



NEUTRAL CITATION NO: 2022/DHC/004112

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CRL.A. 258/2018**

Date of Decision: 13.09.2022

IN THE MATTER OF:STATE
NCT OF DELHI

..... Appellant

Through: Mr Utkarsh, APP for the State SI
Vinod Bhati, PS: Greater Kailash.

Versus

BAL RAM S/O PRABHU PASWAN
R/O VILLAGE BAHARIA P.O. TAWARI
PS: SIPHOL DISTRICT SIPHOL, BIHAR

..... Respondent No.1

JAMES @ SURAJ BISWAS
S/O ANTHONY
R/O E-553, SERVANT QUARTERS,
G. K-2, NEW DELHI
PERMANENT ADDRESS:-
SHRI DURGA COLONY, V.P.O.
KRISHNA NAGAR, DISTRICT NADIA
WEST BANGAL.

..... Respondent No.2

Through: Mr Parmeshwar Jha, Advocate for
R-1.
Mr Nitin Mittal, Advocate for R-2.**CORAM:**
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**J U D G M E N T**

**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. This appeal under Section 378 (1) of the Cr.P.C. has been filed by the State against the judgment of acquittal dated 08.01.2015, passed by the court of Additional Session Judge -06 South East, Saket Courts, Delhi. After granting leave, this appeal has been registered as a regular criminal appeal.

2. The case of the prosecution before the trial court was that on 05.08.2013, at about 9:45 pm at Kautilya Sarvodya Bal Vidyalaya, Chirag Enclave, Greater Kailash -1, New Delhi, accused persons in furtherance of common intention of committing robbery with the help of other accused persons voluntarily caused hurt to the victim/guard Radhey Shyam (PW5). The accused persons stated to have used a knife and stabbed Radhey Shyam in the centre of the chest, right thigh, right buttock and other parts of the body and caused grievous hurt to him. An FIR was registered against the accused persons before the concerned jurisdictional police station. After completion of the investigation, the police submitted a final report for offences punishable under Section 394/397/34 of the IPC. The trial court framed charges against the respondents/accused person on 02.04.2014 for offences punishable under Section 394/397/34 of the IPC. The accused pleaded not guilty and claimed to be tried.

3. The trial court proceeded to conduct the trial and recorded the statement under Section 313 of the Cr.P.C. of the accused. There were four accused before the trial court. The learned trial court has acquitted two accused, who are respondents in the instant appeal. So far as accused Ganesh is concerned, he absconded and, therefore, the trial court directed



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for taking appropriate proceedings in accordance with the law. Another accused Mehtab was a juvenile, therefore, separate proceedings were taken up against him, in accordance with the law. During the pendency of the instant appeal, it is stated by the learned counsel appearing on behalf of respondent No.2 that respondent No.2 has expired. Thus, the prosecution with regard to respondent No.2 stands abated.

4. The learned APP for the State/appellant submits that the learned trial court has committed a grave error while acquitting the respondents/accused persons. According to him, the trial court has not appreciated the entire material available on record and has wrongly acquitted the respondents/accused. He further stated that if the evidence of all the witnesses is examined carefully, the same would indicate that the prosecution has successfully proved the charges against the respondents/accused persons for offences punishable under Section 394/397/34 of the IPC beyond any reasonable doubt.

5. The learned counsel appearing on behalf of respondent No.1, however, opposed the prayer and he submits that there is no substance in the submissions made by the learned APP for State/appellant. According to him, the judgment of acquittal passed by the trial court is based on proper appreciation of evidence and on the basis of sound principle of law. The same does not call for any interference. While taking this court through the evidence of various witnesses and relevant paragraphs of the impugned judgment, he submits that the prosecution has failed to prove the charges in question against the respondents.

6. I have heard the submissions made by the learned counsel appearing on behalf of the parties and perused the record.



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7. As per the trial court record, it is seen that the prosecution has examined as many as 16 witnesses to prove the charges. PW-1/HC Ram Prasad stated that on 06.08.2013 at about 12:45 AM, SI Kumar Santosh sent one *rukka* to Constable Sunil and on the basis of the same, he recorded the FIR No.141/2013 exhibit PW-1/A. PW-2 Shankar Thakur deposed that on 05.08.2013, at about 9:30 PM, on hearing the crying noise of Radhey Shyam, he went there and found that Radhey Shyam was in injured condition. According to him, blood was oozing out from his backside. He further deposed that Radhey Shyam informed him that 3-4 boys attacked him. He also stated that he brought the injured Radhey Shyam to the main gate of the school and informed the police at 100 number from his mobile. In cross-examination, he stated that he does not remember whether his statement was recorded by the police. According to him, 3-4 neighbours and 3-4 guards gathered at the spot. He further deposed that the other security guards were from another school and not from his school.

8. It is, thus, seen that so far as the evidence of PW-2 is concerned, he is not an eyewitness of the incident. He reached the place of occurrence after the incident had occurred.

9. PW-3 Constable Sunil Kumar stated that he was on emergency duty along with SI Kumar Santosh on 08.05.2013. At about 10 pm, SI Kumar Santosh received DD No.42A by Ex.PW-3/A regarding a quarrel at Chirag Enclave. They reached the spot i.e. Kautilya Sarvodya Bal Vidyalaya, Chirag Enclave and came to know that the injured Radhey Shyam was already removed to Trauma Centre AIIMS by PCR. He stated that the Investigating Officer examined the place of occurrence where blood was lying on the floor and called the Crime Team at the



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spot. The Crime Team lifted blood in gauze, converted it into pullanda and sealed it with the seal of KS and handed it over to him. PW-4 Constable Mukram Ali is the witness of the arrest memo of accused James @ Suraj Biswas.

