

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th February, 2015

+ CRL.REV.P. 31/2013

SARVESH CHATURVEDI & ANR. Petitioner
Through: Ms Sangita Bhayana, Advocate

versus

STATE NCT OF DELHI & ANR. Respondent
Through: Ms Fizani Hussain, APP for State/R-1
Mr Manish Kumar, Advocate for R-2

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Revisional jurisdiction of this Court has been invoked under Section u/s 397 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) r/w Section 482 Cr.P.C. challenging the judgment dated 26th October, 2012 passed by Learned District and Additional Sessions Judge, In-charge (South & South East), Saket, New Delhi whereby the judgment passed by learned Metropolitan Magistrate, Mahila Court dated 24th October, 2011 acquitting the accused in case FIR 346/2006 PS Badarpur u/s 506/509 IPC was upheld.

2. Petitioner No.2 is the daughter of petitioner No.1. They were residing in the neighbourhood of respondent No.2. On 23rd February, 2004, a quarrel had taken place between petitioner No.1 and mother of respondent No.2 on a trivial issue of disposal of garbage as according to the petitioner mother of respondent No.2 Rajwati had thrown garbage in front of house of petitioners. When an altercation was going on between the two, respondent No.2 came out of the room, abused the petitioners in filthy language and threatened to rape petitioner No.2. He also ran after petitioner No.2. In order to save herself she entered her house. On these allegations, the aforesaid FIR was registered.

3. After completing investigation, charge sheet was submitted before the learned Metropolitan Magistrate. Respondent No.2 was put to trial on the basis of charges framed on 27th September, 2008 to which he pleaded not guilty.

4. During trial, the prosecution examined in all five witnesses including the petitioners. After the prosecution evidence was closed, statement of respondent No.2 was recorded under Section 281 Cr.P.C. in which he denied the case of prosecution and alleged his false implication due to past enmity. He, however, stated that a quarrel had

taken place between his mother and petitioner No.1. He examined one defence witness Satayapal Sharma in support of his defence.

5. Vide judgment dated 24th October, 2011, learned Metropolitan Magistrate acquitted respondent No.2 of the charges levelled against him observing that the complainant took contrary stands in her original complaint dated 23rd February, 2006 and subsequent complaint dated 26th April, 2006. Moreover, both the petitioners had given contrary versions in their statements u/s 161 Cr.P.C. as well as deposition in the Court. Not only that, none of the witnesses used the specific words used by the accused against them. At the time of quarrel, the accused was inside the house. Moreover, although the incident had taken place in the street, however, no public witness was examined. There was delay of 2 months in registration of FIR. In order to invoke the provisions of Section 509 IPC, it was incumbent to reproduce specific words used by the accused which were not detailed by either of the witnesses. Even on the factual matrix of the case, offence under Section 506 IPC was not proved as mere threat does not fall within the definition of criminal intimidation unless it is proved that the threat given by the accused caused an alarm to the witness.

6. Feeling aggrieved, the petitioner/complainant preferred Crl. Appeal No.14/2012 u/s 372 Cr.P.C. before learned District Judge and Additional Sessions Judge, Incharge, Saket, New Delhi. The same was dismissed by observing that the fate of the case apparently rests on the version of PW3 & PW4. It was essential for the witnesses to narrate the actual words used so that the Court can form an opinion as to whether language was filthy or abusive or amounting to improper expression designed “to insult the modesty of a woman” within the ambit of penal clause under Section 509 IPC which was lacking. Similarly, the allegations regarding criminal intimidation were not consistent. Further reference was made to the settled legal proposition regarding the scope of appeal against an order of acquittal by referring to the judgment rendered by Hon’ble Supreme Court in *Chandrappa & Ors. vs. State of Karnataka*, 2007 (2) Crimes 103 (SC) and another decision rendered by this Court in *State (GNCT) of Delhi vs. Saqib Rehman @ Masood & Ors.*, 2012 (3) JCC 2127 that the Appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible and, therefore, dismissed the appeal.

7. The findings have been assailed by filing the present revision petition on the ground that since there are patent illegalities while evaluating the factual matrix of the case, as such, even while exercising revisional jurisdiction, this Court is competent to re-appreciate the evidence and although this Court has no power to convert a finding of acquittal into one of conviction but it can remand the case to the Trial Court for reconsideration. Reliance was placed on *Venkatesan vs. Rani & Anr.*, JT 2013 (11) SC 328.

