

Court No. - 47

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 560 of 2024

Appellant :- Smt. Bharti

Respondent :- State of U.P. and 2 others

Counsel for Appellant :- Ved Prakash Ojha

Counsel for the Respondent :- A.G.A.

Hon'ble Siddharth,J.

Hon'ble Praveen Kumar Giri,J.

Order on Criminal Misc. (Leave to Appeal) Application

1. Heard Sri Ved Prakash Ojha, learned counsel for the appellant, learned A.G.A. for the State and perused the record.
2. The above noted appeal under Section 372 Cr.P.C. is filed against the judgment and order of acquittal dated 15.07.2024 passed by Sessions Judge, Lalitpur, in Sessions Trial No.141 of 2021 arising out of Case Crime No.10 of 2021, under Sections 302, 364 & 201 of IPC, Police Station - Jakhlaun, District – Lalitpur.
3. The prosecution story is that the complainant had given a complaint to the concerned police station on 28.01.2021 stating that her son, namely, Ansh, aged about 6 years, had gone outside to play at about 10.00 AM after having food. At 11.00 AM, when she searched him for taking bath, he was not found. She enquired from the neighbours but she could not receive any information with regard to her son. Thereafter, she informed her husband – Jagat Singh and made the aforesaid complaint. On the basis of aforesaid complaint, an F.I.R. being Case Crime No. 10 of 2021 was registered on 28.01.2021 under Section 363 of IPC against unknown persons.
5. The investigation was set into motion by Investigating Officer. On 29.01.2021, dead body of Ansh was found in the potato farm of one Ram Sewak. This information was given to concerned police

station by the father of the deceased. Thereafter, Sections 302 and 201 of IPC was added. The Investigating Officer inspected the place of occurrence, collected relevant evidence, took statements of witnesses and prepared the site plan. During the course of investigation, names of accused-respondents were revealed in the commission of crime. On conclusion of the investigation, charge-sheet was submitted against accused-respondent Nos. 2 & 3 before the concerned Chief Judicial Magistrate under Sections 363, 302 & 201 of IPC, and, thereafter, the CJM took cognizance upon the said Charge sheet and committed the matter to Court of Sessions.

6. Thereafter, accused appeared before the concerned Court and charges were framed against them under 363, 302 & 201 of IPC on 11.08.2021. The accused-respondent Nos.2 & 3 pleaded not guilty and sought trial.

7. The prosecution, in order to prove its case, has led many documentary evidence including postmortem report and has examined as many as 12 witnesses namely, PW-1, Bharti (Complainant), PW-2, Jagat Singh; PW-3, Anantram; PW-4, Veer Singh; PW-5, Mamta; PW-6, Gonda alias Genda; PW-7, Ramakant Dubey; PW-8, Head Constable Ram Singh; PW-9, Sub Inspector Awadhesh Kumar Singh; PW-10, Dr. Mukesh Seth; PW-11, Nanhi Bai & PW-12, Inspector Jay Prakash Chaubey.

8. After prosecution evidence was completed, the accused-respondent Nos. 2 & 3 were put to question under Section 313 of Cr.P.C. wherein they stated that they were falsely implicated and the witnesses which were produced had given false statements.

9. At the end of the trial, after hearing the arguments on behalf of prosecution and the defence, the Trial Court acquitted the accused-

respondents holding that the prosecution had failed to prove its case beyond all reasonable doubts.

10. Learned counsel for the appellant has submitted that trial court has failed to appreciate the evidence on record. Learned counsel has further submitted that the recovery was made from the accused persons and only on the basis of minor contradictions in the depositions of prosecution witnesses, the entire case of the prosecution cannot be disbelieved. Therefore, acquittal of respondent Nos. 2 & 3 are bad in the eye of law.

11. Before we embark on testimony and the judgment of the Trial Court, the principle for interfering in appeal against acquittal would be required to be discussed.

12. 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.

13. 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."

14. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. In the background of the law discussed herein above, we will 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.

20. We have perused the depositions of prosecution witnesses, documentary evidence and arguments advanced by learned counsel

for the appellant. In the present case, initially, the appellant had made a missing complaint of his son which was later on registered as an F.I.R. under Section 363 of IPC against unknown persons. The dead body of her son was found in a potato field of one Ram Sewak. This information was given to concerned police station by the father of the deceased and, thereafter Sections 302 & 201 of IPC were added. During investigation, a bloodstained plastic bag and a bloodstained piece of wood which was cut from the door were recovered. Near banana tree, a bloodstained piece of stone used in the crime and a green saree of accused were also recovered. All these items were sent to Forensic Science Laboratory. However, in the F.S.L./Serological report it was stated that on the aforesaid items the blood was found disintegrated and, therefore, it could not be ascertained whether the blood was of human being. There was no eye-witness to the incident and only evidence of recovery of bloodstained items from the premises of the alleged accused persons, was not confirmed by the F.S.L./serological report. Therefore, the prosecution case is based on surmises and conjectures. The other prosecution witnesses have not supported the prosecution case. There are material discrepancies in the depositions of prosecution witnesses. Therefore, we are unable to accept the submissions of the counsel for the appellant in view of the the judgments of the Apex Court which lay down the criteria for considering the appeals against acquittal. In that view of the matter, we are unable to satisfy ourselves with the submission of learned counsel for the appellant and we concur with the findings of the Trial Court.

21. The judgment of the trial court is well considered and we do not find any perversity in the findings recorded by the trial court.

22. In view of the above, application seeking leave to appeal is *rejected*.

Order on Criminal Appeal U/s 372 Cr.P.C. No. 560 of 2024

In view of the fact that application seeking leave to appeal has been rejected, this appeal stands dismissed.

Let Trial Court's Record along with a copy of this judgment be sent to the trial court within two weeks.

Order Date :- 5.3.2025

DKS