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Neutral Citation No. - 2023:AHC:156221-DB

AFR

(Judgment reserved on 11.07.2023)

(Judgment delivered on 07.08.2023)

Court No. - 42

Case :- GOVERNMENT APPEAL No. - 1873 of 1984

Appellant :- State of U.P.
Respondent :- Har Dayal Singh And Others
Counsel for Appellant :- A.G.A.
Counsel for Respondent :- P.N. Mishra,Suresh Dhar Dwivedi,Vidya Kant Tripathi

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Ms. Nand Prabha Shukla,J.

(Per: Surya Prakash Kesarwani, J.)

1. Heard Sri K.P. Pathak, learned A.G.A. for the appellants and sri Suresh Dhar Dwivedi Vidya Kant, learned counsel for the accused-opposite parties.

2. Briefly stated, facts of the present case are that a First Information Report being Case Crime No.14/1983 dated 11.02.1983 under Section 302/324 I.P.C., P.S. S.M. North, Sub-District Puwaya, District Sahajahanpur, was lodged by the informant eyewitness PW-1 Avtar Singh, who is the son of the deceased Kundan Singh. As per FIR version, there arose a dispute of return of buffaloes purchased by the deceased from the accused Hardayal Singh and simple scuffle took place about three or four months before the date of incident, i.e. 11.02.1983. This resulted in enmity. When the deceased Kundan Singh along with the informant were cutting *barseem* in their agricultural field, the accused Hardayal Singh came at the place with *sooja* and started abusing and thereafter called his brothers - the accused Tirlok Singh, Balvinder Singh and also his relative Bhura. Tirlok Singh and Balwinder Singh were having swords and Bhura was having “Kanta”. They all started beating the deceased Kundan Singh and when the informant's uncle,

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Dileep Singh and his son Sardar and the informant's mother ran to protect the deceased, the accused Hardayal assaulted on the chest of the deceased, Tirlok and Balwinder assaulted with swords and Kanta and also assaulted on Dileep Singh, Sardar Singh and informant's mother and caused injuries to them and thereafter fled away. The time of incident was said to be 01:00 P.M. and FIR was registered at 09.15 P.M. Delay in lodging first information report was explained by the informant in the FIR itself. The I.O. proceeded on spot and took samples of blood lying on the earth and on leaves of wheat Exhibit (Ka-13 and Ka-14) and white *pagri* with blood stains (Ka-15). The injuries of the informant Avtar Singh was examined by the medical officer on 11.02.1983 before lodging of the FIR which were found to be simple caused by some sharp edged object. The injuries of Sardar Singh was examined by the medical officer on 11.02.1983, but the prosecution has not examined him during trial. The injuries of Dileep Singh was examined on 11.02.1983 by medical officer and he was examined by prosecution as PW-2. The mother of the informant, namely Surinder Kaur, also got herself medically examined on 14.02.1983 at 01:45 P.M. and her injury No.2 was found to be simple caused by a sharp edged object and injury No.1 and 3 were found caused by hard or blunt object. All the injuries were found to be simple. Autopsy of the deceased’s body was done and the following ante-mortem injuries were found:-

> *“(1) Penetrating wound with clean margins-2.5 c.m. x 1 c.m. x chest cavity deep at right anterior chest wall 6 c.m. from anterior at 3 o'clock in relation to right nipple, direction backwards.*
>
> *(2) Incised wound 8 c.m. x 2 c.m. x bone back left hand transversely placed coming upto web between thumb and index finger, cutting 3rd, 4th and 5th metacarpal bones.*
>
> *(3) Lacerated wound 2 c.m. x 1 c.m. x muscle left side scalp 8 c.m. above left ear.*
>
> *(4) Contusion 2 c.m. x 2 c.m. upper part pinna left ear.*
>
> *(5) Two incised wounds on one line, two c.m. apart, each 2 c.m. x 0.2 c.m. x skin, back right wrist.*
>
> *(6) Abrasion 2.5 c.m. Long x .6 c.m., top let shoulder.”*

3. The doctor conducting the autopsy found 500 m.l. blood in the chest

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cavity, right lung had collapsed, heart was empty, in the stomach there were three ounces of semi-digested food, in large intestine faecal matter was present, in small intestine, digested food was present. The medical officer opined that cause of death of the deceased is due to shock and haemorrhage caused by ante-mortem injuries. The post-mortem report was filed as Exhibit K-19.

