

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRIMINAL LEAVE PETITION No. 756/2015

% *Date of decision : 17th February, 2016*

STATE **Appellant**

Through : Ms. Aashaa Tiwari, APP for the State with
SI Uma Dutt, Police Station - Mangol Puri.

versus

PAWAN @ HAWALDAR **Respondent**

Through : None.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The State by this Criminal Leave Petition, under Section 378(1)(a) of the Code of Criminal Procedure, seeks leave to appeal against the judgment dated 27.08.2015 passed by the learned Additional Sessions Judge-04 (North), Rohini Courts, Delhi in Sessions Case No. 84/1/2014 thereby acquitting the respondent under Section 302 of the Indian Penal Code.
2. The necessary and relevant facts, as projected by the prosecution, are that on 26.05.2012 PW2 Manoj while returning from his work saw the accused quarelling with his brother Virender @ Kalu (since deceased) when PW2 Manoj proceeded towards them to resolve the issue, accused took out a knife and stabbed into the chest of the deceased and when PW2 Manoj tried to save his brother, accused ran after him with

knife in his hands on which PW2 Manoj was petrified and ran towards his house. PW2 Manoj narrated the entire facts to his father PW1 Karam Singh. Both PW1 and PW2 along with few persons of the locality rushed towards the spot but on their way they noticed that one rickshaw puller had dropped the dead body of the deceased. Body of the deceased was brought home and PCR was called. Body of the deceased was removed to the hospital where he was declared brought dead. On the complaint of PW2 Manoj, FIR was registered. On secret information, accused was arrested on 28.05.2012 from inside F-Block Park near Mangolpuri flyover. Accused confessed to his guilt in committing the alleged murder. Weapon of offence i.e. one dagger type knife having blood stains was recovered at the instance of the accused.

3. The charge sheet on completion of the investigation was presented before the Court. On committal of the case, the Trial Court framed the charges against the accused for the offence punishable Under Section 302 of the Indian Penal Code. As the accused pleaded not guilty, he was tried for the aforesaid offence. In order to establish the guilt of the accused, the prosecution examined as many as 20 witnesses. The statement of the accused under Section 313 of Code of Criminal Procedure was also recorded. No evidence was led on behalf of the accused.
4. The Trial Court, on appreciation of the oral as well as documentary evidence and after hearing the parties held that the prosecution has failed to prove its case beyond reasonable doubt that the accused was

guilty of having committed offence punishable under Section 302 of the Indian Penal Code.

5. Ms. Aashaa Tiwari, learned Additional Public Prosecutor contended that the Trial Court had committed grave error in holding the appellant not guilty of the offence under Section 302 of the Indian Penal Code. She further contended that the impugned judgment was erroneous and unsustainable, which would result in miscarriage of justice and the same is liable to be set aside. She further contended that the findings recorded by the learned Trial Court are not based on proper appreciation of the evidence on record and, in fact, they are perverse and totally untenable.

Ms. Tiwari contended that PW2 Manoj, the only eye witness of the occurrence has fully supported the case of the prosecution and this witness has stood the test of cross-examination and his testimony could not be discredited.

6. We heard learned counsel for the State and perused the material placed before us.
7. The case of the prosecution entirely depends upon the testimony of sole eye witness of the occurrence i.e. PW2 Manoj, brother of the deceased. The law on this point is well settled that a conviction can be well founded upon the testimony of a sole witness. However, as laid down by the Hon'ble Apex Court in catena of judgments that the testimony of a sole witness must inspire confidence and should be beyond suspicion, leaving no doubt in the mind of the Court and that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other

material on record. True, the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution. The evidence of the sole witness thus needs to be considered with caution and after testing it against other material and further, such evidence must inspire confidence and ought to be beyond suspicion.

8. In ***Kuria & Anr. Vs. State of Rajasthan : (2012) 10 SCC 433***, the Hon'ble Apex Court held that

"25. The testimony of an eye-witness, if found truthful, cannot be discarded merely because the eye-witness was a relative of the deceased. Where the witness is wholly unreliable, the court may discard the statement of such witness, but where the witness is wholly reliable or neither wholly reliable nor wholly unreliable (if his statement is fully corroborated and supported by other ocular and documentary evidence), the court may base its judgment on the statement of such witness. Of course, in the latter category of witnesses, the court has to be more cautious and see if the statement of the witness is corroborated. Reference in this regard can be made to the case of Sunil Kumar (supra), Brathi alias Sukhdev Singh v. State of Punjab : (1991) 1 SCC 519 and Alagupandi @ Alagupandian v. State of Tamil Nadu : 2012 (5) SCALE 595."

