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

+ **CRL.L.P. 555/2019**

THE STATE

..... Petitioner
Through Ms. Aashaa Tiwari, APP for the State
with Insp.Jaspal Singh, PS
Mangolpuri.

versus

FAKAR & ANR.

..... Respondents
Through None.

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Date of Decision: 18th November, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE YOGESH KHANNA

J U D G M E N T

MANMOHAN, J: (Oral)

1. Ms. Aashaa Tiwari, learned APP for the State has handed over a report of the SHO, Police Station Mangol Puri, Delhi wherein it is stated that Fakar (respondent No.1) had received injuries on 27th October, 2019 and had subsequently succumbed to the same on 29th October, 2019. In view of the aforesaid, present proceedings qua Fakar (respondent No.1) stand abated.

2. It is pertinent to mention that the present criminal leave petition has been filed on behalf of the State challenging the judgment/order of acquittal dated 25th July, 2019 passed by Additional Session Judge – 03, North-West, Rohini, Delhi, in Sessions Case No.04/2016 arising out of FIR No. 1691/2015 registered with Police Station Mangol Puri.

3. The Trial Court in the impugned judgment while acquitting the respondents under Sections 324/307/34 IPC has held as under:-

“28. Testimonies of all the eye witnesses are not corroborating each other. Sonal also made improvement in his testimony by introducing new aspect that accused Fakar left the park for 10 minutes and came again. It is also in MLC of Sonal that he was under the influence of liquor. Further, accused Shahrukh was initially not named, later on his name and role was mentioned in the supplementary statement of Sonal recorded after the arrest of the accused Shahrukh. Further in cross examination Sonal completely absolved the accused Shahrukh of the offence alleged against him. Happy, Arif and Vipin also exculpated the accused Shahrukh.”

(emphasis supplied)

4. Ms. Aashaa Tiwari, learned APP for the State contends that the Trial Court failed to appreciate the testimonies of the injured eyewitnesses, which were sufficient to convict Sharukh Khan @ Sonu (respondent No.2). She states that the victims had been consistent, trustworthy and there was no material contradiction in their testimonies.

5. Having heard the learned APP for the State and having perused the evidence on record, this Court is of the view that four out of five victims/injured eyewitnesses namely – Complainant-Sonal (PW-1), Happy (PW-3), Arif (PW-4) and Vipin (PW-5) have not supported the case of the prosecution with respect to involvement of Sharukh Khan @ Sonu (respondent No.2) in the incident of stabbing.

6. The only eyewitness who had deposed qua involvement of Sharukh Khan @ Sonu (respondent No.2) in the incident of stabbing was Mohd. Shahnawaz (PW-2), who had stated that Sharukh Khan @ Sonu (respondent No.2) had given a knife blow on the face of Happy (PW-3). However, on the

contrary, the victim Happy (PW-3) had deposed that he had sustained injuries on his face as he had fallen down on stones. In fact, he had categorically denied the suggestion that Sharukh Khan @ Sonu (respondent No.2) had stabbed him. The relevant portion of the testimony of the victim Happy (PW-3) is reproduced hereinbelow:-

“It is wrong to suggest that I have stated to the police in my statement that Shahrukh had given a blow of knife on my face. Confronted with statement Ex.PW3/A from point C to C1 where it is so recorded

xxx

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XXXXXX by Sh. Ajay Mahla, Advocate,

Ld. Counsel for accused Sharukh @ Sonu

It is correct that Sonu came there to intervene and to pacify the quarrel and in the process I fell down.”

(emphasis supplied)

7. In view of the aforesaid, this Court is of the opinion that the testimony of Mohd. Shahnawaz (PW-2) does not inspire confidence and is contrary to the testimonies of other injured eyewitnesses. Consequently, the same cannot be relied upon to convict Sharukh Khan @ Sonu (respondent No.2).

8. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. The Apex Court in *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450* has held as under:-

“69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) *The trial court's judgment is likely to result in “grave miscarriage of justice”;*

(iv) *The entire approach of the trial court in dealing with the evidence was patently illegal;*

(v) *The trial court's judgment was manifestly unjust and unreasonable;*

(vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

(vii) *This list is intended to be illustrative, not exhaustive.*

2. *The appellate court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.*

71. *Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution.*”

(emphasis supplied)

9. One of us, (Manmohan, J) in **Niraj vs. Ramesh Pratap Singh, 2012, SCC OnLine Del 3813** has held as under:-

“6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415 while referring to previous cases

laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(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 accused. 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 accused 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.”

7. The Supreme Court in a subsequent judgment in **Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr., (2009) 10 SCC 206** has held as under:-

“40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

(emphasis supplied)

10. In view of the abovementioned factual scenario as well as the mandate of law, no interference is called for. Consequently, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

YOGESH KHANNA, J

NOVEMBER 18, 2019

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