

State Of U.P. vs Rakesh And 4 Others on 31 January, 2025

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14503-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 253 of 2023

Appellant :- State of U.P.

Respondent :- Rakesh And 4 Others

Counsel for Appellant :- Shiv Kumar Pal

Counsel for Respondent :- Saurabh Yadav

Hon'ble Siddharth,J.

Hon'ble Praveen Kumar Giri,J.

Order on Criminal Misc. (Leave to Appeal) Application No. of 2024

1. Heard Sri Prem Shankar Prasad, learned AGA for the State-appellant and perused the material on record.

2. The above noted leave to appeal application has been filed praying for grant of leave to the appellant to prefer appeal against the judgement and order of acquittal dated 12.1.2023 passed by First Additional Sessions Judge, Budaun, in Sessions Trial No.678 of 2015 (State Vs. Rakesh and others) connected with Sessions Trial No.679 of 2015 (State Vs. Rakesh).

3. The accused-respondent nos.4 and 5 have been acquitted of charges Under Sections 302/34, 506 of I.P.C. and accused-respondent nos. 1, 2 and 3 have been acquitted from the charge under Section 506 of I.P.C., whereas accused-respondent no. 1 has also been acquitted of the charge under Section 25 of Arms Act by Sri Udai Bhan Singh, learned First Additional Sessions Judge, Badaun by his judgment and order dated 12.01.2023 in Sessions Trial No. 678 of 2015 (State Versus Rakesh and others) connected with Sessions Trial No.679 of 2015 (State Versus Rakesh)..

4. The prosecution story in brief is that the complainant has given a written report at Police Station concerned stating therein that the complainant is uneducated lady. On 21.08.2015 at about 8 hours her son, Jasvir, was taken away by the accused, Rakesh and thereafter at about 9 hours she heard noise of firing. Thereafter, complainant and her husband, Badam Singh, and Rajesh, Danvir and Rajendra had gone to search the son of complainant. They met accused-respondents armed with their respective weapons and they informed that they have committed the murder of her son, Jasvir. They also extended threats of suffering dire consequences to them. Thereafter dead body of deceased son of the complainant was found in front of house of one Rakesh. On his chest, fire arm injuries were found. On the basis of the aforesaid the first information report, present case was registered and during the course of investigation the accused, Rakesh, was arrested and from his possession Tamancha of 315 Bore and 312 Bore were recovered, regarding which separate first information report was registered and the Investigating Officer of both the cases after due investigation submitted charge-sheets separately.

5. Trial court framed charges against the respondent which he denied and sought trial.

5A. The first information report of present case was registered against the accused-respondents and the Investigating Officer after due investigation submitted charge-sheet only against accused-respondent nos. 1, 2 and 3, on the basis of which, the trial proceeded and during trial on the basis of application moved under Section 319 Cr.P.C. the accused-respondent nos. 4 and 5 were summoned to face the trial.

6. The prosecution in order to prove its case has examined PW-1, Chameli Devi (complainant of the case); PW-2, Veerpal; PW-3, Rajesh; PW-4, Dr. Harpal Singh; PW-5, S.I. Har Singh Pal Sub-Inspector; PW-6, Ramayan Prasad, retired HCP; PW-7, Kashmir Singh Yadav, Inspector (Investigating Officer); PW-8, Udaibhan Singh, retired Inspector (Investigating Officer of under Section 3/25 of Arms Act).

7. Learned counsel for the appellant has submitted that trial court ignoring the evidence on record acquitted the accused- respondent nos. 4 & 5 of all charges; respondent nos. 1, 2 & 3 of charges under Section 506 IPC and respondent no.1 of charges under Section 25 Arms Act, holding that the prosecution has failed to prove its case beyond all reasonable doubt.

8. 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.

9. 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."

10. 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.

11. 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 order 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.

12. 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."

13. 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.

14. 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.

15. 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.

16. We have heard learned counsel for the appellant and perused the material on record. We find that PW-1 herself has not supported the allegations made against respondent nos. 4 & 5 in her statement before the court, hence trial court has rightly acquitted them. Regarding the findings of the trial court regarding respondent nos. 1, 2 & 3 also, there is no perversity pointed out as to how offence under Section 506 IPC was proved against them. Finally the findings of the trial court regarding implication of respondent no.1 under Section 25 Arms Act, this Court finds that recovery of arms was made from open place and the ballistic report too did not support the prosecution case.

17. Learned counsel for the appellant could not point out any perversity in the findings recorded by the trial court. The trial court's judgement is a well merited one, this Court need not re-appreciate the evidence.

18. This leave to appeal application is rejected.

Order on Government Appeal Since leave to appeal application is rejected, therefore, the above noted government appeal is, hereby, dismissed.

Let the record of the trial court be returned and this judgement to be notified to the trial court, within two week Order Date :- 31.1.2025 Ruchi Agrahari (Praveen Kumar Giri,J.) (Siddharth, J.)