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

Reserved on: 30th November, 2022
Pronounced on: 20th December, 2022

+ **CRL.A. 149/2017**

STATE (GOVT OF NCT OF DELHI) Appellant

Through: Mr. Utkarsh, APP for the State
versus

MANOJ KUMAR @ MEENU & ORS Respondents

Through: Mr. Abid Ibrahim, Advocate along
with R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present criminal appeal under Section 378 (1) of Cr.P.C., has been instituted on behalf of the State assailing the judgment dated 29.11.2014 passed by Sh. Jitendra Mishra, Additional Sessions Judge-06, South East District, Saket Courts, New Delhi in Session Case No. 75/14, arising out of FIR No. 196/2012, under Sections 308/452/325/323/34 IPC, registered at PS Sarita Vihar, whereby the respondents herein were acquitted of the charges framed against them.

2. The brief facts leading to the filing of present appeal are as follows:

(a) As per the prosecution, on the intervening night of 16-17/06/2012 between 11.00 p.m. to 5.00 a.m., SI Virender Pakhare (PW-11) while he was on checking duty, received a wireless message that a quarrel had taken place at Kumhar Mohalla, Jasola Village. As he reached at the spot, he came to know that injured

persons had been removed to the Trauma Centre at All India Institute of Medical Science. Acting upon directions of the SHO, SI Virender Pakhare (PW-11) arrived at the Trauma Centre at All India Institute of Medical Science, where ASI Devender was already present there and was making inquiry with respect to DD No. 43-A dated 17/06/2012 and PW-11 informed that, both the parties of the quarrel were present at the hospital. SI Virender Pakhare (PW-11) collected the MLC of injured Vijay Pal (PW-2) and recorded his statement. The injured Vijay Pal (PW-2) had stated that on 16-17/06/2012 at about 10:00 pm his son Rahul (PW-8) called him up on phone and told him that he and his mother Kusum have been pushed by neighbours, Babli @ Surender (R-4) and Raje (R-3). After hearing the same, he went to the spot near Tubewell situated at Village Jasola and found Babli @ Surender (R-4) and Raje (R-3) quarrelling with his wife and son. On inquiry from them about the incident, both started abusing him. Vijay Pal (PW-2) further stated that he, his wife and son returned to their house. After about 5-10 minutes Babli @ Surender (R-4) son of late Sh. Prakash, Raje (R-3) son of late Sh. Prakash, Manoj @ Meenu (R-1) son of late Sh. Mangal and Rishi (R-2) son of Late Sh. Jagbir, all resident of Jasola Gaon came together with Lathi and Danda at his residence, entered into his house and assaulted him and his family members with Danda and Saria. SI Vijender Pakhare (PW-11) reduced the statement of Vijay Pal (PW-2) in writing (Rukka) and sent the same for registration of the case and hence FIR No. 196/2012 under Sections 308/452/325/323/34 IPC was registered by P.S. Sarita Vihar.

(b) On completion of the investigation, charge sheet *qua* the present respondents was filed before the court of competent jurisdiction and charges under sections 308/452/34 IPC were framed against them to which they pleaded not guilty and claimed for trial.

(c) The prosecution examined 11 witnesses and the respondents were examined under Section 313 of Cr.P.C.

(d) Upon examining the evidence and documents placed on record in support of the chargesheet, the learned Additional Sessions Judge vide impugned judgment dated 29.11.2014, acquitted the respondents for the offence punishable under sections 308/452/34 of IPC, hence the present appeal.

3. Heard the learned APP for the State and the learned counsel for the respondents.

4. Learned APP for the State submits that the present judgment has been passed without appreciating the prosecution evidence on record which was clinching and irrefutable. It is submitted that the impugned judgment is passed on presumption, conjecture and surmises. It was further submitted that, non appreciation of the aforesaid prosecution evidence has resulted into an erroneous judgment of acquittal *qua* the present respondents. It is further urged that any lapse on account of the investigating officer will not vitiate the trial and that the same cannot be a ground to dilute otherwise cogent evidence brought on record by the prosecution.

5. It is further argued that the testimonies of the witnesses were not properly appreciated by the learned trial Court and that the discrepancies and

irregularities as noticed by the learned trial Court were minor in nature which did not affect the credibility of the evidence on record.

6. Learned counsel appearing on behalf of the respondents submits that there is no legal or factual infirmity in the impugned judgment of acquittal passed by the learned trial Court. It is further submitted that the judgment has been passed after thread bare examination of the testimonies of the witnesses concerned. It is urged that learned trial Court has correctly disbelieved the case of the prosecution and therefore acquitted the respondents in the aforesaid chargesheet.

