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

% Reserved on : 09th January, 2019

Date of Decision : 3rd July, 2019

+ **CRL.REV.P. 437/2014**

SMT BABITA

...Petitioner

Through: Mr. I.V. Raghav, Advocate.

versus

STATE & ORS.

.....Respondents

Through: Mr. Ashish Dutta, APP with SI
Ranveer Mavi, PS Anand Vihar
Mr. Rajesh Yadav, Advocate
for respondent Nos.2 & 4

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has assailed the order dated 29.4.2014 (hereinafter to be referred as the 'impugned order') passed by the Additional Sessions Judge, Karkadooma Courts, Delhi (hereinafter to be referred as 'the Appellate Court') in Crl. Appeal No. 85/2013, whereby the finding returned by the Additional Chief Metropolitan Magistrate, Karkadooma Courts, Delhi (hereinafter to be referred as 'the Trial Court'), vide judgment dated 7.5.2012 in FIR No.325/2000, confirming the acquittal of respondent Nos.2 to 4, has been endorsed, with the prayer to set aside the said impugned order and judgment.

2. Briefly stated, the facts of the present case are that, on 13.10.2000, FIR No. 325/2000, under Sections 452/354/342/323/34 of the Indian Penal Code, 1860 (hereinafter to be referred as 'the IPC')

was lodged against the respondent Nos.2 to 4, on the basis of a complaint made by the petitioner.

The allegations made by the petitioner in the afore-said complaint are that, on 12.10.2000, at about 10 PM, at H. No. 124, Karkadooma Village, Delhi, the respondent Nos.2 to 4 had committed house trespass and bolted the room of the petitioner's father-in-law from outside. Thereafter, the respondent Nos.2 to 4 gave beatings to the petitioner and her husband, Sh. Megh Raj with kicks and fists, as a consequence of which the cloth worn by the petitioner was torn. Further, when both the petitioner and her husband raised an alarm, the respondent Nos.2 to 4 ran away, leaving behind a belt and a shirt at the spot.

3. Subsequently, investigation was carried out against the respondent Nos.2 to 4 and after the completion of the investigation, a charge-sheet was filed by the police under Sections 452/354/342/323/34 of the IPC.

4. Thereafter, the Trial Court took cognizance and on 02.05.2001, charges for the offences under Sections 452/342/323/34 of the IPC were framed by the Trial Court, to which the respondent Nos.2 to 4 pleaded not guilty and claimed trial.

5. After the completion of the trial, the Trial Court, vide judgment dated 7.5.2012, gave the benefit of doubt to all the three respondents and acquitted them.

6. The Trial Court, in the impugned judgment, observed that the most important witness in the case, i.e., the Investigating Officer (hereinafter to be referred as 'the IO') and two more independent

witnesses could not be examined by the prosecution despite receiving several opportunities. Further, stark anomalies and contradictions in the statements of the prosecution witnesses were observed by the Trial Court and the injuries sustained by the respondent Nos.2 to 4 were left unexplained. The Trial Court, accordingly, giving the benefit of doubt to the respondent Nos.2 to 4, acquitted them.

7. Aggrieved, the petitioner preferred an appeal under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'the Cr.P.C.') against the afore-said judgment passed by the Trial Court.

8. The Appellate Court, vide the impugned order dated 29.4.2014, dismissed the appeal of the petitioner and confirmed the acquittal of the respondent Nos. 2 to 4, in the light of the judgment passed by this Court in the case titled *Amit Singh Bedi vs. State of NCT of Delhi & Ors.*, 2012 (2) JCC 901.

9. Aggrieved, the petitioner has preferred the present revision petition.

10. I have heard the submissions of the learned counsel for the petitioner, learned APP for the State and the learned counsel for the respondent Nos. 2 to 4 and perused the record.

11. Learned counsel for the petitioner has addressed arguments mainly on the ground that the Trial Court, as well as the Appellate Court while passing the impugned judgment and order have failed to appreciate the fact that the accused persons ran away, leaving behind the belt and shirt at the spot which have been seized and sealed by the IO from the house of the petitioner proving their culpability in the

crime.

12. The learned counsel for the petitioner also submitted that non-examination of the I.O. was not fatal, in view of the facts and circumstances of the case and the Trial Court committed a grave error while holding that the IO was the most important witness in the present case, who was not examined by the prosecution.

