

**Reserved on 24.10.2024
Delivered on 08.11.2024**

Neutral Citation No. - 2024:AHC:175223-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 506 of 2024

Appellant :- State of U.P.

Respondent :- Bholu Qureshi And 5 Ors.

Counsel for Appellant :- G.A.

Counsel for Respondent :- Man Mohan Mishra

Hon'ble Rajiv Gupta,J.

Hon'ble Surendra Singh-I,J.

(Delivered by Hon'ble Rajiv Gupta, J)

1. The instant Government Appeal has been filed by the State of U.P. alongwith an application for grant of leave to appeal against the judgment and order dated 3.8.2018 passed by Addl. Sessions Judge, Court No. 6, Jhansi in Sessions Trial No. 315 of 2010 (State of U.P. Vs. Bholu Qureshi and 5 others) arising out of Case Crime No. 722 of 2008, under Sections 147, 148, 149, 307, 323, 353, 324, 504, 506, 342, 336 IPC and section 7 Criminal Law Amendment Act, P.S.-Babina, District-Jhansi, whereby the accused-opposite parties No. 1 to 6 have been acquitted.

2. We have heard Sri Ashish Tiwari, learned AGA appearing for the State-appellant, Sri Satya Narayan Vashishth and Sri Man Mohan Mishra, learned counsel for all the accused-opposite parties No. 1 to 6 and perused the material on record.

3. The prosecution story, in nutshell, as narrated in the F.I.R. lodged by S.I. Sri Arun Kant Singh, is that on 22.7.2008 at about 9.30 p.m. in the evening a telephonic information was received that in the sarafa bazaar, public has apprehended one person and are beating him, where large number of people have gathered. On the basis of said information, the first informant alongwith police party reached at the sarafa bazaar and found that the public at large had apprehended one Nikki son of Ashok Kumar Dhobi and is beating him however, the police party asked the crowd not to beat the said apprehended person, consequent thereto, the crowd got agitated and started hurling abuses. The police party somehow rescued the apprehended person Nikki and brought him at the police station, however, accused persons namely Sunil Agarwal, Bholu Qureshi, Mahesh @ Dharti Pakar, Rajesh Gupta @ Pappu, Ashu Gupta, Shahid Mansudi, Vinod Agarwal, Om Prakash Sahu, Deepak Ahirwar, Kalley Yadav alongwith 40-50 unknown persons armed with lathi, danda and illegal arms assembled together and blocked the national highway, consequent to which, large number of vehicles were stranded and started hurling abuses to the police administration causing great inconvenience to the passers by. S.O. Sri Ram Kumar Sharma (P.W.-1) tried to persuade the crowd to allow free flow of the traffic, however, they did not budge and started further hurling abuses and on being asked to refrain from hurling abuses, they got agitated and started assaulting the police personnels with lathi,

danda and use of illegal fire-arms, consequent thereto, there was a stampede and passers by started running helter skelter raising alarm, the people living in the vicinity were terrified creating a sense of fear and terrorism on their minds.

4. S.O. Ram Kumar Sharma approached the higher police authority and requested for sending additional force and when the additional force reached there, the crowd disbursed from the place of incident pelting stones. In the said pelting of stones, S.O. Ram Kumar Sharma, S.I. Prem Sagar, S.I.Virendra Singh, constable Imamuddin, Home-guard Veerpal Singh received injuries, who were taken for medical treatment. On the basis of said incident, the first information report was lodged by S.I. Arun Kant Singh, which was registered vide Case Crime No. 722 of 2008, under Sections 147, 148, 149, 307, 323, 353, 324, 504, 506, 342, 336 IPC and section 7 Criminal Law Amendment Act, P.S.- Babina, District- Jhansi.

5. After registration of the first information report, the G.D. report of the said incident was drawn and thereafter the victims were sent for medical examination and their medical examination report was submitted. The Investigating Officer thereafter investigated the matter and recorded the statement of the relevant witnesses and after concluding the investigation submitted the charge sheet against the six accused opposite parties. On the basis of said charge sheet, learned Magistrate had taken cognizance and

thereafter the case was committed to the court of session, where it was registered vide Sessions Trial No. 315 of 2010 (State of U.P. Vs. Bholu Qureshi and 5 others.

6. The trial court thereafter framed the charges against the 6 accused opposite parties under Sections 147, 148, 307/149, 333/149, 353/149, 504, 506, 336/149, 342/149, 323/149, 324/149 IPC and section 7 Criminal Law Amendment Act vide order dated 1.2.2011. The said charges were read out to the accused-opposite parties, who abjured the said charges, pleaded not guilty and claimed to be tried.

