

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th January, 2016

+ Crl.Rev.P.542/2012

MS. MANJU

..... Petitioner

Through: Mr.B.K.Sharma, Advocate

versus

STATE & ORS.

..... Respondents

**Through: Ms.Neelam Sharma, Additional
Public Prosecutor for the State
alongwith sub-Inspector Om
Prakash, Police Station Badarpur,
New Delhi.
Mr.Ravindra Narayan, Advocate for
respondent Nos.2 to 4.**

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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 397/401 Cr.P.C challenging the judgment dated 14.08.2012 passed by learned ASJ-03/SE, New Delhi in Criminal Appeal No.140/12 arising out of FIR No.291/06 under Section 354/341/509/323/325/352 IPC registered at Police Station Badarpur, Delhi whereby the judgment passed by learned Metropolitan Magistrate dated 06.03.2012 acquitting the respondent nos.2 to 4/accused was upheld.

2. Factual matrix of the case leading to filing of the present petition is that on receipt of DD No.45-B on 09.04.2006 Head Constable Ranjeet Singh alongwith Constable reached the spot and on enquiry found that injured were taken to hospital by PCR van. Thereafter, on receiving DD No.28-A, he reached hospital alongwith Constable where he collected the MLCs of injured and recorded statement of injured Manju in which she alleged that on that day at

about 7.00 pm when she was returning back to her house alongwith her brother Ajay after taking a book and reached in her Gali, she found accused Vikas standing outside his house and on seeing her, he started singing a song and tried to pull her towards him by catching hold of her hands and when she tried to free herself from him, then he caught hold of her hairs and tried to hit her head on the wall. When her brother Ajay tried to rescue her, accused Sandeep, younger brother of Vikas came and started beating her brother and on hearing her screams, her mother Usha came out of the house and tried to free them from Vikas. In the meanwhile, mother of Vikas, accused Shashi also came out. Thereafter, accused Vikas and Sandeep left her and started beating her mother and in this process she gave a tooth bite on the hand of Vikas and went alongwith her brother for making a telephone call to police. When they came back, accused Vikas again caught hold of her and hit her face with fist blow. Sandeep hit her brother with some glass type object because of which blood started oozing out of his head. Police came to the spot and took them to hospital. Pursuant to recording of her statement, an FIR was registered and investigation was carried out which ultimately resulted in filing chargesheet before the Court against the accused persons.

3. During trial, the prosecution examined eight witnesses. After the prosecution evidence was closed, statement of all the accused persons were recorded under Section 281 Cr.P.C in which they denied the case of prosecution and alleged their false implication in this case.

4. Vide judgment dated 06.03.2012, learned Metropolitan Magistrate acquitted respondents 2 to 4 of all the charges levelled against them on the ground that respondent no.2 Vikas was charged for offence under Section 341/509/354/323 IPC. As regards charge for offence under Section 341 for wrongful restraint of the complainant is concerned, it had come on record that the witnesses themselves had gone to the house of accused to teach them a lesson, as such, no question of restraining them arises. As regards charge for offence under Section 509 is concerned, the complainant merely deposed that

accused Vikas started singing a song and hold her hand, however, there was no mention that the songs were abusive or any filthy language was used against her. Therefore, no case under Section 509 IPC is made out. Similarly, mere holding the hand in the absence of mens rea is not sufficient to prove the charge under Section 354 IPC. As regards offence under Section 323 IPC, there were material contradictions in the testimony of the witnesses. Moreover, in the cross-examination it had come that some boys of the locality caused injuries to them, therefore, no case under Section 323 is made out.

5. Respondent no.3 Sandeep was charged for offence under Section 323 IPC for causing simple injuries to the complainant, her mother and her brother which was also not proved. Similarly, respondent no.4 Shashi was charged with offence under Section 352 IPC for assaulting PW-5 who, however, exonerated her by deposing that mother of the accused saved her. Therefore, the prosecution failed to bring home the guilt of the accused beyond reasonable doubt, benefit of which was given to the accused persons, as such, they were acquitted.

