



2024:DHC:9753



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

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Date of Decision: 09.12.2024

+ **CRL.A. 870/2011 and CRL.M.A. 4927/2024**

STATE

.....Respondent

Through: Mr. Laksh Khanna, APP for State

versus

RAMESH @ BENGALI

.....Respondent

Through: Mr. Sarthak Tomar, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal, the appellant/State seeks to assail the judgment of acquittal dated 12.01.2010 passed by learned ASJ, Dwarka Courts, Delhi, vide which, the respondent was acquitted of charges under Sections 393/398 IPC, in a case arising out of FIR No.136/2007 registered under Sections 392/394/397/398/411/34 IPC & 25/27/54/59 Arms Act at P.S. J.P. Kalan, Delhi.
2. Briefly noted, the complainant, who was plying a Scorpio car as a taxi, was approached by the respondent and co-accused, *Pawan* on 25.08.2007, who paid him an advance for booking a journey on 26.08.2007 to travel to and fro between Jhajjar and Nehru Place for the purpose of purchasing computers. On the day of the incident, i.e., on 26.08.2007, the co-accused asked the car to be stopped at *Rawta Mor* at around 6:30 PM and came out of the car on the pretext of urination, when the respondent put a cable wire around the complainant's neck and the co-accused aimed a revolver at him and told the respondent to kill him. The complainant



thereafter managed to free himself from the knot tied by the respondent, but was pushed out of the car by the co-accused. Before the car could be restarted, the complainant hit the co-accused with his fist, as a result of which, the revolver fell out of his hand. Upon seeing a tractor coming towards their way from the opposite side, both the accused persons started running away, and while the co-accused was apprehended and arrested on the spot, the respondent managed to escape.

3. It is the case of the prosecution that when the co-accused was arrested from the spot, a desi *katta* alongwith a live cartridge as well as the cable wire used to strangle the complainant were recovered, and the co-accused disclosed the name of the present respondent in his disclosure statement, on the basis of which, the respondent was arrested on 29.08.2007. Further, the respondent refused to take part in TIP on the plea that he had been shown to the witness at the Police Station.

4. Charges under Sections 392/34 IPC were framed against both the accused persons for committing robbery of vehicle bearing No.HR-14C-7937, and a separate charge was additionally framed against the co-accused under Section 397 IPC and Section 27 Arms Act in regards to the use of country-made revolver in commission of offence of robbery that was also recovered at his instance. The prosecution cited a total of 12 witnesses. The complainant was examined as PW2 whereas *Abhay Singh*, who witnessed the arrest of the co-accused, was examined as PW1. *Surender* was examined as PW4, who was the owner of the subject vehicle. Rest of the witnesses were formal in nature.

On the other hand, the accused, in his statement recorded under Section 313 Cr.P.C., claimed that he was innocent and that he had been



falsely implicated in the present case.

5. Learned APP for the State submits that the Trial Court has erred in acquitting the present respondent and has not appreciated the facts and evidence. It is stated that the respondent has been acquitted merely on the strength of giving him benefit of the doubt. It is also contended that a perusal of the statement of the complainant, who was examined as PW2, would show that he has categorically stated as to the role of the present applicant in the commission of the offence and that the respondent had escaped the spot of the incident before he could be caught by the public persons. It is also brought to the attention of the Court that the respondent had refused to take part in TIP, and as such, an adverse inference should be drawn against him. Moreover, it is submitted that the reasoning, as found in the impugned judgement, as to the lack of any recovery at the instance of the respondent is misplaced as the recovery was from the spot of the incident and not from the accused and the same cannot be a ground to award the benefit of doubt to the respondent.

6. On the other hand, the appeal is resisted by learned counsel for the respondent. At the very outset, it is submitted that at the stage of leave to appeal, there exists a double presumption of innocence in favour of the respondent, who has already been acquitted at the trial stage.

On merits, it is stated that the respondent was arrested on the basis of the disclosure statement of the co-accused and that PW1, who has seen the co-accused attempting to flee from the spot of the incident, has not stated to have seen the respondent. As regards the respondent refusing to take part in TIP, it is submitted that the complainant/PW2 had already seen him at the police station on 30.08.2007. No statement of the complainant was recorded



regarding the identification of the respondent on that date, therefore, defeating the very purpose of conducting the TIP. Hence, it is submitted that the refusal to take part in the TIP is justified. It is further submitted that no recoveries were made at the instance of the respondent and that the statements of the complainant/PW2 as to the recoveries are replete with contradictions. To support his contention, attention of the Court is drawn to the complainant's statement recorded in his examination-in-chief on 28.07.2008 and his cross-examination of 08.10.2009, where in the former, the complainant had stated that it was him who had handed over the subject revolver to the police which had fallen down near the vehicle, however, in the latter statement, upon being recalled on an application filed and allowed under Section 311 Cr.P.C., he had stated the said revolver to having being recovered at the instance of the co-accused *Pawan*. Lastly, it is submitted that the prosecution's case could not establish the respondent's guilt beyond reasonable doubt and therefore, he was rightly acquitted by the Trial Court.

7. I have heard the learned APP as well as learned counsel for the respondent and have perused the documents which have been placed on record.