13. Learned counsel for the petitioner further submitted that the non-examination of the two independent witnesses, i.e. Smt. Baldei and Smt. Tula was not fatal to the case of the prosecution and the accused persons were not entitled to any benefit of doubt and the Trial Court ought not to have held that there was a lacuna in the case of the prosecution and that the prosecution has failed to prove its case against the accused persons, thereby acquitting them for the offence under Sections 452/342/323/34 of the IPC vide the impugned judgment dated 7.5.2012.

14. The learned counsel for the petitioner also submitted that the Courts below have ignored the MLC of the respondent Nos.2 and 3, which corroborates the fact that the said incident did take place.

15. To buttress his arguments, learned counsel for the petitioner has relied upon the judgment of this Court titled ***Asha vs. State***, 2013 (1) JCC 201.

16. *Per contra*, the learned counsel for the respondent Nos.2 to 4 submitted that the complaint as well as the present revision petition has been filed by the petitioner as a counter-blast to the compensation suit filed by the respondent no. 2 titled '***Saligram vs. Babita***', Civil

Suit No.408/2014, which is pending adjudication before the Additional District Judge, Karkadooma Courts, Delhi.

17. The learned counsel for the respondent Nos.2 to 4 further submitted that not only the I.O., but two other witnesses were also not examined by the prosecution, despite being given several opportunities by the Trial Court.

18. The learned counsel for the respondent Nos.2 to 4 also submitted that the prosecution was not able to connect the recovery of the articles, i.e., the shirt and the belt to be that of the respondent nos.2 to 4.

19. The learned counsel for the respondent Nos.2 to 4 has placed reliance on the judgments passed by the Supreme Court in ***Dilawar Singh & Ors. vs. State of Haryana***, 2014 (4) JCC 2899 and this Court in ***State of NCT of Delhi vs. Bishan Singh & Ors.***, 2013 (3) JCC 1965.

20. It is a settled law that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the findings of the fact arrived at by the Trial Court unless the reasoning given by the Trial Court is perverse or illegal on the very face of it. Further in an appeal, the accused having secured acquittal the presumption of innocence is certainly not weakened but re-inforced, re-affirmed and strengthened.

21. In ***Dilawar Singh & Ors. v. State of Haryana & Ors.*** (supra), it has been held by the Apex Court that unless there are substantial and compelling reasons, the order of the acquittal is not required to be reversed.

22. In *Amit Singh Bedi v. State of NCT of Delhi & Ors.* (supra), it has been held by a Co-ordinate Bench of this Court that:

“12. In criminal cases, while dealing with appeals against acquittals, the High Court is alive to the circumstance that a finding of innocence by the Trial Court is the affirmation of the badge of innocence which every citizen is entitled to, under our law. Mere errors, in the Trial Court's order are insufficient; the legislature has advisedly not permitted appeals, a factor which has led the courts to say that a judgment of acquittal is an affirmation of the accused's innocence, which should not be lightly interfered with by the High Court, except for substantial and compelling reasons. As to what constitute such reasons, has been spelt out in *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415 as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized 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.

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."

23. Now coming to the ambit, power and jurisdiction vested in the High Courts under Section 397 read with Section 401 Cr.PC, it has been held in catena of judgments that the High Court in its revisional power does not ordinarily interfere with the judgment of acquittal passed by the Trial Court unless there has been a manifest error of law or procedure.

24. In *Vimal Singh vs. Khuman Singh and Ors.*, AIR 1998 SC 3380, the Supreme Court has held as under:

“Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its

revisional power does not ordinarily interfere with judgment 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 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 have 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 403 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.”

25. In *Sarvesh Chaturvedi and Ors. vs. State of NCT of Delhi and Ors.*, 2015 (2) JCC 1081, it has been held by a Co-ordinate Bench of this Court 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) 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 MANU/SC/0179/1975 : (1975) 4 SCC 477, Akalu Ahir v. Ramdeo Ram MANU/SC/0076/1973 : (1973) 2 SCC 583, Mahendra Pratap Singh v. Sarju Singh, MANU/SC/0398/1967 : AIR 1968 SC 707, K. Chinnaswamy Reddy v. State of A.P. MANU/SC/0133/1962 : AIR 1962 SC 1788 and Logendranath Jha v. Polai Lal Biswas, MANU/SC/0029/1951 : 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 MANU/SC/0643/1998: (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."