7. The prosecution, in order to prove the guilt against the accused-opposite parties, has produced Ram Kumar Sharma (P.W.-1), S.I. Prem Sagar (P.W.-2), Medical Officer Dr. Ram Naresh Soni (P.W.-3), who has medically examined the injured, Nikki (P.W.-4), who is said to have been assaulted by the crowd, Medical Officer Dr. Bharat Kankane (P.W.-5), who had given treatment to S.I. R.K. Sharma, Dr. R.R. Singh Raghvendra (P.W.-6), who had conducted X-ray and submitted the X-ray report and Deputy S.P. Ashwani Kumar Sinha (P.W.-7) being the Investigating Officer.

8. After recording the testimonies of the prosecution witnesses, the statement of accused-opposite parties under Section 313 was recorded, wherein they have denied the prosecution story and has categorically stated that they have neither attacked the police

personnels nor resorted to any firing nor caused any injury to any of the police personnels. They have further categorically stated that accused-opposite parties are the business-men and are members of the vyapar mandal. They have raised their voice against illegal act and conduct by the police personnels, as such they have been falsely implicated by concocting a false case. The victim Nikki is a washerman engaged by the police personnels and he, in his testimony, has unravelled the truth against the police personnels and in the backdrop of the said circumstance, they have been falsely implicated.

9. Perusal of the record shows that the first information report has been lodged by S.I. Arun Kant Singh, who is said to have visited the place of incident after getting telephonic information about the incident in question and on the basis of being the witness of the incident, had lodged the first information report, however, during the course of trial, he has not been produced as a witness and has been deliberately withheld, which creates a serious dent in the prosecution story and makes the prosecution story wholly unreliable.

10. It is further germane to point out here that Ram Kumar Sharma (P.W.-1) who is also a member of police party at the time of incident, though, in his examination-in-chief has corroborated the prosecution story but on being cross examined, he has categorically stated that he does not remember that Nikki lodged any report at

the police station for assault being made by the crowd and after receiving injuries he had left the police station for his treatment. He has further stated that in G.D. Report, there is no mention of his injuries and after three days of the incident, he reached the police station. He has further stated that no person was arrested by him, who was accused of assaulting the police personnels.

11. He further stated that he does not remember the name of persons, who had assaulted Nikki. It is also stated by him that he cannot disclose the name of the persons, who had assaulted Nikki, which can only be disclosed by the Investigating Officer as he has not investigated the case. He further stated that as many as 40-50 persons in the crowd whose numbers further swelled. He cannot state as to who actually caused the injuries by lathi, danda nor could disclose if any slippers or shoes were found at the place of incident. He after receiving injuries left the place of incident and was not present there. He further stated that after 15 days of the incident, his statement was recorded. He, in his statement, has categorically disclosed that 40-50 persons, who were said to be involved in the incident, though could be identified by face but not by their names.

12. S.I. Prem Shanker (P.W-2) though reiterated the names of the accused persons, however, he, in his testimony, has categorically stated that he does not know the names of the unknown persons nor

identification parade was held.

13. Nikki (P.W.-4) is infact the star witness of the present incident and is said to have been assaulted by the accused-opposite parties, however, he in his testimony, has categorically stated that he was not assaulted by the crowd. The police personnels had reached the place of incident, who were 6-7 in numbers and had brought him at the police station. He further denied the fact that at the relevant time the road was blocked. The said witness has also denied his thumb impression on his injury report. He further categorically stated that the accused-opposite parties, who are present in the court, have not beaten him. He stayed in the police station for about 15 minutes and the crowd has not beaten him. He further testified that he could not identify any of the accused-opposite parties Sunil Agarwal, Bholu Qureshi, Mahesh @ Dharti Pakar, Rajesh Gupta @ Pappu, Ashu Gupta, Shahid Mansudi, Vinod Agarwal, Om Prakash Sahu, Deepak Ahirwar, Kalley Yadav. Since he has not supported the prosecution story, as such, he has been declared hostile.

14. During cross examination too he has not supported the prosecution story at all. Thus, the prosecution story and the manner, in which, the incident is said to have taken place, stands falsified. We further find that the evidence led by the prosecution miserably fails to prove its case against the accused-opposite parties. Even three defence witnesses have

categorically stated that the incident has not taken place in the manner as alleged, which creates a serious dent in the prosecution story.