4. The prosecution examined the informant Avtar Singh as PW-1, (eye-witness), Dileep Singh as PW-2 (eye-witness), Dr. Habib Ahmed as PW-3, who examined injuries of injured, Ram Swarup Verma SHO as PW-4, Man Singh - constable as PW-5, who carried the body for post-mortem, Dr. Satyapal as PW-6, who conducted autopsy. Sri Vishnu Dutt Agnihotri was examined as CW-1. From defence side, statement under Section 313 Cr.P.C. of accused Hardayal, Tirlok, Balvinder and Palvindar Singh @ Bhura Singh were recorded. One Mahendra Singh was examined as DW-1 and Ram Pal, Junior Clerk, was examined as DW-2. Considering the evidences, learned Session Judge, Sahajahpur, passed the impugned judgment and order dated 31.03.1984 in Session Trial No. 351 of 1983 (State Vs. Hardayal and three others) under Section 302/307 I.P.C., P.S. S.M. North and acquitted all the accused, namely Hardayal Singh, Tirlok, Balvinder Singh and Palvindar Singh @ Bhura Singh from the charges under Section 302/34 IPC and under Section 307 I.P.C. Aggrieved with this judgment and order, the present government appeal has been filed by the State.

5. Sri K.P. Pathak, Learned AGA, submits that the Learned Trial Court has arbitrarily and illegally acquitted the accused persons on account of minor contradiction in the FIR, inquest report, evidences of prosecution witnesses, whereas the prosecution has proved beyond reasonable doubt the motive, place of occurrence, common intention and object, injuries received by the deceased and injured witnesses. Thus, the prosecution case is consistent and minor contradictions cannot be said to be fatal for the prosecution.

6. Learned counsel for the accused persons - respondents submits that the

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injuries do not corroborate with the injury report and evidences. Prosecution has completely failed to prove motive. PW-1 and PW-2 are interested witnesses and their presence has been found to be completely doubtful. Reference in this regard may be had to paragraphs 30, 31, 32, 34, and 38 of the impugned judgment. It is settled law that appeal against acquittal can be interfered by the High Court only if the findings of the Trial Court are so perverse that no prudent person would believe on it. He further submits that *sooja* is a sharp edged pointed thing, not similar to *Barchha*. Neither any recovery of *sooja* was made, nor in the FIR, or in the statement under Section 161, informant witnesses have stated, at any stage, that the alleged *sooja* was double-edged. He further submits that it is only for the first time that PW-1 has made all these allegations in his evidence recorded before the court. He further submits that the alleged injured witnesses, after due consultation, lodged the FIR so as to falsely implicate the accused opposite parties, i.e. three real brothers and one relative. He further submits that the prosecution has completely failed to establish the guilt of the accused persons beyond reasonable doubt. He further submits that the scope of interference in appeal by the High Court is limited, and in the event, if two views are possible on a given set of evidences, the view taken by the trial court to acquit the accused has to be followed. He further submits that the findings recorded by the learned Trial Court are not perverse, rather the same are based on proper consideration of relevant evidences on record.

7. We have carefully considered the submissions of the learned counsels for the Parties and perused the record of the appeal.

8. We find that the learned Session Judge has acquitted the accused persons on the grounds that the three injuries of the deceased could not be explained by the prosecution, the medical evidence and the evidences of the prosecution witnesses are not corroborative, there is major contradiction between the medical report and the evidences of the alleged eyewitnesses, the PW-3 who examined the injured has opined that injuries are simple and may be a

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fabricated one. PW-3 doctor who examined the injuries of the injured is a partisan witness. The PW-1 and PW-2 are interested witnesses. The presence of PW-1 and PW-2 at the place of occurrence is doubtful and the conduct of the PW-3 is also doubtful. The injuries of the deceased could not be proved by the prosecution. The prosecution completely failed to prove that the injuries of the deceased were caused by *sooja*. The injuries which caused death of the deceased Kundan Singh, as found by the medical officer, have already been extracted above. There was one penetrated wound 2.5 cm x 1 cm, three incised wounds, one lacerated wound, one contusion and one abrasion. Undisputedly, *sooja* is made of a bar either round or square with pointed point over its one end.