26. Now reverting back to the present petition, I would like to reproduce, for better appreciation of the contentions of all the parties, the following paragraphs of the impugned judgment dated 7.5.2012 passed by the Trial Court:

"15. Perusal of the record shows that despite giving ample opportunities, the most important witness i.e. IO of the present case could not be examined by the prosecution, even the B/W in a sum of Rs. 10,000/- were also issued against IO SI Jagtar Singh. Apart from the IO, there are two independent witnesses namely Smt. Baldaye and Smt. Tula material in the present case. Smt. Baldaye was reported to be expired and Smt. Tula has not been examined despite number of opportunities and despite sending summons through IO. Smt. Tula was the neighbour of the complainant and she had allegedly opened the door of the house of Net Ram which was allegedly bolted by the accused persons from the outside but this fact has not been disclosed by Smt. Tula in the witness box. PW2 Net Ram in his cross examination had admitted that on hearing his

crises, his neighbours Shyamu and Charan Singh had come but these neighbourers have also not been made witnesses in the present case. Then again, as per PW3, nobody had gathered at the spot except father in law and mother in law. As per PW4 also nobody from neighbour came on the spot. PW4 has also admitted that there were three tenants also in the premises but these tenants also did not hear anything. As far as the testimonies of PW3 & PW4 is concerned, they also admitted in their cross examination that the matrimonial disputes between the sister of the complainant and one of the accused persons is pending in the court and there are counter complaints and therefore, the possibility that the accused persons might be falsely implicated in the present case cannot be ruled out. In fact, if we see the original complaint, on the basis of which, the FIR was registered, then it is only stated that the accused persons had beaten the complainant and her husband and torn jumper but considerable improvements have been made by her during her testimony in the court. Perusal of the MLC Ex.PW5/A also shows that there are no injuries on her persons and there is only mild tenderness present. Even in the MLC of Megh Raj, there are no injuries and only tenderness along previously operated site. Rather MLC of the accused persons shows that there are injuries on the person of accused Ashwani Kumar which as per the opinion of the doctor were self inflicted but as far as the MLC of accused Saligram is concerned, there are abrasions of the left thumb. The injuries on the persons of the accused Saligram have remained unexplained. There is a well settled law, if injuries on the persons of the accused are not explained then the accused persons are entitled to benefit of doubt. Moreover, in the present case, there is a possibility that the present case is an off shoot due to the matrimonial disputes between the accused and his wife.

16. In view of the stark anomalies and contradictions in the statement of witnesses as discussed above, I have no hesitation in holding that the prosecution has miserably failed to prove its case against the accused beyond all the reasonable doubts and to bring his acts and conduct within four corners of the said provisions of law constituting any of such offence or within legal ambit which would warrant his conviction and punishment in the present case. In view of the cardinal principle of law that prosecution must prove the guilt of the accused beyond reasonable doubts and every benefit of doubt must be given to the accused, hence, the accused is entitled to every benefit arising out of lacuna's in the prosecution case.

17. In view of the above discussions it is held that the prosecution has failed to prove its case against all the accused persons and has not been able to prove the charge against them. Accordingly, all the accused persons namely Salig Ram S/o Amar Singh, Ashwani Kumar @ Dharminder S/o Salig Ram and Sunil S/o Salig Ram are hereby acquitted for the offence U/s 452/342/323/34 IPC. Their Bail Bond stand cancelled. Surety Bond stand discharged. Documents, if any, be returned after cancellation of the endorsement, if any, on property receipt and identification. File be consigned to record room.”

27. I would also like to reproduce the following paragraphs of the impugned order dated 29.4.2014, passed by the Appellate Court while dismissing the appeal of the appellant, which are as under:

“12. I agree with the contention raised by Ld. Counsel for appellant/complainant that non examination of IO is not fatal in this case. In Gajoo (supra), Apex Court has observed that the defect in the investigation or omissions on the

part of the investigating officer cannot prove to be of any advantage to the accused. In the instant case, there is no recovery affected by the IO at the instance of accused persons after their arrest. I therefore, agree with the contention raised by Ld. Counsel for appellant/complainant that non examination of the IO by the trial court does not affect the credibility of the complainant PW3 and her husband, PW-4.

