

AFR
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Neutral Citation No. - 2025:AHC:12161-DB

Court No. - 46

Case :- GOVERNMENT APPEAL No. - 1178 of 2024

Appellant :- State of U.P.

Respondent :- Kallan And 3 Others

**Counsel for Appellant :- A. K. Sand, Mohammad
Danish, Saif Ali Khan**

Hon'ble Rajiv Gupta, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

(Delivered by Hon. Mohd. Azhar Husain Idrisi, J.)

1. Heard Sri Jitendra Kumar Jaiswal, learned AGA for the appellant/State, Sri Mohd. Danish, learned counsel for the accused-opposite parties and perused the trial court record.
2. The instant Government Appeal alongwith an application for grant of leave to appeal has been filed by the State of U.P. against the impugned judgment and order dated 13.3.2024 passed by Addl. Sessions Judge, Court No. 9, Moradabad in Sessions Trial No. 952 of 2018 (State Vs. Kallan and others) arising out of Case Crime No. 39 of 2018, under Sections 302 read with section 34 IPC and Section 506 IPC, P.S.-Hazratnagar Garhi, District-Moradabad, by which, all the accused-opposite parties Kallan, Haneef, Shahid and Waheed have been acquitted of all the charges framed against them under Sections 302/34, 506 IPC.
3. As per the prosecution case, based on the written

report an FIR has been lodged at the instance of one Iqbal son of Wazeer on 12.6.2018, stating therein that he is permanent resident of Sonakpur, P.S. Hazratnagar Garhi, Moradabad. On 12.6.2018 in the night, he was sleeping on the roof top of his house alongwith his children. His younger brother Gulfam was also sleeping alongwith his wife and children in the nearby roof and at about 1.30 a.m. in the night, accused-opposite parties, namely Kallan, Haneef, Shahid and Waheed in furtherance of common intention reached on the roof top of his brother Gulfam and sliced his neck causing his death.

4. It is further alleged that while committing the said murder, they were saying that your brother had forcibly taken away his daughter and the said incident is outcome of the same. After hearing the screaming of Gulfam, he had seen the assailants, in the torch light, running away towards jungle.

5. On the basis of said written report, a first information report was lodged at Police Station-Hazratnagar Garhi vide Case Crime No. 13 of 2018, under Section 302, 506 IPC on 12.6.2018 at 4.14 a.m. After registration of the said first information report by P.W.-6 Head Constable Parvez Ali, the investigation of the case was entrusted to P.W-13 S.I. Neeraj Kumar Sharma, who reached the place of incident and prepared the site-plan and recorded the statement of relevant witnesses and had taken in his possession the torch and prepared its fard recovery memo. Thereafter, P.W.-10 SSI Jitendra Kumar Baliyan conducted the inquest on the person of the deceased and prepared the inquest report and the other documents, namely photo-lash, challan-lash, letter C.M.O., letter R.I. and also took in

possession the blood stained earth and plain earth from the place of incident and kept it in a container and prepared its fard recovery memo and thereafter sealed the dead body in a cloth and handed it over to P.W.-8 Constable Manoj Kumar for carrying it to the mortuary for post-mortem.

6. An autopsy was conducted on the person of the deceased on 12.6.2018 by P.W.-7 Dr. Shashi Kumar, who had noted the injuries found on the person of the deceased and prepared the post-mortem report, wherein the cause of death has been noted to be ante mortem injury as a result of shock and haemorrhage.

7. Thereafter, the Investigating Officer after recording the statement of relevant witnesses and collecting the relevant material, concluded the investigation and submitted the charge- sheet against all the four accused- opposite parties.

8. On the basis of said charge sheet, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions for trial, where it was registered as Sessions Trial No. 952 of 2018 (State Vs. Kallan and others). The trial court thereafter on 13.3.2019 framed the charges against the accused-opposite parties under Section 302 read with section 34 and 506 IPC, which was read over and explained to them, who abjured the charges, pleaded not guilty and claimed to be tried.