6. Feeling aggrieved, the petitioner preferred an appeal bearing No.140/12 before the learned Additional Sessions Judge. The same was dismissed by taking note of the settled legal proposition regarding scope of appeal against an order of acquittal by observing that if Trial Court's view regarding the acquittal is possible and plausible then the appellate court is not justified in interfering with the well reasoned judgment of acquittal passed by the Trial Court. Though appellate court can review the Trial Court's conclusion both with respect to facts and law but the appellate court must give due weight and consideration to the decision of the Trial Court and the same can be set aside only in the case of very substantial and compelling reasons. After appreciating the testimonies of PW-2, PW-3 and PW-5 it was observed that there were contradictions in their testimony. It was not clear which persons were involved in causing injuries to them and how they received injuries. The antecedents of complainant Manju were also taken note of by observing that prior to this complaint, she had also made police complaints against other persons. She had earlier made a complaint

regarding molestation against the school students of PW-3. Complaint was also made against SHO, police station Badarpur. As such, the tendency of the complainant Manju to make false complaints cannot be ruled out.

7. The findings have been assailed by filing the present revision petition on the ground that 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. Counsel submits that the ocular testimony of the complainant PW-2 Manju found due corroboration from her brother PW-3 Ajay and mother PW-5 Usha besides the medical evidence. Moreover, in order to prove the charges against the accused persons, it was not necessary to prove the motive. Counsel submits that both the courts below fell in error in not considering the testimony of witnesses in proper perspective, as such, the judgments deserves to be set aside.

8. Learned Public Prosecutor for the State supports the submission of learned counsel for the petitioner. However, learned counsel for respondents 2 to 4 submits that there is concurrent findings of two courts acquitting the respondents, therefore, the burden is heavy on the petitioner to show that the same suffers from any perversity. The counsel also referred to the scope of this Court while exercising jurisdiction and in this regard reliance was placed on a judgment given by this Court in *Sarvesh Chaturvedi & Anr. vs. State NCT of Delhi & Anr.* 2015 (2) JCC 1081. Counsel further submits that the testimony of all the prosecution witnesses were scrutinised carefully by both the courts below and thereafter a finding of acquittal was returned in favour of respondents 2 to 4 which does not warrant any interference. As such, revision petition deserves to be dismissed.

9. I have given my considerable thoughts to the respective submissions made by learned counsels for the parties and have perused the record.

10. In *Sarvesh Chaturvedi* (supra), this Court had the occasion to deal with the scope of this Court while exercising revisional jurisdiction and it was observed as under:-

*“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)¹ 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.”

¹ *Venkatesan vs. Rani & Ors., JT 2013 (11) SC 328*

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)² 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 an examination of 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.”

² *State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, AIR 1999 SC 981*

11. This being the legal position, let us revert to the case in hand. The prosecution case primarily hinges on the testimony of complainant, her brother and mother. A perusal of their testimony reveals that although the complainant in her examination-in-chief reiterated the averments made by her in her initial complaint Ex.PW2/A made to the police which became the bedrock of investigation except the additional fact that she also deposed that tooth of her brother was also broken, however, in cross-examination she admitted that during the course of quarrel they were grappling with each other and had fallen in the lane. She went on stating that there are seven members in her family and except for her father, all her family members received injuries in the quarrel. She had also introduced the story that some other boys also came who were quarrelling with them and who caused injuries to them. She could not say who had beaten whom and who had caused injuries to whom. PW-3 Ajay although in examination-in-chief tried to depict the place of incident as outside the house of Vikas but in cross-examination stated that the quarrel had taken place inside the house of accused as they had gone to their house to teach them a lesson. He could not identify any of the accused persons who had assaulted them on that day except accused Sandeep and Vikas and one Ravi. It is pertinent to note that Ravi is not an accused in this case. Moreover, according to him, their clothes were drenched in blood, however, no such clothes were seized by the police. Further according to him, his tooth was broken, however, even the broken tooth was not taken into possession. Coming to the testimony of PW-5 Smt. Usha although it is the case of PW-2 and PW-3 that when on hearing their alarm their mother came. Accused Shashi, mother of Vikas and Sandeep also came out of the house and gave beatings to Usha. However, she contradicted both these witnesses by deposing that mother of the accused saved her. She also went on stating that her younger daughter namely Sanju was also given beatings by the accused. Under the circumstances, besides the fact that the witnesses have exaggerated their statements, they have also not corroborated each other on material aspects. Although as per the MLCs, the witnesses had sustained some

injuries, however, it is not established beyond reasonable doubt that the accused persons were responsible for causing such injuries. The testimony of all these witnesses were scrutinised 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 or the order suffers from any perversity which warrants interference.

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

(SUNITA GUPTA)
JUDGE

JANUARY 15, 2016
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