13. Two independent witnesses i.e. Baldei and Tula Devi also remain unexamined. Baldei was reported to have died but Tula did not appear before the court to get her statement recorded. Complainant PW3 admitted that R-4 Ashwani Kumar is the husband of her real sister Lalita and matrimonial proceedings are pending between them in Patiala House Court. The defence taken by accused persons is that they are falsely implicated by complainant because of the litigation between accused Ashwani and her sister Lalita. In this back ground, statement of public witnesses assumes importance. Certainly under the facts and circumstances of this case, non examination of the public witness is a major lacuna in the prosecution case. Complainant PW3 has made major improvements while deposing as PW3 before this court. As per complaint Ex.PW3/A, accused Salig Ram had torn her suit but while deposing as PW3, complainant had stated that accused Salig Ram caught hold of her breast stating that he was after her since long and today he will not leave her. Accused Salig Ram taunted her stating that how wonderful these two balls are and he is fond of such breast. These are major improvements made on the part of the complainant which creates shadow of doubt on her credibility.”

14. There is recovery of a belt and a shirt stated to be of accused persons recovered from the spot but in no way prosecution has been able to connect these articles with accused persons.”

28. I, in view of the contentions of the learned counsel for the parties and after going through the record, including the impugned judgment and the order, fully concur with the findings of the Appellate Court, wherein it has held that the non-examination of the IO in this case is not fatal, since no recovery was affected by the IO at the instance of the accused persons after their arrest. However, the facts of the case demonstrate that two independent witnesses, i.e., Baldei and Tula Devi were not examined by the prosecution. It is stated that Baldei stated to have died during the pendency of the case, hence, she could not be produced for her examination in the Court and Tula was not examined before the Court to get her statement recorded. Tula was the neighbour of the complainant and she had allegedly opened the door of the house of PW-2 Net Ram, which was allegedly bolted by the accused persons from outside. Hence, her cross-examination was quite vital and her non-examination is certainly fatal to the case of the prosecution.

29. The Trial Court has also taken note of the fact that PW-2, in his cross-examination, had admitted that on hearing his cries, his neighbours, Shyamu and Charan Singh came, but these neighbours have also not been made witnesses in the present case. Even the tenants were not made witnesses in the present case. It is an admitted fact which has come on record, in view of the testimonies and cross-

examination of PWs 3 and 4, that there is a matrimonial dispute between the sister of the complainant and one of the accused persons, which is pending adjudication before the Court.

30. In view of the foregoing discussions, more so taking into consideration the appreciation of the facts as well as the law by the Trial Court and the Appellate Court, I do not find any flaw or infirmity in the impugned judgment of the Trial Court and the impugned order of the Appellate Court. The Trial Court has certainly taken into consideration all the factors, including oral and documentary evidence on the record as well as the improvements in the statement of the complainant and passed the impugned judgment.

31. I am also in agreement with the reasoning given by the Appellate Court holding that there was no substance in the various grounds of the appeal raised by the appellant ('petitioner' herein) and therefore no interference was called for in the judgment passed by the Trial Court.

32. It is also a fact on the record that the petitioner has not raised any question of law in this revision petition. There are concurrent findings of the Trial Court as well as of the Appellate Court, in view of the evidence on record, that the prosecution has failed to connect the belt and the shirt, stated to be of the accused persons, in any manner with the accused persons, which needs no interference.

33. The petitioner has failed to show any manifest error of law or procedure in the impugned judgment and order passed by the Courts below and has also failed to point out any material or evidence which

has been overlooked or ignored by either of the Courts, thereby causing gross miscarriage of justice.

34. I do not find any substantial or compelling reason for setting aside the judgment of the Trial Court dated 7.5.2012 and the order of the Appellate Court dated 29.4.2014, more so, in view of the concurrent findings of facts by the Courts below. The findings of the Appellate Court strongly re-enforce, re-affirm and strengthen the presumption of innocence of the accused persons. Further, as discussed above, it is held, time and again, that the High Court in its revisionary powers should not ordinarily interfere with the judgment of acquittal passed by the Trial Court, unless there has been a manifest error of law or error of procedure. The High Court, as well as Appellate Court, should not normally interfere with the findings of the facts arrived at by the Trial Court, unless the reasons given by it are perverse on the very face of it.

35. Accordingly, I do not find any error, flaw or infirmity in the impugned judgment dated 7.5.2012 and order dated 29.4.2014. Hence, I have no hesitation to hold that there is no substance in the grounds raised in the present petition. The petition is, accordingly, dismissed. The Trial Court record be sent back. A copy of this judgment be sent to the Trial Court as well as to the Appellate Court to update its record.

CHANDER SHEKHAR, J.

July 03, 2019

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