

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 1203 of 2024

Appellant :- State of U.P.

Respondent :- Rajpal And 2 Others

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Siddharth,J.

Hon'ble Praveen Kumar Giri,J.

Order on Criminal Misc. (Leave to Appeal) Application

1. Heard Mr. Sushil Kumar Pandey, learned AGA-Ist for State-appellant and perused the record.
2. The above noted government appeal is filed against the judgment and order of acquittal dated 28.08.2024 passed by Session Judge, Etah, in Sessions Trial No. 91 of 2011 (State of U.P. vs. Rajpal and others), arising out of Case Crime No. 305 of 2010, under Sections 364, 302/34, 201 of IPC, Police Station- Aliganj, District-Etah connected with S.T. No.92 of 2011 (State vs. Rajpal) arising out of Case Crime No.306 of 2010 under Section 3/25 Arms Act, Police Station- Aliganj, District- Etah.
3. The prosecution story is that informant- Kripal Singh (PW-1) had given a written application at concerned police station stating therein that his son, Upendra Singh, had gone to Aliganj market on 30.05.2010 but he did not returned home and his mobile phone was found to be switched off. On the said application, a missing report was registered on 08.06.2010 at the concerned police station. Thereafter on 29.07.2010, PW-1 met with PW-2 Shyam Singh, who told him that he had seen informant's son on the said missing date along with Rajpal and Vikram s/o Rajpal. Thereafter, PW-1 came to know about the relationship of his son with the daughter of accused Rajpal from some photographs which he found from his son's notebook. The said fact convinced informant that Rajpal and Vikram had taken his son to kill

him after knowing about the illicit relationship between his son and Rajpal's daughter.

4. On the basis of the aforesaid complaint, the F.I.R. was lodged against the accused Rajpal and Vikram being Case Crime No. 305 of 2010, under Section 364 of IPC on 27.08.2010 and on the basis of recovery of pistol, another F.I.R. being Case Crime No. 306 of 2010 under Section 3/25 of the Arms Act, was registered against Rajpal at Police Station- Aliganj, District - Etah.

5. The investigation was done by the Investigating Officer. He found the skelton of the deceased from a well on the information provided by the accused-respondents. Investigating Officer inspected the place of occurrence, took statements of witnesses and prepared the site plan. On conclusion of the investigation name of accused Rampal also came to light and thereafter, charge-sheet was submitted against accused-respondents, Rajpal, Vikram and Rampal, before the Court of Chief Judicial Magistrate, Etah, and, thereafter, Magistrate took cognizance upon the said charge sheet and committed the matter to Court of Sessions, Etah.

6. Thereafter, accused-respondents appeared before the Court on 25.05.2012 and charges were framed against them under Sections 364, 302/34, 201 of I.P.C. and Section 3/25 of the Arms Act against accused Rajpal to which the accused-respondents pleaded not guilty and sought trial.

7. The prosecution, in order to prove its case, has examined as many as 10 witnesses namely, PW-1, Kripal Singh, PW-2, Shyam Singh; PW-3, Ujendra Singh; PW-4, Dalveer Singh; PW-5, Harinandan; PW-6, Dr. Arun Kumar; PW-7, Shashiprakash Sharma; PW-8, S.I. Mauhar Singh Tomar; PW-9, Subeg Singh; PW-10, S.I. Ramjeet Gaud.

8. After prosecution evidence was completed, the accused was put to question under Section 313 of Cr.P.C. wherein the accused-

respondents had stated that they were falsely implicated, the witnesses which were produced had given false statements under the influence of police personnel and they had been falsely implicated in the present case.

9. At the end of the trial, after hearing the arguments on behalf of prosecution and the defence the Trial Court has acquitted the accused-respondents holding that the prosecution has failed to prove its case beyond all reasonable doubts.

10. Learned counsel for the appellant has submitted that trial court has misread the evidence on record and wrongly acquitted the respondent.

11. Before we embark on testimony and the judgment of the Trial Court, the principle for interfering in appeal against acquittal would require 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: 1.50

"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 parties. While going through the record, it is clear that missing report was registered on 08.06.2010 after a week of the alleged incident and after more than two months, F.I.R. was lodged under Sections 302, 364, 34/201 IPC. According to that, one alleged witness Shyam Singh's statement was recorded by the Investigating Officer

after one month and twenty days and he has given last seen account of the alleged incident. During investigation, skelton of the dead body was recovered from a well with the help of J.C.B. machine and the prosecution has not produced the driver of the J.C.B. machine in respect of alleged recovery of the skelton of the deceased. The skelton was having only underwear and baniyan and on the basis of underwear and baniyan, the family members of the deceased identified the skelton as of the deceased but the prosecution has not proved skelton of the alleged deceased with the help of D.N.A. report. It was alleged that murder was with the firearm injury but in the skelton, it could not be proved whether there was any injury of the firearm and there was no scientific method adopted just as D.N.A. to prove the said skelton was of the alleged deceased. Thus, alleged accused-respondents were implicated on the basis of suspicion. Therefore, on perusal of the entire material on record, it is evident that the prosecution has failed to prove its case beyond reasonable doubt. The acquittal order is justified. In that view of the matter, we are unable to satisfy ourselves with the submission of learned A.G.A. for the appellant-State 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 Government Appeal No. 1203 of 2024

In view of the fact that application seeking leave to appeal has been rejected, the government 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

K.Tiwari