Manoj Rameshlal Chhabriya vs Mahesh Prakash Ahuja on 27 February, 2025

1

2025 INSC 282

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1048/2017

MANOJ RAMESHLAL CHHABRIYA

VERSUS

MAHESH PRAKASH AHUJA & ANR.

O R D E R

1. This appeal is at the instance of the original first informant brother of the deceased, seeking to challenge the order passed by the High Court of Judicature at Bombay in Criminal Application No.207 of 2013, dated 22 nd of August 2013, by which the High Court in an appeal filed by the State against the judgment and order of acquittal, declined to grant leave under sub-section (3) of Section 378 of the Criminal Procedure Code (hereinafter referred to as, “Cr.P.C.”).

2. We are conscious of the fact that the acquittal appeal was at the instance of the State. As leave came to be declined, the State could have come before us by way of an appeal. However, the State has though fit not to question the order passed by the High Court, declining to grant leave and in such circumstances, it is the brother of the deceased (original first informant) who has thought fit to question the order passed by the High Court.

3. It appears from the materials on record that the respondent no.1 herein, was put to trial in the Court of the Additional Sessions Judge, Kalyan in Sessions Case No.132 of 2011 on the charge of having committed murder of his wife i.e. the deceased. It is the case of the prosecution that on the date of the incident i.e., 02.04.2011 India was playing World Cup final against Sri Lanka in Mumbai. After India won the match and the World Cup, the respondent accused started celebrating by firing shots in the air from his licensed pistol. Later, he is alleged to have fired a shot at his wife. The wife succumbed to the firearm injuries. Their fifteen years old son was an eyewitness to the incident.

4. The Trial Court acquitted the respondent no.1 of the charge of murder. The State preferred acquittal appeal before the High Court. The High Court thought fit, not to grant leave to appeal. The High Court has observed thus:-

> "6. PW.3 - Umesh (son of the deceased), the sole witness with regard to the last seen, was declared hostile as he did not support the prosecution case. PW.3 - Umesh has in his evidence stated, that he was informed by his mother and sister, that the Respondent/accused had gone out of station for show room work, since the morning of 2nd April, 2011. The said witness has denied the portions marked "A to C" i.e. portion 'A' "after India winning the Cricket match, my father took out pistol from the cupboard, put bullets in it, fired in air by going down stairs"; portion 'B' i.e. "my father accused Mahesh again came to house and started watching Awards Programme on T.V.; portion 'C', i.e. "that there was quarrel between my mother and father in the bed room, after some time heard noise of firing bullet and my father came from the bedroom in frightened condition. At that time his shirt was soaked with blood and there was blood on his hand". It has come in the evidence of PW.3-Umesh, that he had seen one person passing near the staircase when he was going towards the lift and when he went to his house he saw that his mother was bleeding. He has further stated, that when police came home, they had taken with them a jean pant and a shirt from the balcony which was exclusively attached to the bedroom where the incident took place. In his cross-examination, he has stated, that Gladish Anthony was his teacher who use to come to their house for teaching him and that she was about 55 years of age. It is pertinent to note that PW.3 – Umesh's statement came to be recorded on 8th April, 2011 where as the incident had occurred on the intervening night of 2nd and 3rd April, 2011. In fact PW.9 PSI – Ghuge has admitted in his evidence that when he went to the spot immediately after the incident PW.3 – Umesh was present and that he had not recorded the statement of any person in the ADR enquiry.
>
> 7. In the light of the evidence, that had come on record, the Trial Court rightly discarded his evidence and put his evidence in the category of neither fully reliable nor wholly unreliable.

Although the prosecution examined PW.1- Manoj i.e. brother of the deceased and PW.4 – Dhanwanti Chhabriya, mother of the deceased, the Trial Court found that there were several inconsistencies, material omissions and improvements in their evidence and therefore did not think it fit to reply on their testimony, regarding alleged disclosures made by PW.3 – Umesh, to them regarding the presence of the Respondent at the relevant time with the deceased in the bedroom. The Trial Court also found that there was a delay of 3 to 4 days in recording the statement of PW.4-Dhanwanti which is another factor which weighed while evaluating her evidence.

