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

+ CRL.L.P. 522/2019

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State.

versus

AKASH

..... Respondent

Through: None

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Date of Decision: 07th February, 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)

1. Present criminal leave petition has been filed on behalf of the State challenging the judgement dated 21st May, 2019 passed by Additional Sessions Judge (Central District), Tis Hazari Courts, Delhi, acquitting the respondent-accused in FIR No. 76/2017 registered with Police Station Kashmere Gate, Delhi under Section 307 IPC.

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

“Accused Akash has faced trial for offence u/s 307 IPC on the accusation that on 13.03.2017 at about 3.50 pm near iron stairs, Sanitary Deport, Jamuna Bazar, Delhi he caused grievous injury on the neck of the Preet S/o Sh. Lalla Ram with the intention and the knowledge and under such circumstances that if by that act he had caused his death, he would have been guilty of murder.

2. Present case came to be registered on the statement of injured – victim to the effect that on 13.03.2017 at about 3.30 pm, he was playing holi with some of the boys of the locality and he had engaged in a verbal duel with accused Akash regarding playing of holi and that after playing Holi, he started returning to his house and when he had reached near the iron stairs then suddenly Akash accused came from behind and hit his hand on his (victim) back. When injured turned, accused Akash inflicted injury on the neck of the victim with broken glass bottle and blood started oozing from the injury, and while proclaiming that he (accused) will kill him (victim) today, again tried to inflict injury on the person of victim but he managed to escape and raised alarm on which accused ran away from the spot. One Johny friend of the victim removed him to the Hindu Rao Hospital. ASI Gajender reached the hospital and recorded statement of injured and present case got registered against the accused.

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4. *Prima facie case having been made out, charge for an offence under Section 307 IPC was framed against the accused. Since accused pleaded not guilty and claimed trial, prosecution was called upon to lead evidence.*”

3. Ms. Aashaa Tiwari, learned APP states that the Trial Court had failed to appreciate that the injured–victim Preet (PW-1) had fully supported the prosecution’s case and explained how he was attacked and how he was taken to the hospital. In support of her contention, learned APP relies upon Section 161 Cr.P.C. statement of the injured–victim Preet (PW-1). She states that the MLC by the Casualty Medical Officer records two injuries on the victim namely:- (i) Lacerated wound on neck left side measuring 1 cm x 6 cm and (ii) Lacerated wound on the left Pinna and the injuries were found to be of blunt nature.

4. She points out that after recording the disclosure statement of the respondent-accused, the investigating officer had obtained a subsequent opinion (Ex.PW4/B) as to the nature of the weapon of offence, wherein it has been stated, *“As per the seized broken glass bottle, it can cause the injury as per the MLC. Seized glass has been sealed again by Hindu Rao Hospital.”* She emphasises that as the bottle had been resealed by the Hindu Rao Hospital, the bottle ultimately bore the seal of HRH.

5. Having heard the learned APP for the State and having perused the leave petition as well as accompanying documents, this Court finds that the prosecution had failed to prove the place of occurrence as there are material contradictions between the testimony of victim Preet (PW-1) and his friend Johny (PW-5), who had taken the injured to the hospital. As per the victim Preet (PW-1) he had been attacked near the iron staircase leading to his house and thereafter, he had fallen unconscious. However, Johny (PW-5) deposed that he had found victim Preet (PW-1) near an iron foot over bridge. The finding of the Trial Court on this aspect is reproduced hereinbelow:-

“10.In the Court, he deposes that he was ascending and had climbed a few steps of the iron staircase to his house and became giddy and unconscious due to the assault and fell down the stairs and PW5 has deposed that he found the injured near the iron footover bridge. The place is a usually crowded place as has come in the cross-examination of PW1. If PW1 was yet to climb the staircase, there would have been some eye witness to the assault, even if he had ascended a few steps, someone should have seen the assailant coming or running away. Though a crowd gathered when PW1 got injured but no one saw the accused near the iron staircase and running away. PW5 has further

confounded the confabulation when he states that he found the injured near the iron footover bridge. In the site map prepared by the IO at the pointing out of PW1, there is no such iron footover bridge indicated, there is only an iron staircase shown leading upto the rooms.....”

6. The victim Preet (PW-1) had deposed that after being attacked, he had become unconscious and fallen down and he regained consciousness in the hospital. It is the case of the prosecution that the injured victim had been taken to the hospital on a motorcycle by his friend Johny (PW-5). The Trial Court has correctly observed that the victim Preet (PW-1) could not have travelled as the pillion rider, while he was unconscious. The finding of the Trial Court on this aspect is reproduced hereinbelow:-

“8..... Preet and Johny live in the same building, Preet on the ground floor and Johny on the second floor of the same. Sifting the ocular testimonies of PW1 and PW5, the injured and his friend, there crops up one irksome improbability, if the injured had become unconscious after falling down the stairs due to giddiness from the assault on the neck and regained consciousness at the hospital only, how was it possible for him to be taken on a bike to the hospital as the pillion rider, the presence of any third person is not alleged on the bike. There is no other explanation set forth by the prosecution that as to how and by what mode in what manner the injured was removed and brought to the hospital. It is the own case of the prosecution that injured is removed to the hospital by his friend on a bike. The deposition of the injured to this extent therefore does not inspire confidence that he became unconscious and regained consciousness in the hospital.....”

7. Further, this Court is of the opinion that in the present case there are multiple and contrary opinions given by the Medical Officers. Firstly, in the

MLC it has been opined by Dr. Vikramjeet Kapil (PW-3) that the weapon of offence was “blunt” in nature. Secondly, in the subsequent opinion given by the Dr. Abhay Anand (PW-4), it was opined that the seized broken glass bottle could have caused the injuries mentioned in the MLC. Lastly, Dr. Vikramjeet Kapil (PW-3), who recorded the MLC, had deposed that, *“possibility of the aforesaid injuries due to the fall on the ground cannot be ruled out.”* In view of the aforesaid contradictory opinions, prosecution has failed to prove beyond reasonable doubt as to how the victim Preet (PW-1) had received the injuries mentioned in his MLC.

8. Keeping in view the abovementioned contradictions, this Court is in agreement with the finding of the Trial Court that the sole testimony of the injured-victim Preet (PW-1) cannot be relied upon to convict the respondent-accused.

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. This Court, in *State v. Kaishar Ali 2019 SCC OnLine Del 9875*, 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, 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. Accordingly, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 07, 2020

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