7. It is well settled that in an appeal against acquittal under Section 378 Cr.P.C, the scope of the appellate Court is to the extent that the judgment of acquittal should not be ordinarily interfered with unless the findings in such judgment are shown to be arrived at by incorrect or perverse appreciation of material on record and the law. This settled position of law with respect to the scope of the appellate Court *qua* an appeal against the acquittal has been considered in a catena of judgments by the Hon'ble Supreme Court. In **Basheera Begam v. Mohd. Ibrahim, (2020) 11 SCC 174** the Hon'ble Supreme Court has held:

“190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if

the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In *Sadhu Saran Singh v. State of U.P.*, this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”

8. Recently, the Hon’ble Supreme Court in **Jafarudheen v. State of Kerala, (2022) 8 SCC 440**, made a detailed analysis of the precedents, with respect to the scope of an appeal against acquittal and recorded as under;

“Scope of appeal filed against the acquittal

25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial

court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

PRECEDENTS

26. Mohan v. State of Karnataka as hereunder : (SCCparas 20-23)

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the appellate court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The appellate court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role to undertake. Truth has to be

found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, the trial court on the one hand and the appellate courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The appellate court is expected to maintain a degree of caution before making any remark.

23. This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in *Anwar Ali v. State of H.P.* : (SCC pp. 182-85, para 14)

“14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (Babu case, SCC p. 199)

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at

by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, *Triveni Rubber & Plastics v. CCE, Gaya*, *Din v. Hanuman Prasad*, *Arulvelu and Gamini Bala Koteswara Rao v. State of A.P.*)”

It is further observed, after following the decision of this Court in *Kuldeep Singh v. Commr. of Police*, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.3. In the recent decision of *Vijay Mohan Singh*, this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (*Vijay Mohan Singh* case, SCC pp. 447-49)

“31. An identical question came to be considered before this Court in *Umedbhai Jadavbhai*. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused.

Confirming the judgment of the High Court, this Court observed and held in para 10 as under : (SCC p. 233)

‘10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.’

31.1. In Sambasivan , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under : (SCCp. 416)

‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case viz. first recording its

conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. In *K. Ramakrishnan Unnithan*, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found

that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley*, in para 5, this Court observed and held as under : (AIR pp. 809-10)

‘5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of

the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence has been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State*; *Wilayat Khan v. State of U.P.*) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.’

31.4. In *K. Gopal Reddy*, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”” ”

(emphasis in original)

27. *N. Vijayakumar v. State of T.N.* as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24)

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 emphasise 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 is 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.”

21. Further in the judgment in relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court ought not to reverse the acquittal to that of the conviction.

23. Further, in *Hakeem Khan v. State of M.P.* this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by

the trial court. In the said judgment it is held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under : (SCC pp. 722-23)

‘9 . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact

that he attended the Court at some distance and arrived by bus after the incident took place.’

24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a “possible view”. By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m.”

9. In view of the above general principles, the appellant/State had to demonstrate that the impugned judgment suffered from any illegality or perversity. Whether the view taken by the learned trial Court was a possible one or not has to be determined on the basis of evidence on record, including the testimonies of the witnesses and documents. In the present appeal, the grounds urged by the State were the same as those that were raised before the learned

trial Court.

10. This Court has gone through the impugned judgment as well as the material on record. The learned trial Court, has diligently dealt with the entire evidence and circumstances brought on record by the prosecution during the trial of the present case. The finding of learned trial Court to the effect that contradiction in the testimonies of the witnesses with respect to the incident itself and the place of incident thereby giving benefit of doubt to the accused persons/respondents herein is a plausible view.

11. As discussed above, in any appeal against an order of acquittal, the presumption in favour of the accused is strengthened and such a presumption should not ordinarily be disturbed, unless there are substantial and compelling reasons for the same. It is now well settled that the burden on the prosecution in prosecuting an appeal against acquittal is onerous. The prosecution has to demonstrate that the judgment rendered by the learned trial Court was arrived at on the basis of an incorrect appreciation of the facts and evidence on record, necessitating interference by this Court. It is also a settled principle that if the view taken by the learned trial Court "*is a possible view*", then the order of acquittal should not be reversed.

12. In view of the foregoing, this Court does not find any reason to interfere with the impugned judgment passed by Sh. Jitendra Mishra, Additional Sessions Judge-06, South East, Saket District Courts, New Delhi in session case no. 75/14, as arisen out of FIR No.

196/2012, under sections 452/308 read with Section 34 IPC, registered at PS Sarita Vihar.

13. Consequently, the present appeal filed by the appellant/State is dismissed and disposed of accordingly.

14. Pending application(s), if any, also stand disposed of.

15. Bail bonds submitted on behalf of the respondents stand discharged.

**AMIT SHARMA
JUDGE**

DECEMBER 20th, 2022/hb

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