8. The Trial Court did not rely on the testimony of PW.1-Manoj for the following reasons:-i) that the delay in lodging the FIR was not explained by PW.1- Manoj, though the police were present at the scene of incident. It is pertinent to note, that PW.1 – Manoj did not disclose anything to the police

on the spot; despite the alleged disclosures made by PW.3- Umesh to PW.1-Manoj soon after the incident, before the police arrived; and despite the fact that he was present at the time of the spot-cum-inquest panchnama prepared by PW.9-PSI Ghuge. Infact, there is reference of suicide having been committed by the deceased Reena/Bhavana, in the spot cum inquest panchnama, which was recorded in his presence and within the hearing of PW.1-Manoj. In view of the said discrepancies, the Trial Court rightly found the evidence of PW.1 – Manoj, unworthy of credence. The Trial Court also found the evidence of PW.4- Dhanwanti as unsafe to rely upon as there were several material omissions with regard to the disclosures made by PW.3 - Umesh to her, with regard to the incident. The Trial Court observed, that the onus was on the prosecution to lead such evidence, which would show that the Respondent was at his residence at the time of the incident, so as to attract the provisions of Section 106 of the Evidence Act. It was further observed that the evidence on record showed, that in addition to the Respondent, respondent's father, his wife and brothers of the Respondent and their wives were also residing in the same bungalow and in the absence of any evidence to show that they were not having access to the house of the Respondent, situated on the third floor, Section 106 of the Evidence Act could not be invoked.

9. The Trial Court, has therefore, rightly come to the conclusion, that there was no evidence of last seen against the evidence of PW.9-PSI Ghuge, that ADR no.24 of 2011 came to be registered, on the basis of information received from one Rajkumar Govindram Ahuja, who however has not been examined by the prosecution. It also appears from the evidence of PW.9-PSI Ghuge, that the Control Room had received a call regarding suicide by a girl in the Ahuja Bungalow on 3rd April, 2011 at 12.45 a.m. The prosecution had also examined PW.6-Dattatraya Ware, a watchman at the Bungalow at the relevant time. The said witness also has not supported the prosecution and has been declared hostile with regard to the evidence of last seen. The Trial Court, therefore, rightly concluded that in the absence of any reliable evidence, the prosecution had failed to prove the last seen theory. The prosecution had also failed to prove as to when the deceased had her last meal and that in the absence of any evidence to show that the deceased was last seen alive in the company of the respondent, found it difficult to come to a conclusion that it was the respondent who was the author of the crime.

10. The Trial Court has also rightly disbelieved the evidence of recovery of the blood stained clothes of the Respondent, bullet and license of pistol at the instance of the Respondent under Section 27 of the Evidence Act for the following reasons : - i) PW.5 – Nasir Khan, the panch to the recovery did not support the prosecution and had turned hostile; (ii) that the clothes of the Respondent were found in the balcony adjacent to the bedroom. It had come in the evidence of PW9 – PSI Ghuge that he had drawn the spot-cum-inquest panchanama on 3rd April, 2011 and had taken an exhaustive search of the bedroom and therefore it was incomprehensible that PW.11 – P1 Dilip Patil could not see or find the incriminating articles in the house, till the alleged disclosure statement was made by the Respondent on 8th April, 2011; (iii) that the three buttons form the shirt allegedly recovered were found to have been missing, however no broken buttons were found, at the time of the spot-cum-inquest panchnama, which is at Exhibit-

78. iv) that it was highly improbable, that the Respondent would after committing the murder of his wife keep the blood stained clothes on a shoe rack in the balcony, adjacent to the room. v) although

the C.A report shows that the clothes had blood stains of the deceased, the prosecution had failed to prove that the articles were kept in a sealed condition and were not tampered with, till they were either identified or sent to the Chemical Analyzer.

11. The Trial Court rightly held, that although the dog squad and finger print expert were called and the report of the dog squad and the finger print expert were received, the same were not produced by the prosecution and therefore drew an adverse inference as against the prosecution. The Trial Court with regard to abscondence of the Respondent has observed that the Respondent had stated in his 313 statement that he had gone to Nashik, Sinnar in connection with his business and after coming to know of the incident in question, was frightened and surrendered to the police only on 5th April, 2011. The Trial Court rightly observed, that although falsity of the defence is also an incriminating circumstance, the mere act of abscondence, alone does not necessarily lead to a conclusion regarding the guilt of an accused as even an innocent person may become panic stricken and try to evade arrest, when suspected wrongly of having committed a grave crime.

12. It is pertinent to note that PW.7 Chandrashekhar, Manager of the Ramkrishna Restaurant and Lodge was examined by the prosecution to prove that the respondent stayed at the lodge on 3rd April, 2011. However, the said witness did not support the prosecution and was declared hostile. The said witness did not identify the respondent/accused as having stayed in the lodge. The Trial Court, therefore, in the absence of any evidence to show that the respondent stayed in the lodge discarded the said evidence. The prosecution had also failed to examine the respondent's friend who allegedly stayed with him in the said lodge and also failed to prove that the entries in the lodge register (Article-14) were written by the respondent. The prosecution had not even taken the opinion of the handwriting expert, on the entries in the lodge register.