10. The injured /star witness of the incident is PW-5 Radhey Shyam who stated in his evidence that on the date of the incident i.e., 05.08.2013 at about 9:30 pm when he reached the primary building, he noticed that two boys were coming from the front side; one of them had a knife and both the person attacked him. He further stated that during scuffling, he caused teeth bite to one of them on his finger and also caused teeth bite to other on his abdomen. He further deposed that one boy caused several injuries on his chest, thigh and back side of his body with knife and robbed his mobile phone No.9582493962 of Nokia Company and according to him, after snatching his mobile and causing injuries, the accused persons ran away from the spot. He deposed that he shouted and Shankar came there and brought him to the main gate of the school and then he became unconscious. He further deposed that on 16.09.2013, he handed over a photocopy of the purchase bill of his mobile phone which he had purchased in the name of her son Amit. His examination was deferred for the production of cloth but later on, no further examination was conducted. However, at the request of the prosecution, prosecution evidence was closed on 16.08.2014. When the matter was fixed for final arguments, the prosecution filed an application under Section 311 of the Cr.P.C. for further examination of PW-5. In his further examination, the witness has identified the accused in court.

11. PW-6/Sehzadi deposed that she purchased the mobile phone make Nokia from Shazad. PW-7/Radish Ahmad stated that the SIM card



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No.8010340044 was issued in his name by Reliance Company on the basis of his customer application. According to him, he handed over the said SIM to one Salman, who was working with him and he came to know that the said SIM was used by the sister of Salman namely, Sehzadi @ Soni. PW-9 SI Kumar Santosh stated that he received DD No.42A Ex.PW-3/A regarding theft in the house at Chirag Enclave and thereafter, he alongwith Constable Sunil reached at the spot at about 10:00 pm. PW-10/ Rajeev Sharda is the Nodal Officer of the Reliance Communication Ltd. and PW-11 is W/ASI Urmila. PW-12 Inspector Sheelwant Singh deposed that on 14.08.2013, Mehtab was produced by his parents and he was found to be a juvenile and it is on the basis of his disclosure statement, he apprehended Balram and interrogated him. After interrogation, this witness arrested Balram and recorded his statement vide Ex.PW12/C. Mehtab and Balram both were produced before the J.J. Board, however, bone age of Balram was conducted and he was declared as an adult, therefore, he was subjected to trial by the trial court. This witness obtained MLC of the injured from the hospital, according to him, the injuries were found to be grievous. He, further stated that he moved an application for Test Identification Parade of the accused Balram but he refused the TIP. This witness, however, in his cross-examination has admitted that the robbed mobile phone was not recovered from the accused James or from Balram and he further stated that a mobile was recovered from a lady, namely, Sehzadi @ Soni, who did not reveal the name of the accused James and Balram in her statement.

12. After considering the evidence of the witnesses, as referred above and also the evidence of other witnesses, the trial court found that the Investigating Agency submitted a final report against four accused



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persons, namely, Mehtab (JCL), Balram (respondent No.1), James (respondent No.2/deceased) and Ganesh (untraceable). According to the injured witness/Radhey Shyam, all four attacked and robbed the mobile phone. On the basis of the location of the mobile phone, the same was found to have been recovered from PW-8/Sehzadi. She disclosed in her statement that JCL Mehtab, had sold the mobile phone to her for a sum of Rs.300/-. The knife has not been recovered. In cross-examination injured/Radhey Shyam admitted that after the incident had occurred, 3-4 neighbours and 3-4 guards, reached the spot; however, as a matter of fact, none of them were examined. PW-5 in his examination has stated that two boys have robbed and attacked him. It is, thus, seen that there is a deviation from his earlier statement and also from the case of the prosecution that four people were involved in the commission of the offence.

13. Besides that, if the entire material is examined, the same would reveal that neither the knife nor the mobile was recovered. The nature of injuries has also not been proved to be grievous in nature. The link of the present respondent No.1 is not clearly established. It is seen from the prosecution case that the mobile phone was recovered from Sehzadi which was sold to her by Mehtab. The allegation of attack was against Ganesh, who remained absconded. There was no identification parade. The identification of the respondents in court was vitiated on account of the reason that the concerned witness was called by ASI one day before the cross-examination and the injured witness admitted that he came to the court with the concerned ASI. It is for the aforesaid reason, even the identification parade was doubted by the learned Sessions Judge.



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14. The Hon'ble Supreme Court in the matter of *State Of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is founded and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate Court. It has also been held that nonetheless it is not correct to say that unless the appellate Court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial Court is 'perverse', it cannot interfere. If the appellate Court on re-appreciation of evidence and keeping in view well established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law.

15. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision it has been 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.

¹ 2008 9 SCC 475

² (2007) 4 SCC 415

³ (2017) 5 SCC 715



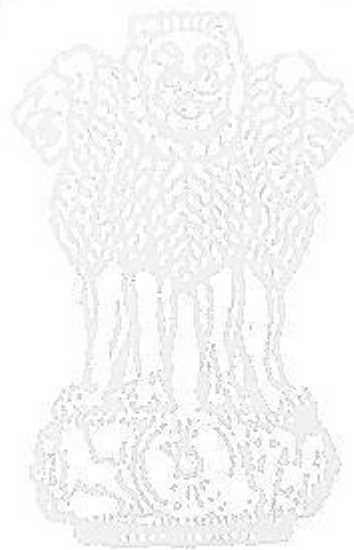
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16. Having considered the aforesaid facts and circumstances, this court finds that the prosecution has not been able to successfully prove the charge beyond reasonable doubt. On examination of the material available on record, this court is not inclined to take a different view other than the view which has already been taken by the court below. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 13, 2022

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