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

+ **CRL.L.P. 187/2020**

STATE

..... Petitioner
Through: Ms. Neelam Sharma, APP for the
State.

versus

NIBUL

..... Respondent
Through: None.

% Date of Decision: 03rd March, 2020.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

CrI.M.A.4694/2020 (exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

CrI.M.A.4693/2020 (condonation of delay)

Keeping in view the averments in the application, the same is allowed and delay in filing the present petition is condoned.

Accordingly, present application stands disposed of.

CRL.L.P. 187/2020

1. Present criminal leave petition has been filed on behalf of the State challenging the judgement dated 2nd September, 2019 and order on

sentence dated 7th September, 2019 passed by Additional Sessions Judge, FTC, E-Court, Shahdara, Karkardooma Court, Delhi in FIR No. 505/2016 registered with Police Station Jyoti Nagar, Delhi whereby the respondent-accused was acquitted under Section 307 IPC and was instead convicted under Section 324 IPC and sentenced to period already undergone i.e. about eight months and nineteen days.

2. The relevant facts of the present case as noted by the Trial Court are as under:-

“1. Criminal law was set into motion on 08.12.2016 at 10.10 pm when a call was received regarding causing injuries with blade in a quarrel, which was recorded vide DD No.71-B at PS Jyoti Nagar pursuant to which ASI Beghraj Singh alongwith HC Bijender Singh reached at H.No.151, Gali No.3, New Kardam Puri, Delhi, where they came to know that injured was taken to GTB hospital by his cousin Haleem. Thereupon, ASI Beghraj Singh alongwith HC Bijender Singh reached at GTB hospital and obtained the MLC of injured Anees Ahmed S/o. Late Akeel Ahmed, who was opined fit to make statement. ASI Beghraj Singh recorded the statement of injured. The gist of the statement is that complainant are five brothers and his three brothers are residing with his mother Rahisa at Gali No.3, Kardam Puri, Delhi. His younger brother Nibul is drug-addict, who was asking money from his mother. He scolded his brother Nibul. Thereupon, Nibul went outside from house in anger and brought some pointed object and hit him, due to which he sustained injuries on his left hand, chest and neck and Nibul ran away from there. His cousin brother Haleem brought him to GTB hospital. On the basis of above statement of complainant, present case FIR was registered. Accused was arrested. Further investigation was carried out and after completion of investigation, charge-sheet was filed.

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3. Initially charge against accused was framed u/s. 308 IPC, however, later on the amended charge u/s. 307 IPC was

framed against accused, to which he pleaded not guilty and claimed trial.”

4. Ms. Neelam Sharma, learned APP for the State states that the trial court had erred in showing undue leniency to the respondent-accused as it failed to appreciate that the attack was on vital organs i.e. neck and chest of the victim with a sharp edged weapon.

5. Having perused the leave petition as well as accompanying documents, this Court finds that the incident in the present case had taken place in a sudden fight and at the spur of the moment.

6. This Court is in agreement with the findings of the Trial Court that the respondent-accused had no intention to cause death of the victim. The relevant findings of the Trial Court on this aspect are reproduced hereinbelow:-

“18. The main contention of Ld. Defence Counsel was that ingredients of section 307 IPC are not attracted as accused had no intention to commit murder of complainant. Admittedly, the quarrel took place when complainant tried to make understand his brother, who was asking money from his mother to consume Ganja and thereafter, he slapped him twice. Thus, the quarrel took place at the spur of the moment. Weapon of offence was not recovered from the possession of accused. As per injured, injuries were caused with blade. The MLC of the complainant/injured shows three injuries and as per opinion of PW-4 Dr. Shailender Patel the nature of injuries is simple. Accused as well as injured both are real brothers. These facts per se make out a case u/s. 324 IPC and not u/s. 307 IPC. In view of above discussion, accused is held guilty and convicted for the offence punishable u/s. 324 IPC. Let the convict be heard on the point of sentence.”

7. Further, Dr. Shailender Patel (PW-4) had deposed that the injuries caused to the victim were simple in nature. In fact, keeping in view the

nature of injuries, this Court is of the opinion that evidence on record is not sufficient to convict the respondent-accused under Section 307 IPC.

8. Consequently, this Court is of the opinion that the Trial Court committed no error in acquitting the respondent-accused under Section 307 IPC as the ingredients for the said section are not made out in the present case.

9. 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. Further, the power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of the accused. In similar circumstances, in *State v. Kaishar Ali 2019 SCC OnLine Del 9875*, this Court has held as under:-

“13. 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)

14. 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)

10. Keeping in view the aforesaid, this Court finds no cogent reason to interfere with the findings of the Trial Court. Accordingly, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

MARCH 03, 2020

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