9. The prosecution, in order to prove the guilt against the accused-opposite parties, has examined P.W.-1 Iqbal, the first informant, P.W.-2 Smt. Asma, wife of Iqbal, eye witness, P.W.-3 Smt. Shabnam wife of deceased, P.W.-4

Jane Alam witness of fard recovery of torch and hair strands, P.W.-5 Irfan witness of inquest and witness of recovery of crime weapon, P.W-6 Head Constable Parvez Ali, who had drawn the first information report and the chik FIR alongwith its corresponding G.D., P.W.-7 Dr. Shashi Kumar, Medical Officer, who conducted the post-mortem and noted the injuries, P.W.-8 Constable Manoj Kumar, who had taken the dead body to the mortuary for post-mortem, P.W.-9 Salman another brother of the deceased, P.W.-10 S.S.I. Jitendra Baliyan, who had conducted the inquest on the person of the deceased and prepared the recovery memos, P.W.-11 Smt. Sanno wife of Salman daughter of Kallan accused-opposite party No. 1, P.W.-12 Tasleem witness of inquest and P.W-13 S.I. Neeraj Kumar Sharma the Investigating Officer.

10. After recording the testimonies of the prosecution witnesses, the statement of the accused opposite parties were recorded under Section 313 Cr.P.C., wherein they have denied the prosecution story and stated that they have been falsely implicated in the present case on account of village enmity and infact were not present at the time of incident and the incident has been caused by some unknown person. Zaqir son of Nasruddin, Nanhu son of Ismail, Akbar son of Roshan, Julfiquar Ali son Anees and Yameen son of Jumma were produced as defence witnesses to support the defence.

11. After recording the entire testimonies of the witnesses and hearing the accused-opposite parties, the trial court acquitted the accused- opposites parties of all the charges framed against them vide judgment and order dated 13.3.2024.

12. Being aggrieved and dissatisfied by the said order, the present Govt. Appeal has been preferred by the State alongwith an application for grant of leave to appeal with the prayer to reverse the finding of acquittal recorded in favour of the accused-opposite parties and to convict them for the offence charged with.

13. Learned AGA for the State/appellant has submitted that the trial court has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of acquittal in favour of the accused-opposite parties. He has further submitted that the impugned judgment and order passed by the trial court is based on surmises and conjectures and, therefore, liable to be set aside by allowing the instant govt. appeal.

14. Per contra, learned counsel for the accused-opposite parties has submitted that the trial court has appreciated the evidence and material on record in right perspective and has recorded the finding of acquittal in favour of the accused-opposite parties in the light of testimony adduced during the course of trial and has reached the just conclusion that no offence charged with, is made out against the accused-opposite parties, however, they have been falsely implicated in the instant case. He has further submitted that against the impugned judgment and order dated 13.3.2024 passed by the trial court, an appeal u/s 372 Cr.P.C. No. 169 of 2024 was preferred by the first informant Iqbal. The said appeal was heard by co-ordinate bench of this Court and this Court vide judgment and order dated 5.4.2024 by a well reasoned and detailed order rejected the said appeal.

15. Against the said order dated 5.4.2024 dismissing the

Criminal Appeal u/s 372 Cr.P.C. No. 169 of 2024, no further appeal has been filed before the higher court and the said order has become final and thus, the present Govt. Appeal is also liable to be dismissed.

16. Having considered the rival submissions made by the learned counsel for the parties and recapitulating the facts of the case and the testimony made therein, we find that incident in question is said to have taken place on 12.6.2018 at around 1.30 in the night when the accused-opposite parties are said to have assaulted Gulfam brother of Salman. Even according to the prosecution own case, Sanno daughter of Kallan accused-opposite party No. 1 was forcibly taken away by the Salman brother of the deceased Gulfam, who married her and was living peacefully with her. The said marriage was against the wishes of accused-opposite party No. 1 Kallan and thus, he committed the instant offence.

17. When we go through the motive of the present incident and analysing the same, we find that in the backdrop of the motive as suggested by the prosecution, the accused-opposite party No. 1 Kallan was aggrieved with the act and conduct of Salman, who forcibly had taken away his daughter and married her four years back and was living peacefully with him, however, after four years there was no reason for the accused-opposite party No. 1 Kallan to join hands with other accused-persons to kill Gulfam brother of Salman.

18. The trial court has vividly discussed the said factum of motive and held that in the backdrop of the circumstance, the said motive appears to be far-fetched and difficult to believe. During the course of trial, Salman and Smt. Sanno

daughter of Kallan have also been examined as P.W.-9 and P.W.-11. Salman and they in their testimony, stated that after marriage with Sanno, he alongwith his wife has been residing at Delhi and the accused-opposite party No. 1 Kallan never contacted them after the incident nor extended any threats to them and the last four years were event free and no untoward incident had taken place during this period, however, suddenly killing of Gulfam by Kallan and his accomplices for the aforesaid motive, raises a big question mark and grave doubt about the veracity and authenticity of the prosecution case, that too in the darkness of night when all were sleeping.