15. Thus, from the testimony of the witnesses, we find that the prosecution has miserably failed to prove the factum as to how the injuries were caused to the victim and who infact, caused the said injuries. Even the genesis of the prosecution as stated in the FIR has not been proved and the star witness Nikki has not supported the prosecution story at all, which creates a serious dent in the prosecution story and makes it wholly unreliable and not worth credence.

16. The trial court after analysing the entire oral and documentary evidence on record found that the prosecution has failed to prove its case beyond reasonable doubt and thus recorded the finding of acquittal in favour of the accused-opposite parties.

17. The learned State Counsel vehemently submitted that the trial court has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of acquittal in favour of the accused-opposite parties. He has further submitted that the injury report submitted by the police personnel are on record and have been proved by the doctor, however, the trial court ignored the consistency and reliability of prosecution evidence and on flimsy grounds in an arbitrary manner acquitted the accused opposite parties.

18. Per contra, learned counsel for the accused opposite parties opposed the application for leave to appeal and submitted that the prosecution has miserably failed to prove its case against the accused-opposite parties. The star witness of the prosecution Nikki, who is said to have been assaulted, consequent to which, the entire incident is said to have taken place, has not supported the prosecution story at all and has completely denied the prosecution story and has been declared hostile. He has further submitted that if the prosecution evidence is taken into entirety, the reliability of prosecution witnesses stands shattered during their cross-examination and the trial court committed no error while appreciating the evidence rendered by the prosecution as well as the defence and the material contradictions in the evidence were clearly pointed out. The contradictions and inconsistencies have been elaborately discussed by the learned trial court.

19. Thus, in the facts and circumstances, we find that S.I. Arun Kant Singh (P.W.-1), who is the first informant of the case and alleged to be present at the time of incident, has not been examined and has been deliberately withheld, which creates a serious dent in the prosecution story. Even in the statement of P.W.-1, there are serious contradictions and inconsistencies in his cross examination, which renders the prosecution story wholly unreliable.

20. While going through the impugned judgment, we find that the trial court has elaborately discussed the

oral and documentary evidence on record and reached the right conclusion and committed no mistake in recording the acquittal of the accused persons and the impugned judgment is based on the theory that the prosecution case 'must be proved beyond reasonable doubts' and not merely 'may be proved' which is a trite law and we concur on the same.

21. Thus, we find that the learned trial Court after analyzing and scrutinizing the evidence on record recorded the acquittal of the accused persons and has given logical and plausible findings in the judgement and has rightly concluded that the prosecution has miserably failed to prove its case beyond reasonable doubt. The judgment and order of the trial court under judicious scrutiny is just, proper and legal, which does not call for any interference by this Court. We are of the considered view that the reasoning adopted by the learned trial Court is free from any legal or factual error, which needs no interference by us in exercise of power under Section 378 CrPC. Analysing the finding recorded by the trial Court, we find that no illegality, infirmity or perversity was found therein.

22. Now coming to the scope of reversal of acquittal in Govt. Appeal, we may say that the Hon'ble Apex Court in several of its decisions has laid down the principles governing the scope of interference by the High court in an appeal filed by that state for challenging the acquittal of the accused recorded by the trial court. This Court in the case of **Rajesh Prasad v.**

State of Bihar and Another encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“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 Criminal Procedure Code, 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.”

23. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka*** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further

strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

24. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- a) That the judgment of acquittal suffers from patent perversity;
- b) That the same is based on a misreading/omission to consider material evidence on record;
- c) That no two reasonable views are possible and

only the view consistent with the guilt of the accused is possible from the evidence available on record.

25. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

26. In the light of above settled proposition of law when we go through the impugned judgment and order, we find that the trial court had given cogent and convincing reasons for recording the finding of acquittal against the accused-respondents and that the acquittal of the accused-respondents is plausible and justifiable view emanating from the discussion of the evidence available on record and does not suffer from any infirmity or perversity.

27. In the backdrop of the said facts and circumstances, we are of the opinion that the impugned judgment and order passed by the trial court is just, proper and legal and do not call for any interference by this Court.

28. In view of the above, the application for grant of leave to appeal in the instant case is wholly misconceived and is liable to be outrightly rejected. Accordingly, the prayer for grant of leave to appeal is refused and the application is rejected. Consequently, the instant government appeal, being devoid of merits, is also **dismissed**.

29. Let a certified copy of this judgment and order be sent to the court concerned alongwith trial court record for information and necessary compliance.

Order Date :- 08.11.2024

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