

evidence, documents and the impugned judgment. Admittedly, there is a dying declaration, in which, deceased Vandana, who was married to accused no.1 has stated that she sustained burn injury when she was boiling milk in a stove. The dying declaration of deceased Vandana shows that Vandana stated before the Special Judicial Magistrate that due to flames from stove while boiling the milk her dress caught fire and she got burnt. Not only this Vandana has further stated before the Special Judicial Magistrate that she shouted loudly as soon as she was enveloped in fire and at that time her husband extinguished the fire by wrapping her with bed sheet and immediately moved her for treatment to Sahyadri Hospital. To a specific query posed by the Special Judicial Magistrate, Vandana replied that she has no complaint against anybody. The dying declaration at Exhibit 16 cannot be faulted for the procedure followed. There is also an endorsement of the Doctor concerned stating that patient was fully conscious and able to talk before giving the statement and she was fully conscious even after giving the statement. Both these endorsements prove that the dying declaration recorded by the Special Judicial Magistrate upon the cause of getting burnt, reflects Vandana's voluntary statement made without any pressure and in full consciousness.

4 Even in the statement recorded on 22-1-2004 by the police of deceased Vandana shows that the statement was recorded by PSI of Panchwati Police Station in Sahyadri Hospital itself. There is an endorsement of the Doctor concerned on the said statement that it was

recorded at 12.10 a.m. (midnight) on 22-1-2004 and patient was conscious and oriented to give the statement. Even in this statement Vandana has stated the same cause of burn and made no allegations against anybody. On this ground alone I shall not find fault with the conclusions arrived at by the Trial Court.

5 Moreover, there are material contradictions in the evidence of the complainant in as much as complainant has stated in the complaint that Vandana poured kerosine on herself. While in the evidence complainant states that Vandana told her that accused no.1 poured kerosine on her. In the testimony, complainant states Vandana told her that accused no.1 said that he will provide her treatment in private hospital provided she does not tell his name to anybody. But this does not appear in the complaint. Even the spot panchnama does not indicate anything suspicious. If Vandana had poured kerosine on herself or accused no.1 had poured kerosine on her, kerosine would have split in the room and same would have been noticed and recorded in the panchnama. Nothing is mentioned.

6 In the cross-examination, complainant has admitted that it was accused no.1 who provided treatment to Vandana and incurred expenses of Rs.35,000/-, but immediately states that she does not know anything about it.

7 There are various other contradictions and omissions mentioned in the judgment which for the sake of brevity I am not reproducing. Suffice to say I agree with the findings of the Trial Court.

8 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under :

72. 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 trial court was wrong.

73. 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";

1. (2008) 10 SCC 450

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.

9 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of***

2. (2014) 5 SCC 730

*Gujarat*³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

10 I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against the accused.

11 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused 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 acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

12 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of

3. 1996 SCC (cri) 972

acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera M. Jadhav

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