9. In ***Namdeo v. State of Maharashtra : (2007) 14 SCC 150***, this Court further held:

"38. ... it is clear that a close relative cannot be characterized as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

10. In the light of the aforesaid principles, we now proceed to examine the testimony of PW2 Manoj, the sole eye witness of the occurrence in the context of the material available on record.
11. Manoj, brother of the deceased entered into the witness box as PW2 and deposed on oath before the Court that :

"On 26.05.2012, I was working in Mangol Puri, Patthar Market, in the shop of tiles. On that day, after finishing my duty, I was returning to my house and at about 7:00 p.m. reached at Swimming Pool, Opposite C Block, Railway Station Road. I saw accused Pawan @ Hawaldar, present in the Court today who was the resident of our Mohalla standing with my brother Virender @ Kallu (since deceased) and arguing with him and threatening him "Kal Toh Me Nashe Me Tha Muzhe Gira Kar Bhag Gaya Dekhta Hu Aaz Tujhe Kon

Bachata Hai Tujhe Jaan Se Maar Dunga." I proceeded towards them to make them understand. *But in the meanwhile accused took out a knife from his back side and pierced the chest of my brother with knife. When I tried to save my brother, the accused ran towards me with the knife. I ran towards my house. I disclosed all the facts to my father. When we were proceedings to towards spot I saw some Rickshawala was brining my brother towards our house. My brother had died by that time. Rickshawala dropped the dead body of my brother at the dhaba of Hira and left."*

12. PW2 Manoj claimed to be an eye witness of the occurrence. He narrated the entire episode to his father PW1 Karam Singh. PW1 deposed that *"Police had made inquiries from me at my home. I had disclosed the name of the accused to the police as the accused resides in our neighbourhood. At that time PCR was also present at the spot."* He further deposed that *"Manoj had disclosed about Hawaldar to the local police at our house itself before we left for the hospital."* The versions of PW1 and PW2 falsified by PW14 HC Ranbir Singh, Incharge PCR Van who categorically deposed that *"We went inside the said house and found that one dead body covered by white bed sheet, was lying on the floor. On enquiry from one elder person, it was told that the deceased had been stabbed with knife by someone."*
13. It is pertinent to note herein that neither PCR Form Ex.PX nor coloumn No. 11 of Mobile Crime Team Report Ex.PW5/A mentioned the name of the accused. PW2 further claimed that he accompanied

the PCR officials to SGM Hospital when the body of the deceased was removed to the hospital. The said version of PW2 is further falsified by PW14 who stated that despite request none of the family members of the deceased accompanied the PCR officials at that time. This finds support from MLC Ex.PW13/A wherein it has been stated that deceased had been brought to the hospital by PW14.

The claim of PW1 and PW2 that on their way to the place of occurrence, they saw that some persons known to them were bringing the deceased in a rickshaw is falsified as both the witnesses failed to disclose the names of such persons. Further, these persons have neither been investigated nor made part of the investigation. PW2 stated that he left early at 06: 30.pm. as he was unwell but his averment was neither supported by any medical document **nor his employer was examined.**

14. It is true that merely because a witness is related or interested, his evidence is not rendered suspect per se but it definitely requires deeper scrutiny. Having considered the evidence of PW1, PW2 and PW14 coupled with other available records as a whole, we have grave doubt on the credibility of the prosecution version that PW2 has witnessed the incident.
15. It is well settled that lacunas in the investigation can be ignored if they are found not very relevant and if it is possible for the Court to say that it does not adversely affect the case placed by the prosecution or defence and the Courts are not supposed to pay heed to procedural irregularity not resulting into serious prejudice, but such lacuna should

not be permitted to percolate at initial stage of investigation or trial which may ultimately result into serious prejudice to either side.

16. In the instant case, the testimonies of PW1 and PW2 show that when they were moving towards the place of occurrence, they saw some persons carrying the deceased on a rickshaw who left the body of the deceased near Hira Dhaba. The investigating agency failed to adduce statement of any of the public witnesses i.e. statement of the persons who were carrying the body of the deceased or owner of the dhaba in the array of witnesses to give strength to the case of the prosecution. Further, since the name of the assailant was known to the complainant from the beginning, his name was neither disclosed to PCR officials when the call was made at 100 nor his name was mentioned in PCR form or in the report prepared by Mobile Crime Team.
Further, the investigating agency failed to adduce the evidence of the employer of PW2 as a witness to support his version that he left the shop early at about 06:30 pm on the day of alleged incident.
17. In view of the above facts, it clearly emerges from the record that there were several serious lapses and lacunae in the investigation carried out before the filing of the chargesheet.
18. As far as the recovery of the weapon of offence i.e. knife is concerned, the Trial Court disbelieved the same as it was not done in the presence of any independent witness and it was improbable that the respondent would have concealed the knife inside the bushes near the side of the wall of Railway Station Mangol Puri Phase-I, Delhi where public persons have frequent access. Seized blood stained clothes of the accused also does not connect the accused with the crime as Biological

Report Ex.PZ states that there was no grouping of blood. Further, as per Scientific Report Ex.PY, no blood was detected on the knife.

19. The principles laid down in relation to the scope of interference by Appellate Court in a judgment of acquittal by the Trial Court is now well settled. In a recent case ***Upendra Pradhav Vs. State of Orissa : (2015) 5 SCALE 634***, the Apex Court has reiterated the decision taken in *State of Rajasthan v. Raja Ram : (2003) 8 SCC 180*, wherein it has been held that :

*“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused 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 accused and the other to his innocence, the view which is favourable to the accused 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 reappraise the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see ***Bhagwan Singh v. State of M.P.***) The principle to be*

followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

In *Muralidhar @ Gidda and Anr. Vs. State of Karnataka : (2014) 5 SCC 730* , Hon'ble Apex Court held that

"Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial

court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

20. We have already stated above that the appreciation of evidence by the Trial Court is in consonance with the settled legal principles. Even if two views are possible, it is not permissible for this court to interfere in the order of acquittal. The present leave petition, therefore, has to fail; the same is accordingly dismissed.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

FEBRUARY 17, 2016

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