

Court No. - 42

Case :- CRIMINAL APPEAL No. - 6572 of 2024

Appellant :- State of U.P.

Respondent :- Satish Chandra And 2 Others

Counsel for Appellant :- A. K. Sand

Hon'ble Vivek Kumar Birla,J.

Hon'ble Pramod Kumar Srivastava,J.

1. Heard Sri Rahul Asthana, learned AGA appearing for the appellant-State of U.P. and perused the record.

2. Present criminal appeal has been preferred against the judgment and order dated 06.03.2024 passed by the Special Judge, S.C./S.T. Act, Jhansi in Sessions Trials No.59 of 2010, 59A of 2010, 25 of 2011 and 359 of 2010, arising out of Case Crimes No. 427 of 2010 and 468 of 2010, under Sections 302, 120B IPC, 3(2)5 SC/ST Act and 25 of the Arms Act, P.S. Gursarai, District Jhansi.

3. Prosecution story, in brief, is that on 25.8.2010, informant's cousin Bhagirath went to cloth shop in Katra Bazar as usual. In the evening, he was returning home after closing the shop. Informant's cousin was coming from Madori Naka via Mahavir road. As soon as he reached in front of Satish Chaurasia's shops, at around 8 pm, two people, one of whom had covered his face with towel and the other had not covered his face, took out a gun from the waistband of his pants and shot informant's cousin Bhagirath with the intention of killing him, due to which informant's cousin fell down injured on the spot. On receiving the information, all the family members and informant reached the spot. The injured cousin of informant was taken to Gursarai Government Hospital, where the doctor referred him to Jhansi Medical College after some treatment and during treatment Bhagirath died.

4. In support of prosecution case, PW-1 Bharat Singh, PW-2 Thakurdas, PW-3 Prithviraj, PW-4 Constable Mohd. Shamiuddin, PW-5 Inspector Swaminath, PW-6 Investigating Officer M.L. Vimal, PW-7 Dr. S.K. Tripathi, PW-8 Inspector Anil Kumar singh, PW-9 Krishna Swaroop Yadav and PW-10 Khoobchand were produced and examined before the Court below.

5. The judgement of acquittal was passed on the ground that FIR was registered against unknown persons and informant was not eye-witness of the incident as per the facts narrated in the FIR but during trial informant had adduced himself as eye-witness, whose testimony is not believable. Motive is not mentioned in the FIR. During investigation Investigating Officer developed the case on the basis of love triangle and, thereafter, name of the accused persons came into light for the first time. Suddenly, Witnesses PW-2 Thakurdas and Panchamlal emerged out. On 02.09.2010, accused persons Satish and Jitendra were arrested by the police with the weapon during police encounter. No test identification parade was conducted by the Investigating Officer. Statement of prosecution witnesses are not natural and inspires no confidence. Witnesses Panchamlal and PW-2 Thakurdas never informed the name of accused persons to the informant. After long interval, prosecution story was developed and these public witnesses were empoistered as eye-witnesses. Veracity of their statements are not credible. The weapon which is said to be used in the commission of crime is recovered from the open public place which was not sent to the F.S.L. for the examination. At no stage the prosecution witnesses stated about the love story of accused Satish and Sarla. Under such circumstances, the Court below found that the prosecution could not prove his case beyond doubt and the accused persons were given benefit of doubt and judgment of acquittal was passed.

6. Challenging the impugned judgment, Sri Rahul Asthana, learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that public witnesses have supported the statement given by the informant and minor contradictions cannot be given much importance as they do not adversely affect the core of prosecution version. Prosecution case cannot be thrown outrightly. Prosecution has fully proved his case beyond reasonable doubt but the analysis and conclusion drawn by the trial court is totally contrary to the facts, evidence and law. He further submits that the learned trial Court has given undue weightage to the evidence of defence and has wrongly ignored the prosecution evidence. 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 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 admittedly, accused were not named in the FIR. Virtually, FIR was lodged by the informant against two unknown persons. As per the narration of the FIR, it does not transpire that informant was present at the time of incident while it is specifically mentioned that on getting information, informant including other family members reached on the spot. Prosecution adduced the evidence of informant as PW-1 and during examination of PW-1 informant, he has introduced himself as eye-witness while as per FIR, he was not present at the place of incident. Another glaring fact is that he has stated in his evidence that one of the accused was covering his face who has triggered fire on the deceased and deceased fallen down, thereafter, both the miscreants/accused fled away from the spot and he started crying/screaming but with regard to the fact of crying/screaming,

there is no whisper in the FIR, although, it is settled law that FIR is not substantive piece of evidence but it does not mean that it is waste paper, it has corroborative value and in the FIR (Ex.Ka-1) neither the name of the witnesses are mentioned nor it is stated that at the time of incident they were present. During investigation name of the accused persons and witnesses were emerged out. The prosecution has examined PW-3 Prithviraj as a witness of extra judicial confession who has stated that on 28.08.2010 when he was present in his house, at about 4 PM. accused persons came there and said to him that they have committed murder of Bhagirath by firing and requested him to save them because he has acquaintance with police but surprisingly, this witness did not inform to the informant in respect of this fact. Prosecution has examined Investigating Officer but he did not state regarding extra judicial confession made by accused before PW-3 Prithviraj. Investigating Officer PW-5 admitted that he has not conducted the test identification parade of the accused persons and he also admitted that weapon-countrymade pistol was recovered from the open place which was not sent to the F.S.L. for examination. It is also admitted fact that accused were arrested by the police during police encounter and after that name of the accused came into light for the first time. 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. Present criminal appeal is, accordingly, dismissed.

Order Date :- 20.8.2025
S.A.