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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 771/2018

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for State
with SI Pankaj Kumar,
PS Mangolpuri.

versus

GOPAL & ORS

..... Respondents

Through: Mr. Vivek Gautam, Advocate.

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Date of Decision: 11th July, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present criminal leave petition has been filed under Section 378(1) Cr.P.C. by the State, challenging the judgment dated 06th September, 2018 passed by Additional Sessions Judge-II, North-West Rohini Courts, acquitting the respondents under Sections 307/34 IPC in Sessions Case No.629/2017 in FIR No.1147/2016 registered with police station Mangolpuri under Sections 307/341/34 IPC.

2. The trial Court while acquitting the accused persons has held, "*it is the case of the defence that the complainant sells smack in G block,*

Mangol Puri, Delhi and he uses the said park for dealing in smack and due to this, people of the locality were annoyed with him and they had given beatings to him which resulted in injuries to him. In the background of the criminal antecedents of the victim, his unreliable testimony and the contradictions therein, it cannot be ruled out that the version of the defence may be true.”

3. Ms. Aashaa Tiwari, learned APP for the State contends that the trial Court failed to appreciate that the victim (PW5-Joginder @ Gattu) had correctly identified the accused persons in Court by name and had also mentioned the role played by each of the accused persons in inflicting injury upon him. She further contends that the testimony of the victim (PW5) of having received injuries at the hands of the accused persons with knife had been corroborated by medical evidence wherein stab injuries were mentioned and were opined to be grievous in nature.

4. It is 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.

5. 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, reappraise 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)

6. 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 reappreciate 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)

7. Upon a perusal of the paper book, this Court finds that PW1 being the Doctor, who had prepared the MLC, in his cross-examination had opined that he cannot rule out that the injuries in question on the victim (PW5) could have been possible by a fall. PW1 was not re-examined on this aspect by the learned counsel for the State. Further, in the present case, the police had failed to recover the alleged weapon of offence i.e. the knife.

8. In any event, this Court is in agreement with the finding of the trial Court that there is contradiction in the testimony of the victim (PW5) in Court and his initial statement on the basis of which rukka and FIR had

been registered regarding the sequence of events and the manner of commission of offence. The Victim (PW5) in his initial statement Ex.PW5/A (rukka) had attributed the role of “*catching hold of him*” to accused Gopal and of stabbing him to Kallu and Gainthul; whereas in his deposition before the Court, he had attributed the role of “*catching hold of him*” to Kalu and Gainthul and of stabbing him to Gopal.

9. Consequently, this Court is in agreement with the finding of the trial Court that the contradictions in the versions of the victim (PW5) are vital and go to the root of the matter.

10. Accordingly, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 11, 2019

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