9. The injury No.1 of Kundan Singh was caused by some weapon like spear or '*barchha*' having two sharp edges and width of more than two centimetres. The informant has specifically mentioned the weapon in the hands of Hardayal as *sooja*. It is for the first time that the PW-1 attempted to improve the case by stating that *sooja* was having two edges. Even in his statement under Section 161 Cr.P.C., the PW-1/ complainant Avtar Singh had not stated that *sooja* used by the accused Hardayal Singh was double edged. **Thus, it is evident that the injury No.1 found on the body of the deceased Kundan Singh could neither be explained nor it could be proved that it was caused by *sooja* by the accused Hardayal.**

10. Over the body of the deceased Kundan Singh, one lacerated wound 2 c.m. x 1 c.m. x muscle deep, one contusion 2 c.m. x 2 c.m. and one abrasion 2.5 c.m. X 0.6 c.m. were found. As per medical evidence, these injuries were caused to the deceased by some blunt object. The weapons shown in the hands of the accused persons are *sooja*, sword, and *kanta*. The prosecution has not alleged use of any blunt object by the accused persons to cause the said injury to the deceased. No explanation could be offered by the prosecution that by what weapon and in what manner the aforesaid injuries were received by the deceased. Non-explanation of these injuries leads to two possible conclusions.

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The **first** is that for causing the lacerated wound, the bar of *kanta* was used as a blunt object and the contusion and abrasion were caused by falling down. The **second** conclusion may be that these injuries were caused by some blunt object not seen by the complainant Avtar Singh PW-1 and **Dileep Singh PW-2**. From both the conclusions, one conclusion can very well be drawn that either PW-1 Avtar Singh and PW-2 Dileep Singh were not present at the place of occurrence or they concealed some material facts during trial. Both the circumstances are fatal to the prosecution case. The burden to explain occurrence and the injuries, was on the prosecution but the prosecution has failed to discharge its burden.

11. So far as the injuries of **Smt. Surinder Kaur** is concerned, as per injury report, she suffered simple injuries of one abrasion, one incised wound and one contusion. The prosecution had not examined the aforesaid Smt. Surinder Kaur as a prosecution witness, whose husband Kundan Singh deceased had also suffered contusion and abrasion. The prosecution had not examined Smt. Surinder Kaur, who could be the best person to explain her injuries. No explanation for non-examination of Surinder Kaur as a prosecution witness has been offered by the prosecution.

12. Medical examination of **Avtar Singh PW-1** was done before lodging of the FIR. In the GD Report No. 24, Exhibit Ka.7, it is not mentioned that the PW1 Avtar Singh was having some bandaged wound in his hand. Even in his statement under Section 161 Cr.P.C., the PW-1 Avtar Singh had not informed that he suffered injuries in the incident in question. Instead, Avtar Singh had stated in his statement under Section 161 Cr.P.C. that he escaped injury. The PW-1 Avtar Singh for the first time stated before the trial court that he had suffered injuries in the incident in question, which creates doubt upon the prosecution case.

13. The conduct of **PW-3 Dr. Habib Ahmed** is also doubtful. Perusal of the injury reports of the PW-1 Avtar Singh, PW-2 Dileep Singh and Sardar Singh shows that the PW-3 examined them on 11.02.1983 between 4 P.M. to 5 P.M.

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without any request made by any police officer. For medical examination of these persons, the PW-3 has chosen even not to inform the police of police station Banda about the aforesaid three injuries.

14. Thus, it is doubtful that these three persons had suffered injuries in the same occurrence in which the deceased Kundan Singh was murdered. As per injury report, Dileep Singh was brought by one Preetam Singh, but the identity of Preetam Singh was not disclosed before the trial court. **The PW-3 himself admitted that injuries suffered by the aforesaid three injured could be self-inflicted**, if they had tolerance. Thus, the medical report of the aforesaid three injured prepared by the PW-3 do not inspire confidence.

15. Considering the fact as discussed above, the presence of both eyewitnesses i.e. PW1 and PW2 at the place of occurrence appears to be doubtful. Both the aforesaid witnesses have stated that the deceased Kundan Singh was wearing white *pagri*, whereas the investigating officer in his inquest report found the pink *pagri* near the dead body. The PW-1 complainant - Avtar Singh also failed to disclose that who was driving the cart carrying food from 'langar' and whether the cart was being pulled by bullocks or buffaloes. If he was actually present at the place of occurrence, he could have disclosed that the cart was pulled by bullocks or buffaloes. He has not mentioned in the FIR that he was injured in the occurrence in question. PW-1 Avtar Singh has stated in his cross-examination, that the cart was of Gurdwara, but he does not know whether it was driven by bullocks or buffaloes. Thus, the view taken by the learned Trial Court doubting the presence of PW-1 and PW-2 at the place of occurrence is one possible view which a man of ordinary prudence can believe on the basis of evidences on record.

