

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRIMINAL LEAVE PETITION No. 492/2014

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Date of decision: 19th February 2015

STATE

..... Petitioner

Through : Mr. Sunil Sharma, APP for the State.

versus

PRADEEP KUMAR

.....Respondent

Through : None.

CORAM :

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. The State by this Criminal Leave Petition No. 492/2014, under Section 378(3) of the Code of Criminal Procedure, seeks leave to appeal against the judgment of the learned Additional Sessions Judge (hereafter called "Trial Court") dated 26.05.2014 in Sessions Case No. 42/2011 thereby acquitting the respondent under Section 302 of the Indian Penal Code.
2. The brief facts of the case, as alleged by the prosecution are that, on 26.04.2011 at 7am DD No.7 was recorded in police station Harsh Vihar on an information received that a quarrel had taken place between husband and wife. PW-13 HC Harkesh who was on duty was given this DD call and on reaching the spot he found that victim had suffered burn injuries and had already been taken to the GTB Hospital. Statement of the victim was recorded by HC Harkesh as Ex.PW-13/A. Doctor had recorded his opinion on MLC that victim was fit to give her statement and PW-2 SDM Sh Vipin Garg also recorded the statement of victim as Ex. PW-2/A. On the statement of the victim, FIR under Section 307 of the Indian Penal Code was registered as Ex.PW7/A. On 30.04.2011

victim Smt. Parvesh died in hospital and offence under Section 302 of the Indian Penal Code was added. Post mortem on the dead body was conducted and investigation was carried out.

3. During the investigation, statement of mother and brother of victim were recorded and also a plastic can containing some quantity of kerosene oil, match box and some match sticks, partly burnt salwar and shirt pieces were seized from the spot and sent to FSL. Post mortem report was obtained vide Ex. PW-4/A which opined that victim died as a result of septicaemia due to ante mortem flame burns involving about 75% of total body surface area. After completion of the investigation charge sheet was filed against the respondent to which he pleaded not guilty and claimed trial.
4. To bring home the guilt of the respondent and to prove its case the prosecution examined 22 witnesses.
5. PW-1 Jagwati, mother of Parvesh (deceased) had categorically deposed that the respondent was not gainfully employed and used to demand money from the deceased for buying liquor and also the respondent used to pick up quarrel and beat her deceased daughter. She further deposed that on 26.04.2011 PW-20 Vinod informed her that a quarrel was going on in the house of the deceased and when she entered the house she found the deceased lying with burn injuries and the deceased told her that the respondent had set her on fire after pouring kerosene oil.
6. However the Trial court observed various contradictions and inconsistencies in the deposition of the above stated witness and held that it did not provide any strong circumstance or motive for Respondent to set the deceased on fire on the date of incident. PW-1 in her cross-examination admits that the respondent purchased two properties in Harsh Vihar which were located in close vicinity and her children used to visit the house of the respondent in Harsh Vihar almost every day.

Trial court further observed that if the witness and her children used to visit house of the respondent every day there is no deposition on record to prove that any such serious quarrel or fight was ever seen or observed between the respondent and the deceased whereby it could be inferred or taken that the respondent had set the deceased on fire.

7. PW-17 Investigating Officer in his testimony deposed that the respondent made a confession recorded as PW-13/B and pin pointed the 'kerosene oil can' which was then seized. Trial court finding this testimony unreliable raised serious doubt with regard to the presence of 'kerosene oil can' and observed that recovery and seizure of 'kerosene oil can' is sought to be brought within the purview of Section 27 of the Evidence Act but in the photographs of the scene of the crime the 'kerosene oil can' is found near the LPG gas stove in the kitchen and witnesses have admitted this fact but still PW-17 Investigating Officer deposed that the 'kerosene oil can' was seized pursuant to the disclosure statement made by the respondent which highlights the extent of unfair investigation by the Investigating Officer in this case.
8. Regarding the public witness PW-20 Vinod, PW-17 Investigating Officer deposed that he recorded the statement of the above witness on the day of the incident i.e 26.04.2011 whereas it was actually recorded on the 25.06.2011. The Trial Court observed that if false witness is being introduced and his statement under Section 161 of Code of Criminal Procedure is recorded after two months without any explanation for delay, it creates a doubt in the prosecution story.
9. PW-3, the child witness who is the son of the deceased deposed that he saw his father respondent pouring kerosene oil on his mother and setting her on fire. Rejecting his testimony, Trial Court observed that in the cross-examination PW-3 deposed that he came out of the room when his mother had raised hue and cry which suggests that incident occurred

before the child came out of his room and it is difficult to believe that he saw the respondent putting his mother on fire. Trial Court further made this observation that the statement of PW-3 was recorded after three months and during these three months the child remained in the custody of his maternal grandmother and it is possible that he may have been tutored and therefore his testimony is not fully reliable and cannot be accepted nor he can be treated as an eye witness.