19. Furthermore, when we go through the testimony of P.W-3 Shabnam wife of deceased Gulfam, who claims herself to be an eye witness, we find that though in her examination in-chief, she has supported the prosecution story but in her cross examination, she has categorically stated that the incident has taken place in the dark night, where there was no source of light either of torch or any electric bulb and at the relevant time, she was not present at the roof top, where the deceased was sleeping but had come down. She has further categorically stated that no other person of the village nor any of his family members nor Iqbal had witnessed the incident, he was not even present at the place of incident and it was she, who had first reached the place of incident and raised alarm.

20. She has further categorically stated that accused-opposite parties Kallan, Haneef, Shahid and Waheed though involved in the present incident and belongs to her village with whom she is well acquainted but they were not seen at the time of incident. She has further stated that her

husband was done to death by the assailants, who had covered their identity and could not be identified by her. She has further stated that assailants, who actually committed the incident and were running away, were not of the same physical structure as that of the accused. She further denied to have given any statement to the police nor she was interrogated by the police. She further testified that Iqbal used to live in a separate house and the earlier statement given by her was made under the fear and pressure of Iqbal and Salman, who had extended death threats to her if she refuses to depose as per their wishes, nominating accused-opposite parties as accused. She even denied the presence of P.W.-2- Asma at the time of incident, as such, she was declared hostile by the prosecution and cross examined by the public prosecutor.

21. While going through the testimony of said witness, we find that she being the wife of the deceased, was the most natural witness, whose presence in the wee hours of the night cannot be doubted and she, in her statement, has categorically stated that accused-opposite parties were not real assailants and some unknown persons had infact murdered her husband, who had concealed their identity and could not be identified by her. She further categorically stated that earlier testimony given by her was under the fear and pressure of the P.W.-1- Iqbal and P.W.-9- Salman.

22. Thus, the said witness, in our opinion, cannot be said to be a wholly reliable witness but an inconsistent witness, thus relying on her testimony, the said accused-opposite parties cannot be convicted by reversing the acquittal. Even when we go through the testimony of P.W-1 and P.W.-2, who are the real brother of the deceased and the first

informant and sister in-law of the deceased, we find that there are material contradictions in their testimonies as noted by the trial court and, therefore, they too cannot be said to be reliable witnesses as held by the trial court. The motive suggested for the commission of the said offence also do not inspire confidence at all. Even if, aggrieved by the act and conduct of Salman, who forcibly enticed away her daughter and married him against his wishes then he would have caused the death of Salman and there is no reason for him to cause the death of Gulfam brother of the deceased, which circumstance further creates a serious doubt about the prosecution story and, therefore, the appellants, in our opinion, are entitled to the benefit of doubt.

23. Now coming to the scope of reversal of acquittal in Govt. Appeal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently in **Mallappa v. State of Karnataka, 2024 SCC OnLine SC 130**, the Apex Court has held as under:-

37. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the

reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

24. Assessing the aforementioned analysis and evaluation of the evidence with the aforesaid guidelines given by the Hon'ble Apex Court in the judgement of Mallappa(supra), we are of the considered opinion that the learned trial court has taken legally plausible view, which favours the accused and thus it does not deserves any interference by this court in exercise of powers under Section 378 (3) Cr.P.C.

25. Further this Court in the case of **Rajesh Prasad v. State of Bihar and Another** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 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.”

26. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

27. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the

judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- a) *That the judgment of acquittal suffers from patent perversity;*
- b) *That the same is based on a misreading/omission to consider material evidence on record;*
- c) *That no two reikeasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

28. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

29. In the light of above settled proposition of law moreso in view of the fact that the criminal appeal under Section 372 Cr.P.C. filed by the first informant, has already been rejected by coordinate bench of this Court vide Judgment and order dated 5.4.2024, which has not further been challenged before higher court and has become final and going through the impugned Judgment, we find that the trial court had given cogent and convincing reasons for recording the finding of acquittal against the accused-opposite parties and that the acquittal of the accused-opposite parties is plausible and justifiable view emanating from the discussion of the evidence available on record and does not suffer from any infirmity or perversity. Therefore, we are of the opinion that the impugned judgement and order passed by the trial court is just, proper and legal and do not call for any interference by this Court.

30. Accordingly, the prayer to grant leave to appeal is refused. The Govt. Appeal is also accordingly dismissed.

31. Let a certified copy of this judgment and order be forwarded to the court concerned for information and necessary compliance alongwith the trial court record.

Order Date :- 27.01.2025

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