned trial court failed to appreciate the evidence in the right perspective and the prosecution has been able to prove its case against the respondent/accused beyond reasonable doubt. He further submits that the witnesses are intact and have supported the prosecution case and the findings recorded by the learned trial Court is not one of the possible view. Submission, therefore, is that the judgement and order of acquittal passed by the trial Court requires serious consideration and reversal and the accused persons herein are liable to be convicted.

7. We have considered the submissions and have perused the record.

8. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

9. In the case of **Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790**, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities"

10. In **Jayamma vs. State of Karnataka, 2021 (6) SCC 213**, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a 'possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led

to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

11. In a recent judgement of this Court in **Virendra Singh vs. State of UP and others, 2022 (3) ADJ 354 DB**, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that 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. Paragraphs 12 to 19 of the aforesaid judgment are quoted 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 more, the 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 subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).

13. In *Sheo Swarup and Ors. King Emperor AIR 1934 PC 227*, the Privy Council observed as under:

"...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. The 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 Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).

15. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate 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."

16. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this 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.

17. In *State of Rajasthan v. Naresh @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of Uttar Pradesh v. Banne alias Baijnath & Ors.* (2009) 4 SCC

271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

- i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
- ii) The High Court's conclusions are contrary to evidence and documents on record;
- iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
- iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
- v) This Court must always give proper weight and consideration to the findings of the High Court;
- vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal v. State by Public Prosecutor, Madras* (2009) 10 SCC 401.

19. 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."

11. Hon'ble Apex Court in the case of *Ramesh Babulal Doshi vs. State of Gujarat* (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.

12. The aforesaid judgments were taken note of with approval by Supreme Court in the case of *Anwar Ali and another vs. State of Himachal Pradesh* (2020) 10 SCC 166, *Nagabhushan vs. State of Karnataka* (2021) 5 SCC 222, and *Babu (supra)* in *Achhar Singh vs. State of Himachal Pradesh* (2021) 5 SCC 543."

12. Similar view has been reiterated by Hon'ble Apex Court in ***Rajesh Prasad vs. State of Bihar and another*, (2022) 3 SCC 471.**

13. On perusal of record, we find that the learned trial court has

recorded the finding that the age of the victim on the date of occurrence was about eight years as per his educational certificates. On the basis of educational records, the boy took admission in Class-I on 04.04.2017 in 'Saurabhya Bal Vidya Mandir, Bhaylakalan, Saharanpur Poorv'. It has also come in the evidence that PW-1, informant the father of the victim has stated that he lodged a missing report and later on when the dead body of his boy was recovered he came to know by co-villagers namely Sanoj, Promod, Devi Singh, Jasveer, Rahul etcetera that his son was murdered by respondent/accused Nitin @ Bobby, Prashant and Akash and he has further stated that he had come to know that the above named persons had committed unnatural sex with the boy and to save themselves they had murdered him and burnt his dead body. The learned trial court has held that PW-1 is not an eye-witness and his evidence is based on hearsay evidence. PW-2 Sanoj Kumar has stated that the police suspected the involvement of Nitin @ Bobby, Prashant and Akash regarding commission of offence but this witness has denied that he did not know when the respondent Nitin @ Bobby and Prashant, Akash used to indulge in consuming intoxicating materials. In the cross-examination this witness has denied that he had seen the respondent/accused consuming 'gaanja' and the deceased was standing there. Similarly, PW-3 has also not supported the prosecution case. PW-3 is witness of inquest. PW-4 Dr. Manish Pandey, who conducted the post mortem of the deceased has found no sign of unnatural sex being committed with the deceased. Apart from the above there is no evidence against the respondent/accused. In view of above the judgement of acquittal recorded by the learned trial court does not suffer from any perversity. In such view of the matter, we, therefore, find that the court below has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view as per the law discussed above.

14. Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is rejected.

Re: Government Appeal:-

1. Consequently, since the Criminal Misc. Application (Leave to Appeal) is rejected by order of date, the present government appeal is also dismissed.

Order Date :- 18.7.2025/Virendra