16. For all the reasons stated above, we find that the view taken by the learned Trial Court who disbelieved the presence of PW-1 at the place of occurrence, non-explanation of injuries of the deceased by the prosecution, evidence of PW-3, and the injuries of PW-1, PW-2 and Surinder Kaur, do not inspire confidence, to hold that the prosecution has failed to establish his case

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beyond doubt, is not perverse, and the conclusion so reached is based on evidences on record, which does not require any interference.

Principles Governing Appeal Against Acquittal:-

17. In the case of **Ravi Sharma vs. State, (2022) 8 SCC 536**, Hon'ble Supreme Court referred to several judgments and held that in appeal under Section 378 Cr.P.C., the presumption of innocence gathers strength before the Appellate Court. Therefore, 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. This court while exercising appellate jurisdiction can interfere with the findings recorded by the trial court, if findings of fact recorded by the trial court is perverse or 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. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Aruvelu v. State, [(2009) 10 SCC 206] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636])."**

18. In **Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10]**, Hon'ble

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Supreme Court held 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.

19. In the case of **Vijay Mohan Singh v. State of Karnataka, [(2019) 5 SCC 436] (Paras-31 and 31.1 to 31.4)**, Hon'ble Supreme Court considered the scope of Section 378, Cr.P.C. and referring to its earlier judgments in **Sambasivan v. State of Kerala, [(1998) 5 SCC 412], K. Ramakrishnan Unnithan v. State of Kerala, [(1999) 3 SCC 309], Atley v. State of U.P., [AIR 1955 SC 807], Wilayat Khan v. State of U.P. [AIR 1953 SC 122], K. Gopal Reddy v. State of A.P., [(1979) 1 SCC 355] and Umedbhai Jadavbhai v. State of Gujarat, [(1978) 1 SCC 228]** and held that once the appeal is entertained against the order of acquittal, the High Court was entitled to re-appreciate 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 but this rule will not be apply where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case or that the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable or that the trial court has rejected creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible. In such cases, it is the obvious duty of the High Court to interfere in the interest of justice and exercise its wide power of court of appeal to appreciate the evidences against the order of acquittal in such manner as it may appreciate evidences 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

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order of acquittal.

20. In the case of **Chandrappa v. State of Karnataka, [(2007) 4 SCC 415 (para-42)]**, Hon'ble Supreme Court considered large number of its earlier judgments and Section 378 Cr.P.C. and summarised the **principles regarding powers of the appellate court** while dealing with the appeal **against an order of acquittal**, as under:

> *"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, re-appreciate 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 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. In the case of **Dhanapal and others vs. State, [(2009) 10 SCC 401 (para-39)]**, Hon'ble Supreme Court has culled out five principles, as under:

> *"39. The following principles emerge from the cases above:*
>
> *1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court.*
>
> *The trial court's acquittal bolsters the presumption that he is innocent.*
>
> *2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*

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3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

22. In a recent judgment in **N. Vijayan Kumar vs. State of Tamilnadu, [(2021) 3 SCC 687],** Hon'ble Supreme Court held that under Section 378, Cr.PC, no differentiation should be made between an appeal against acquittal and the appeal against conviction.

23. In the case of **Hakeem Khan & Ors. v. State of Madhya Pradesh (2017) 5 SCC 719**, Hon'ble Supreme Court 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 has been further held that so long as the view of trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of trial court cannot be interdicted and the High court cannot supplant over the view of the trial court.

24. In **Government Appeal No.506 of 2019 (State of U.P. vs. Salim and 4 others, decided on 28.01.2020 (Para-11)**, a coordinate bench of this Court held, as under:

"11. While considering the scope of interference in an appeal or revision against acquittal, it has been held by the Supreme Court that if two views of the evidence are reasonable possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the trial Court. In the matter of State of Karnataka vs. K. Gopalkrishna reported in (2005) 9 SCC 291, the Hon'ble Supreme Court, while dealing with an appeal against acquittal, observed as under:

> *"In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evnidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an*

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order of acquittal."

25. Applying the principles summarized by Hon. Supreme Court in the case of **Chandrappa** (supra) and **Dhanapal** (supra) on the facts of the present case, we find that the learned trial court has taken a reasonable view which leads to acquittal. The view taken is not perverse. Therefore, we do not find any good reason to set aside or disturb the order of the acquittal passed by the session court.

26. For all the reasons aforestated, we do not find any merit in this government appeal, which is pending in this court from last about 40 years.

27. **The appeal** lacks merit and is, therefore, **dismissed**. Records be send back forthwith.

Order Date :- 07.08.2023
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