8. The learned ASJ has noted in the impugned judgment that PW2/complainant had correctly identified the blue colour plastic wire which was seized as Ex.P1, the country-made revolver as Ex.P2 and the live cartridge as Ex.P3. He had further stated in his cross-examination as to the absence of any receipt issued in favour of the accused persons for booking the car and that the same was done in nobody else's presence. It was also clarified that no parking receipt was given at Delhi near Nehru Place. It is further observed that it was only during the cross-examination of



PW2/complainant that the fact was brought forth for the first time that the moment accused persons allegedly moved the vehicle, he hit on the hands of the co-accused, *Pawan* and grappled with him. Moreover, there were material contradictions found between the complainant's statement recorded in his examination-in-chief on 28.07.2008 and his cross-examination of 08.10.2009 as to the recovery of the country-made revolver, live cartridge as well as the wire.

9. Even though the charge was framed under Sections 392/34 IPC, as per the version of PW2/complainant, it was clear that the accused persons had only taken control of the subject vehicle, but had not moved the same, thus, leaving the offence of robbery as incomplete. The offence of robbery is nothing but theft by extortion and the moving of a thing from one place to another is necessary to constitute the commission of theft. In context of the present case, the subject vehicle was not moved as per the complainant's own version recorded in his examination-in-chief and it was only when he was confronted on the said aspect in his cross-examination, did he allege that the vehicle was in fact, moved. After a perusal of the material, it was rightly reasoned that merely taking control of the driving seat of the vehicle after putting a wire on the neck of the victim and pointing a revolver at him will at best, only amount to an attempt to commit robbery.

Furthermore, the complainant's statement makes it clear that the present respondent was seen by him at the Police Station on 30.08.2007 and that no statement of his was recorded regarding the identification of the accused on that date. It has been contended that showing the respondent to the witness/complainant by calling him at the Police Station on 30.08.2007 defeated the very purpose of TIP. A simultaneous reading of the statements



of PW12/ASI *Dayanand* and PW2/complainant would lead to the inference that the respondent was deliberately shown to the complainant, thus, making the refusal to take part in the TIP justified. It is a settled position in law that if the accused are already shown to the witnesses in the Police Station, then the sanctity of TIP before the court is doubtful. [Ref: Kamal v. State (NCT of Delhi), reported as **2023 SCC OnLine SC 933**]

10. More pertinently, in regards to statement of PW1, a perusal of same would show that he had only seen the co-accused, *Pawan*, trying to escape and eventually caught by the public persons. This is also in contradiction to PW2/complainant's statement, who had stated that the co-accused was chased only by himself and PW1. PW1 identified the co-accused in Court, however, he stated that the country-made revolver and wire were recovered at co-accused *Pawan*'s instance.

11. The fact that PW1 had only seen and identified the co-accused *Pawan* read with the justified refusal of the respondent to take part in the TIP, as noted above, leads to the conclusion that the case against the present respondent is a weak one. It is also seen that there was no prior enmity existing between the accused persons and any of the witnesses. At best, it is the case of the prosecution that the subject car had been attempted to be robbed, however, the same was not successful.

12. In light of the abovenoted facts, the learned ASJ has rightly concluded that no case was made out against the accused persons under Section 392 IPC. Furthermore, vide the impugned judgment dated 12.01.2010, the co-accused *Pawan* was convicted for offences under Sections 393/398 IPC and Section 27 Arms Act, however, the present respondent was extended the benefit of doubt and he was accordingly acquitted.



13. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

“8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Criminal Procedure Code (for short “CrPC”) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, 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.”

14. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“ ...



13. In *Sheo Swarup v. King Emperor* [*Sheo Swarup v. King Emperor*, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* [*Tulsiram Kanu v. State*, 1951 SCC 92 : AIR 1954 SC 1] , *Balbir Singh v. State of Punjab* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal v. State of Maharashtra* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Khedu Mohton v. State of Bihar* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Sambasivan v. State of Kerala* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , *Bhagwan Singh v. State of M.P.* [*Bhagwan Singh v. State of M.P.*, (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and *State of Goa v. Sanjay Thakran* [*State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under: (SCC p. 432, para 42)...

(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. '

16. In *Ghurey Lal v. State of U.P.* [*Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the



demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* [*State of Rajasthan v. Naresh*, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069], the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

‘20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.’

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17. Even in *G. Parshwanath* [*G. Parshwanath v. State of Karnataka*, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027], this Court has in paras 23 and 24 observed as under: (SCC pp. 602-03)

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the



conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.” (emphasis supplied) ”

15. In light of the abovenoted factual as well as legal position, this Court is inclined to agree with the view taken by the Trial Court. To begin with, double presumption of innocence lies in favour of the respondent after his acquittal at the stage of trial. Upon appreciating the facts and materials placed on record, it is evident that the offence of robbery is not made out against the accused persons as the *sine qua non* ingredient of moving of the subject property in order to such taking is not made out. At best, it is the case of the prosecution that there is an attempt to commit robbery. When this is seen in light of the fact that PW1 did not see the present respondent at or near the spot of the incident and the further fact that no material recoveries were made at his instance and his refusal to take part in TIP has been justified in the circumstances, as noted above, this Court finds no grounds to interfere with the impugned judgement of acquittal.

16. Accordingly, the present appeal is dismissed alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 9, 2024
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