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

Date of decision: 18.10.2022

+ **CRL.A. 523/2022 & CRL.M.A. 6710/2018, CRL.M.A. 30334/2018,
CRL.M.A. 7352/2019**

RAMJILAL

..... Appellant

Through: Ms. Pinky Behera, Adv.

versus

STATE & ANR

..... Respondent

Through: Ms. Manjeet Arya, APP

Mr. R.K. Tarun, Mr. Abhay Solanki, Adv.

SI Ashok Kumar, PS Timarpur

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. Originally, the present revision petition was filed seeking quashing/ setting aside of the impugned order dated 13.10.2014 passed by the learned ASJ/ NDPS-02 (Central), Tis Hazari Courts, Delhi in Crl. A. No. 102/13 convicting the accused that was the petitioner herein to 3 years simple imprisonment and fine of Rs. 5,000/- and in default, 2 months simple imprisonment under Section 452 IPC and further sentence to undergo 3 years simple imprisonment and fine of Rs. 5,000/- and in default, 2 months simple imprisonment under Section 325 IPC.
2. The petitioner was acquitted by the learned MM *vide* judgment and order dated 16.08.2013. The complainant filed an appeal against the order of acquittal which was allowed by the learned Sessions Court on

13.10.2014. This is the order which has been challenged in the revision petition.

3. During the pendency of the revision petition, the petitioner died on 12.04.2017 and his legal heirs were brought on record *vide* order dated 30.08.2017.
4. This Court in its order dated 30.08.2017 considered the provision for substitution in revision and after considering the same, was pleased to permit the substitution of the wife of the deceased petitioner in the revision petition.
5. On 13.04.2017, the LRs the deceased petitioner, Mr. Ramjilal, entered into a settlement before the Mediation Centre, Tis Hazari Courts, Delhi where it was also agreed that the respondent No.2 would assist in settling the present criminal matter.
6. On 12.10.2022, it was argued that the revision petition may not be maintainable against the order of conviction and appeal under Section 374 Cr.PC is required to be filed. Accordingly, the revision petition was re-numbered as Crl. Appeal 523/2022 along with leave to appeal.
7. Since the revision petition had been pending for a considerable period of time and since the parties have entered into a mutual settlement, the criminal leave to appeal on oral request is allowed and the appeal has been taken up for hearing today.
8. As regards abatement of appeals is concerned, Section 394 Cr.PC reads as under:

“394. Abatement of appeals.

(1) Every appeal under section 377 or section 378 shall finally

abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.”

9. I am of the view that in the present case, the original revisionist Mr. Ramjilal expired on 12.04.2017, and the application for bringing the LR's on record was filed 14.07.2017. Along with the application for bringing the LR's on record, the appellant also filed an application being Crl. M.A. 11421/2017 seeking condonation of 65 days' delay in bringing the LR's on record.
10. The said application for condonation of delay was duly considered and allowed by this Court in its order dated 30.08.2017. Once the delay of 65 days for bringing the LR's has been condoned, the present appeal can be considered on merits in view of the proviso to Section 394(2) CrPC.
11. I am of the view that in the present case, since the delay of 65 days for bringing the LR's has been condoned, the revision petition, which has subsequently been changed into an appeal, will be considered to have been filed within 30 days and hence will not abate.
12. The Apex Court in **Chandrappa & Ors vs State Of Karnataka (2007) 4 SCC 415** held:

“Para 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.” (emphasis supplied)

13. The above judgment lays down the cardinal principle for considering appeals against an order of acquittal. I am of the opinion that in the present case the presumption of innocence lies in favour of the accused and the prosecution needs to discharge the burden of proof beyond a reasonable doubt in order to secure conviction of the accused.
14. In this view of the matter, the appeal needs to be allowed as order of conviction does not bring home the guilt of the accused. Thus, in the present case, order of conviction dated 13.10.2014 is set aside for the following reasons:
 - A. There are material contradictions in the complainant's narration of events because firstly, there were improvements and embellishments in the testimony of the complainant and secondly, there are contradictions with regards to injuries suffered by the complainant. As per the complaint of complainant, she had suffered fracture in her left hand whereas as per the MLC she had suffered fracture in her right hand. Thus, the MLC is in total contradiction to the oral testimony of

the complainant as no injury has been recorded on the left hand of the complainant.

She in the court stated that the *sali* of the accused came to her upon which the accused got angry and scolded. The said fact is missing in her previous statement.

She also gave a contradictory and exaggerated version as to the assault by the accused. She, while in court, stated that the accused assaulted her with a *lathi* due to which her left hand got broken. Thereafter, one person Sita Ram came in her house and she also escaped from the custody of accused. She thereafter fell down and accused thereafter pushed her to the road. The accused thereafter lifted her and threw her on the road for 5/6 times. On the other hand, in her previous statement, she merely stated that accused gave 5/6 *lathi* blows on her left hand, head and waist. The accused thereafter ran away after issuing the threat. The manner in which the incident ended is also contradictory as per the version of the complainant. The complainant in court stated that the driver of one TSR saved her from the assault of accused. She further improved her statement in the cross by stating TSR driver and 2/4 other persons saved her. On the other hand, the complainant in her statement stated that the accused himself has left the spot after issuing threat to him and the role of any other person was not narrated by her to the IO. The said improvements and contradictions were also confronted by the accused in the cross examination. She further in her cross examination stated that she had gone semi-conscious after the assault. On the other hand, in her previous statement, she stated that she lost her consciousness after the

assault. The said contradictions, improvements and exaggerations raised a serious doubt as to the credibility of the complainant keeping in view the fact that the accused was having previous dispute regarding property with the complainant and her husband.

- B. There was delay in lodging the FIR which has not been explained by the prosecution. The delay of 14 hours further pokes holes in the prosecution's story and deprives them of credibility.
- C. In the present case, prosecution has examined 7 witnesses to prove their case. Out of the 7 witnesses, only complainant and her husband are the public witnesses. Rest all the witnesses are police officials who are the witness of proceedings which had taken place in present case. The other public witness namely the husband of the complainant PW6 was not present at the spot when the incident occurred. His testimony against the accused is based upon hearsay evidence and thus cannot be read into as evidence. The other independent witness for corroborating the version of the complainant cited by the prosecution was PW Sita Ram who rescued the complainant as per the story of the prosecution. The said witness was never produced by the prosecution despite being a material witness as his whereabouts were not traceable. It appears that effort was made to not produce the said witness in the court as the permanent address of the said witness was never provided in the chargesheet. His occupational address only was provided which he had already left when summons for appearance were issued to him. The PCR official who took the injured complainant to hospital from the spot was not cited as witness for

reasons best known to the prosecution. Thus, the only material witness for proving the incident in question is the complainant herself.

D. The case of the prosecution suffers from material irregularities. The learned ASJ failed to appreciate the facts of the case. There was enmity between the complainant's family and the accused. They had also lodged various complaints against each other at the Police Station prior to the incident in question. The complainant also in her examination in chief admitted the said fact that they were already having disputes with the accused. Considering these facts, the complainant's narrative has been scrutinised carefully as the accused from the beginning has argued this to be a case of false implication due to pending property disputes between the parties.

15. In view of the aforesaid reasons, the appeal is allowed, and the order of conviction dated 13.10.2014 is set aside.

OCTOBER 18, 2022 / (MS)

JASMEET SINGH, J

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