8. It was submitted that the Trial Court had acquitted respondent No. 2 primarily on the ground that there were certain discrepancies in the testimony of the petitioners, however, discrepancies were minor in nature and were not on the basic substratum of the case. Moreover, the Trial Court also noticed that there was delay in lodging the FIR, however, it failed to consider that the petitioner belonged to poor strata of society and, therefore, after the incident when the complaint was lodged no action was taken by the police. She was running from pillar to post and also made complaint before Delhi Commission for Women and on their instructions, the FIR was registered. It was further submitted that the Trial Court took into consideration, testimony of DW1-Satyapal Sharma, who tried to project as if he is an

independent witness by deposing that he was living in the neighbourhood of both the parties and, therefore, they were known to him. However, this witness is none else but the maternal uncle of the accused and was, therefore, bound to depose in favour of respondent No.2. Moreover, the Trial Court went wrong in observing that the threats did not cause any alarm to the petitioner. Had that been the case, the complainant would not have run from one forum to another to seek justice. As such, it was submitted that the impugned order be set aside.

9. Rebutting the submission of learned counsel for the petitioner, it was submitted by learned counsel for the respondent that there is presumption of innocence in favour of the accused. This presumption is re-enforced, affirmed and strengthened by the fact that the accused secured his acquittal not only before the learned Trial Court but also before the Appellate Court. Reliance was placed on *Chandrappa*(supra) for raising this submission. As regards, the scope of High Court while exercising revisional jurisdiction, reliance was placed on *State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*. AIR 1999 SC 981. Lastly it was submitted that the entire evidence was considered by both the Courts below in correct

perspective and the same does not call for interference. Reliance was also placed on ***Kanshi Ram vs. State***, 86 (2000) DLT 609 for submitting that mere threat is no offence, as such, the revision is liable to be dismissed.

10. I have given my considerable thoughts to the respective submissions of the counsel for the parties and have perused the record.

11. What are the true contours of the jurisdiction vested in the High Courts under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 while examining an order of acquittal passed by the Trial Court was considered by Hon'ble Supreme Court in ***Venkatesan*** (supra) relied upon by the learned counsel for the appellant. It will be advantageous to reproduce the following observations:-

“6.The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in ***Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu*** (1975) 4 SCC 477, ***Akalu Ahir v. Ramdeo Ram*** (1973) 2 SCC 583, ***Mahendra Pratap Singh v. Sarju Singh***, AIR 1968 SC 707, ***K. Chinnaswamy Reddy v. State of A.P.*** AIR 1962 SC 1788 and ***Logendranath Jha v. Polai Lal Biswas***, AIR 1951 SC 316 may be referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of ***Akalu Ahir v. Ramdeo Ram*** (supra) may be usefully extracted below.

“8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the Accused;
- (ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial Court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

“6.1 These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

“10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.”

6.2 The observations in para 9 in the case of **Vimal Singh v. Khuman Singh** (1998) 7 SCC 223 would also be apt for recapitulation and, therefore, are being extracted below.

“9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the

issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the Accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

12. Similar view was taken in ***State of Kerala***(Supra) relied upon by the learned counsel for respondent No. 2 where it was observed as under:-

"5... In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

13. This being the legal position, reverting to the case in hand, a perusal of the judgment passed by learned Trial Court as well as by learned Additional Sessions Judge goes to show that the case basically hinges on the testimony of both the petitioners which was scrutinized by them minutely and, therefore, it was observed that the prosecution

has not been able to prove its case beyond reasonable doubt. Much emphasis has been laid by the learned counsel for the appellant for challenging the testimony of DW1-Satyapal Sharma for submitting that he tried to project that he was an independent witness which was not so as he was the maternal uncle of respondent No.2. Firstly, it may be mentioned that there is nothing on record to show that DW1 was maternal uncle of respondent No.2. Even if he is so related to him, the fate of the case was not decided on the testimony of this witness. Although, learned Metropolitan Magistrate referred to his testimony but the acquittal of respondent No. 2 was not on his deposition whereas while affirming the findings of learned Trial Court, except for making a reference that respondent No.2 examined DW1 Satya Pal Sharma, there was no reference to his deposition for which reason, it may be said that non-disclosure of his relation with respondent No.2 proved fatal for the petitioners. Even otherwise as observed in **Venkatesan** (supra), re-appreciation of evidence should be refrained by the High Court while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code.

14. Testimony of both the petitioners were scrutinized carefully not only by the learned Metropolitan Magistrate but also by learned

Additional Sessions Judge and, therefore, it cannot be said that any material has been overlooked or ignored by either of the Courts thereby causing miscarriage of justice.

15. Under the circumstances, there is no merit in the revision, the same is accordingly dismissed.

(SUNITA GUPTA)
JUDGE

FEBRUARY 10 , 2015
rs