10. In this background learned counsel for the state submits that the impugned judgment passed by the trial court is manifestly wrong, bad in law and contrary to the facts and evidence on record. Learned APP for the state further points out that when the statement of the deceased is recorded by the SDM it is qualified as a Dying Declaration and the law is settled that a dying declaration can be the basis for recording a conviction where the dying declaration inspires confidence and appears truthful. Also no further corroboration is required by the court for acting upon the dying declaration. Counsel for the state argues that the statement of the deceased as a dying declaration is consistent with what was made to PW-13 HC Harkesh and the one made to SDM Sh. Vipin Garg. Counsel further states that PW-5 Doctor who proved the MLC of the victim has specifically mentioned that the deceased was oriented, conscious and fit to give a statement. Hence the trial court has wrongly disbelieved the dying declaration of the deceased.
11. Having gone through the record we are of the opinion that the conclusion reached by the trial court cannot be termed as unreasonable or erroneous in any material detail. On perusal of the trial court record and the evidence of all the witnesses it is apparent that there are inconsistencies in the depositions of witnesses which cannot be ignored. Also the trial court has carefully scrutinized the dying declaration made by the deceased to PW-13 HC Harkesh as Ex. PW-13/A and PW-2 SDM

Sh Vipin Garg as Ex.PW-2/A. Had it been that the deceased had been set on fire by the respondent she would have mentioned it in clear terms to the Doctor and not mentioning this fact by the deceased leads to the inference that her dying declaration is untrue and impugned version of what happened. The fact that the respondent sustained burn injuries while putting off fire with bare hands and that he poured water on the deceased points towards his innocence. Moreso this aspect as to how respondent sustained burn injuries on his head remained uninvestigated. A reasonable doubt in the dying declaration made by the deceased on account of tutoring or influence by mother or brother of the deceased cannot be ruled out and dying declaration therefore cannot be relied upon.

12. The High Court's jurisdiction, whilst considering a petition for Leave to Appeal, by the prosecution, against an order of acquittal is well defined. The court does not examine the impugned judgment as an appellate court, it has to be alive to any exceptional features in the trial court's judgment which compel the exercise of its discretion to grant leave and hear the appeal. In the case of ***Chandrappa and Ors. Vs. State of Karnataka (2007) 4 SCC 415***, Apex court laid down the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal;

“(1) An appellate Court has full power to review, reappreciate 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 emphasize 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 Respondent. Firstly, the presumption of innocence 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 Respondent 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."

13. In ***Harijana Thirupala v. Public Prosecutor, High Court of A.P., Hyderabad 2002 CriLJ 3751*** , the Court held;

"Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of inn decree in favour of the Respondent gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the Respondent and then to dispel

those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity".

14. In another case of ***Ramanand Yadav v Prabhunath Jha*** 2004CriLJ640, this Court observed that

"There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the Respondent is further strengthened by acquittal. The golden thread which runs through the web of 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 Respondent and the other to his innocence, the view which is favourable to the Respondent should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the Respondent has been acquitted, for the purpose of ascertaining as to whether any of the Respondent committed any offence or not".

15. For the reasons stated above, we are of the opinion that the trial court has rightly disbelieved the prosecution version of the case. There are inconsistencies in the deposition of prosecution witnesses. Also there is inordinate delay of two months in recording the statement of public witness Vinod who is examined as PW-20 and unexplained delay of three months in recording the statement of PW-3 son of the deceased. Further in the present case the respondent sustained burn injuries on his hands while putting off the fire. If the respondent had set the deceased on fire

then as a natural human conduct and reaction, he would not rush to put off the fire by his bare hands. In these circumstances dying declaration becomes unacceptable and cannot be relied upon without corroborative evidence.

16. In our view, in the light of above circumstances, we are of the opinion that finding and conclusion of the trial court are based on correct and proper appreciation of evidence and there are no substantial and compelling reasons to interfere with the order of acquittal. For these reasons, the petition, being unmerited requires rejection. It is, therefore, dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 19, 2015

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