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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 449/2019**
STATE

.....Petitioner
Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Mahendra Patil (P.S.
Narela).

versus

JEET SAINRespondent
Through: Mr. R.K.L. Choudhary,
Mr. Prashant Kaushik &
Mr. Ansh Tomar,
Advocates alongwith
Respondent-in-Person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
09.08.2024

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1. The present petition is filed challenging the order dated 29.05.2019, pursuant to which the respondent was acquitted for offences under Sections 308/34 of the Indian Penal Code, 1860.
2. The FIR was registered pursuant to the complaint given by the victim alleging that the present respondent and other co-accused had hit him on the head with a baseball bat.
3. Victim further alleged that a quarrel took place between the accused, namely, Sandeep Sain and the victim pursuant to which the accused called his father, the present respondent.
4. It is alleged that the respondent caught hold of the victim when the accused hit him with the baseball bat.
5. It is submitted that during the course of the trial, the prime witnesses being the victims, namely, Pawan and Dinesh were examined.
6. The learned Trial Court noted that except for the allegation



that the respondent caught victim, no further role has been attributed to him.

7. It is further noted that only a bald statement that the respondent caught hold of the victim is not sufficient to hold that the said act was done in furtherance of a common intention with the co-accused.

8. I find no infirmity in the order passed by the learned Trial Court.

9. It is an admitted case that the scuffle took place between the parties at a spur of the moment.

10. It was not alleged by the victim that there was any pre-meditated intention of the accused and the present respondent to cause injuries.

11. It is apparent that that the present respondent and the victims were known to each other as neighbours.

12. It is alleged by the victim that the co-accused was teasing the victim and did not desist even on objection.

13. It was when the victim pushed the co-accused that he went to his house and called his father/respondent. Thus, even as per the allegations, the quarrel took place between the victim and Sandeep Sain on a provocation and the allegation was that in the altercation, the respondent allegedly held one of the victims.

14. It is settled law that the Appellate Court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so. The Hon'ble Apex Court in ***Muralidhar and Ors. v. State of Karnataka : (2014) 5 SCC 730***, reiterated principles formulated in dealing with appeals against acquittal, the said principles are reproduced below:

“12. The appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of



acquittal passed in his favour by the trial;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) 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. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

15. Having heard the learned counsel appearing on behalf of the parties and perused the impugned judgment as well as the material on record, this court is of the considered view that the finding arrived by the Trial Court cannot be said to be perverse.

16. As noted above, the only allegation against the respondent was that he came out on being called by his son who had a quarrel with the victim. It is alleged that the respondent held one of the victims and beating was given by the accused ‘Sandeep Sain’. The same, as rightly noted by the learned Trial Court, is not sufficient to reach a conclusion that the act of holding the victim was done in furtherance of common intention with the accused ‘Sandeep Sain’. The father, coming out on being called by his son who is having a scuffle / altercation and thereby trying to hold one of the party involved in the scuffle, cannot be held to be an act in furtherance of common intention of committing a



crime.

17. Admittedly, the beating was given to the victim by the accused 'Sandeep Sain', who has been convicted by the learned Trial Court for offence under Section 308 of the IPC.

18. It is also settled law that the Appellate Court, while hearing an appeal against an order of acquittal, shall not interfere when two views are possible on the evidence adduced in the case. If one view points towards the guilt of the accused and the other towards his innocence, the view which is favourable to the accused, should be adopted. Moreover, the Appellate Court ought not to interfere with the judgment of acquittal unless there are compelling and substantial reasons for doing so.

19. From the allegations and the evidence as recorded by the learned Trial Court, it can safely be held that the prosecution has not been able to prove its case beyond reasonable doubts as to the involvement of the respondent.

20. In view of the above, I find no reason to interfere with the impugned order.

21. The petition is, therefore, dismissed.

AMIT MAHAJAN, J

AUGUST 9, 2024

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