13. With regard to motive, that the Respondent was allegedly having an affair with one lady, Gladish Anthony, the trial court observed that the prosecution had failed to adduce any evidence with regard to the same. An omission regarding the name of Gladish Anthony was also brought on record, in the FIR lodged by PW.1-Manoj and the evidence of PW.1-Manoj. The Trial Court found that the evidence of PW.1-Manoj and PW.4 – Dhanwanti was contrary and inconsistent with each other on the point of the alleged illicit relationship of the Respondent with Gladish and therefore the said evidence of motive has rightly been rejected by the Trial Court.

14. It appears, that the medical evidence and ballistic evidence with respect to firing of a bullet on the deceased has been accepted and the Trial Court has come to a conclusion that the two bullets were fired from the licensed pistol out of which one was lodged in the body of Reena/Bhavana.

15. It appears that the Medical Officer, PW.10-Dr. Khandare has in his cross-examination, admitted the possibility of both suicidal and accidental death and in the postmortem notes (Exhibit-83) has opined that it was an unnatural death. The Trial Court concluded after considering the medical and ballistic evidence, that the prosecution had proved that Reena/Bhavana died a homicidal death. However, considering the evidence on record, the Trial Court has rightly held that the prosecution had failed to prove the chain of circumstances to show that it was the Respondent and Respondent alone who was responsible for the death of his wife Bhavana and therefore rightly extended the

benefit of doubt to the Respondent.

16. Having gone through the Judgment and the evidence with the assistance of learned APP, we find that the view taken by the trial court is a possible view, taken on the basis of the evidence on record. We do not notice any perversity in the reasoning of the trial court, to warrant any interference in this Appeal against Acquittal.

17. Consequently, this application fails and is dismissed. Leave refused."

5. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

6. We have heard Mr. Gaurav Agrawal, the learned Senior Counsel appearing for the appellant and Mr. R. Basant learned Senior Counsel appearing for the respondent No.1.

7. The question as to how the application for grant of leave to appeal filed under Section 378(3) of the Cr.P.C.

should be decided by the High Court and what are the parameters which the High Court should keep in mind remains no longer res integra. This issue was examined by this Court in State of Maharashtra v. Sujay Mangesh Poyarekar reported in (2008) 9 SCC 475. C.K. Thakker, J. speaking for the Bench held in paras 19, 20, 21 and 24 respectively as under:

> "19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub- section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.
>
> 20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.
>
> 21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted.

xxx xxx xxx

> 24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither.

In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave."

8. In Sita Ram v. State of U.P. reported in (1979) 2 SCC 656, this Court held that :

> "31. ... A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the [concept] that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re- examination of the facts and the law is made an integral part of fundamental fairness or procedure."

9. We are aware and mindful that the above observations were made in connection with an appeal at the instance of the accused. But the principle underlying the above rule lies in the doctrine of human fallibility that "Men are fallible" and "Judges are also men". It is keeping in view the said object that the principle has to be understood and applied. Now, every crime is considered as an offence against the society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed. (See: Sujay Mangesh (supra)

10. We are not getting into the debate whether the impugned order could have been questioned by the brother of the deceased (original first informant) or not. Prima facie, we are not convinced with the reasonings assigned by the High Court while declining to grant leave against the judgment and order of acquittal passed by the Trial Court. We are conscious of the fact that the entire case hinges on circumstantial evidence. We are also conscious of the fact that one of the prime witnesses, i.e., the son of the deceased aged 15 years at the relevant point of time, turned hostile.

11. The High Court seems to have taken the view that it would be futile, granting leave as it didn't notice any perversity in the reasoning of the Trial Court.

12. We are of the view that at the stage of considering grant of leave under sub-section (3) of Section 378 of the Cr.P.C., a prima facie case should be looked into by the High Court, of course, not ignoring the materials on record.

13. After hearing Mr. Gaurav Agrawal, the learned senior counsel appearing for the appellant and Mr. R. Basant, the learned senior counsel appearing for the respondent no.1, we have reached the conclusion that at least, the High Court should have granted leave and thereafter the acquittal appeal, on its own merits. We also heard Mr. Sanjay Kharde, the learned Senior Counsel appearing for the State.

14. Without saying anything further as any further observations may cause prejudice to either side, we grant leave to appeal and remit the matter to the High Court for consideration of the criminal appeal on its own merits, in accordance with law. The criminal appeal shall now be registered accordingly.

15. We clarify that the criminal appeal against the judgment and order of acquittal, shall be decided on its own merits without being influenced in any manner by any of the observations made by this Court in this order.

16. We also permit the appellant herein (original first informant) if at all he intends, to file appeal under the proviso to Section 372 of the CrPC. If any such appeal is filed, the same may be clubbed with the State's appeal and both the appeals shall be heard together in accordance with law.

17. The appeal is disposed of, as aforesaid.

18. Pending application(s), if any, shall stand disposed of.

.……J. (J.B. PARDIWALA) .……J. (R. MAHADEVAN) NEW DELHI;

FEBRUARY 27, 2025.