

State Of Up vs Amir S/O Sahid on 4 February, 2025

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:15343-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 884 of 2024

Appellant :- State of U.P.

Respondent :- Amir S/O Sahid

Counsel for Appellant :- Ashutosh Kumar Sand, G.N. Kanojia

Counsel for the Respondent : -

Hon'ble Siddharth,J.

Hon'ble Praveen Kumar Giri,J.

Order on Criminal Misc. (Leave to Appeal) Application

1. Heard Mr. G.N. Kanojia, learned A.G.A. for the appellant and perused the record.

2. The above noted government appeal is filed against the judgment and order of acquittal dated 31.07.2024 passed by Additional Sessions Judge-IX, District- Meerut, in Sessions Trial Nos. 216 of 2019 and 217 of 2019 (State of U.P. vs. Amir s/o Sahid), arising out of Case Crime No. 13 of 2019, under Section 302 of IPC and Case Crime No. 14 of 2019 under Section 25 of the Arms Act, Police Station- Falawada, District - Meerut.

3. The prosecution story is that informant-Pushpendra Singh (PW-2) had given a written report at concerned police station stating therein that his nephew (bhanja), Ankur, was a Constable and was posted at Police Station - Falawada, District - Meerut. On 11.01.2019, the informant received a phone call from the police that his nephew had been murdered by some unknown person and, thereafter, when the informant reached there, he found that the police was trying to get the postmortem of the deceased done. The informant saw that there were a firearm injury on the stomach and temple (kanpati) of the deceased. On inquiry, the informant came to know that in the night of incident the deceased was on duty with Deewan Rajendra Singh. After the postmortem, the dead body of the deceased was taken to his village and cremation was done.

4. On the basis of the aforesaid complaint, the F.I.R. was lodged against unknown person being Case Crime No. 13 of 2019, under Section 302 of IPC and on the basis of recovery of country made pistol, another F.I.R. being Case Crime No. 14 of 2019 under Section 25 of the Arms Act, was registered at Police Station- Falawada, District - Meerut.

5. The investigation was done by the Investigating Officer. Investigating Officer inspected the place of occurrence, took statements of witnesses and prepared the site plan. On conclusion of the investigation, charge-sheet was submitted against accused-respondent, Amir, before the Court of C.J.M., Meerut, and, thereafter, Magistrate took cognizance upon the said Charge sheet and committed the matter to Court of Sessions, Meerut, on 29.05.2019.

6. Thereafter, accused appeared before the Court on 29.05.2019 and charge was framed against him under Section 302 of I.P.C. and Section 25 of the Arms Act to which the accused-respondent pleaded not guilty and sought trial.

7. The prosecution, in order to prove its case, has examined as many as 11 witnesses namely, PW-1, Raju Shaini, PW-2, Pushpendra Singh; PW-3, Anuj Kumar; PW-4, Ramveer; PW-5, Ramlakhan; PW-6, Rajendra Kumar; PW-7, Dr. Mithun Ghosh; PW-8, Vijaypal; PW-9, Rameshwar Singh; PW-10, Kartar Singh; PW-11, Vinay Kumar.

8. After prosecution evidence was completed, the accused was put to question under Section 313 of Cr.P.C. wherein the appellant had stated that he was falsely implicated, the witnesses which were produced had given false statements under the influence of police personnel and he had been falsely implicated in the present case.

9. At the end of the trial, after hearing the arguments on behalf of prosecution and the defence the Trial Court has acquitted the accused-appellants holding that the prosecution has failed to prove its case beyond all reasonable doubts.

10. Learned counsel for the appellant has submitted that trial court has misread the evidence on record and wrongly acquitted the respondent.

11. Before we embark on testimony and the judgment of the Trial Court, the principle for interfering in appeal against acquittal would require to be discussed.

12. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. in *State of M.P. Vs. Sharad Goswami*, (2021) 17 SCC 783; *State of Rajasthan Vs. Shera Ram*, (2012) 1 SCC 602, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793.

13. The Supreme Court in the case of *Ramesh Babulal Doshi Vs. State of Gujarat*, (1996) 9 SCC 225 has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

14. The Supreme Court in the case of *Sadhu Saran Singh Vs. State of U.P.*, (2016) 4 SCC 357 has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

15. The Supreme Court in the case *Basheera Begam Vs. Mohd. Ibrahim*, (2020) 11 SCC 174 has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of

a judgment and other of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

16. The Supreme Court in the case of Kali Ram Vs. State of H.P., (1973) 2 SCC 808 has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

17. The Supreme Court again examined in State of Odisha v. Banabihari Mohapatra & Ors, (2021) 15 SCC 268 the effect of the probability of two views in cases of appeal against acquittal and held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused, and the other to his innocence, the view which is favourable to the accused should be adopted.

18. The Supreme Court in Sujit Biswas v. State of Assam, (2013) 12 SCC 406 has reiterated the position that suspicion, however strong, cannot replace proof. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt.

19. In the background of the law discussed herein above, we will examine the trial court's findings and evidence adduced during the trial by the witnesses to test the legality and validity of the impugned order.

20. We have perused the depositions of prosecution witnesses, documentary evidence supporting ocular versions and arguments advanced by learned counsel for the appellant. The prosecution witnesses have not supported the prosecution case. Rather the prosecution has failed to produce any independent eyewitness who can support the prosecution case and, therefore, we are unable to accept the submissions of the State counsel in view of the judgments of the Apex Court which lay down the criteria for considering the appeals against acquittal. While going through the record, it is very clear that the Trial Court has given a categorical finding that the evidence is so scanty that the accused cannot be convicted and punished for the offence for which he was charged. The Trial Court has rightly not relied upon the statements of prosecution witnesses as they were not the independent witness and have not even witnessed the incident. The Trial Court has rightly held that no witness appeared before the Court to prove the last scene theory and the chain of circumstances is incomplete. The factual scenario in the present case will not permit us to take a different view than that taken by the Trial Court. In that view of the matter, we are unable to satisfy ourselves with

the submission of learned A.G.A. for the appellant-State and we concur with the findings of the Trial Court.

21. The judgment of the trial court is well considered and learned counsel for the appellant is unable to point out any perversity in the findings recorded by the trial court.

22. In view of the above, application seeking leave to appeal is rejected.

Order on Government Appeal No. 884 of 2024 In view of the fact that application seeking leave to appeal has been rejected, the government appeal stands dismissed.

Let Trial Court's Record along with a copy of this judgment be sent to the trial court within two weeks.

Order Date :- 4.2.2025 DKS