

State Vs. Ravi@ Ravinder and anr

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Court : Delhi

Decided On : Jan-02-2014

Judge : Kailash Gambhir

Appellant : State

Respondent : Ravi@ Ravinder and anr

Advocate for Def. : Mr. Deepak Vohra

Advocate for Pet/Ap. : Ms. Richa Kapoor

Judgement :

\$~1 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.L.P. 191/2012 & Crl. M.A. No.4383/2012 (delay) STATE Petitioner Through: Ms. Richa Kapoor, Additional Public Prosecutor for the State with Sub-Inspector Sandeep, Police Station Vasant Kunj (North), Delhi versus RAVI@ RAVINDER & ANR Respondents Through: Mr. Deepak Vohra, Advocate for respondent No.1 & 2. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 02.01.2014 KAILASH GAMBHIR, J.

1. By this petition filed under Section 378(1) of the Code Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.), the petitioner seeks grant of criminal

leave to appeal to challenge the judgment dated 26.08.2011, passed by the learned Additional Session Judge-02 (South), Saket Courts, New Delhi, thereby acquitting the accused persons of the charge framed against them under Section 307 of Indian Penal Code, 1860.

2. The facts and circumstances which gave rise to the registration of the case against the accused person, as per prosecution, are that:

One PW-1, Jogender runs a mobile shop in the part of his house. On 02/12/2007, at about 11 p.m., while he was working in his shop, he heard the noise of a quarrel from outside on which he came out and saw 23 boys were quarrelling with Sumit s/o Inderjeet. Sumit had suffered injuries. PW-1 asked those boys reason for quarrel. In the meanwhile PW-1 saw that one of the boy had caught hold of Sumit and another two boys, one of whom was Rathi Juicewala residing nearby and from other boy a revolver like weapon fell down while that person fell down during the quarrel and then Rathi Juicewala asked that person to fire on Sumit as he was disturbing him. That person who had fallen down picked the revolver and fired upon Sumit. Sumit sat down holding his stomach and PW-1 ran from the spot. All the three persons also fired upon PW-1.

3. Addressing arguments in support of the present criminal leave to appeal, Ms. Richa Kapoor, Additional Public Prosecutor for the State submits that the learned Trial Court fell in grave error by not appreciating the testimonies of the eye witness (PW-1) and the injured witness (PW3), who in their respective depositions named these accused persons in committing the said crime. Learned APP further submitted that it is a settled legal position that because of any lapse on the part of the investigation agency, the accused persons shall not be given any benefit of doubt.

4. We have heard learned counsel for the petitioner and given our thoughtful consideration to the arguments advanced by her. We have also gone through the impugned judgment and other material placed on record.

5. The learned trial court has rightly not given due credence to the testimonies of Joginder (PW-1) and Sumit (PW-3) as they failed to disclose the names of these

accused persons in their very first statement given before the police. The learned trial court has also rightly found the presence of PW-1 at the spot doubtful, as the alleged incident had taken place in the month of December at 11 PM and at that time there was a remote possibility of Joginder working in his shop. The doubt on the testimony of PW-1 also strengthens from the fact that after escaping from the spot after the alleged incident he could meet the Investigating Officer at about 2 AM in the night.

6. We are also unable to comprehend that Sumit (PW-3), the victim of the crime, could not name the accused persons in his first statement recorded under Section 161 of Cr.P.C. whereas he could name them in his supplementary statement. The non-examination of Inderjeet - father of the victim who accompanied him to the hospital also proved fatal to the case of the prosecution. The prosecution has also failed to place on record any material to justify as to how and on what basis they could link the present co-accused persons with the commission of the crime in question as Joginder (PW-1) in his first statement, named some Rathi Juice Wala as one of the accused persons but no such person was named as an accused by the prosecution. We are also amazed to find that Joginder (PW-1) conducted his own inquiry to find out the names of the accused persons in the commission of the said crime and based on his inquiry, the prosecution apprehended the said accused persons. Learned trial court has also commented upon the faulty and shoddy investigation carried out by the Investigating Officer due to which many holes were left unfilled. While agreeing with the observations of the learned trial court we further find that neither the victim - Sumit himself lend any credence to the case of the prosecution nor PW-1 who claimed himself to be the eye witness to the said incident could succeed in doing so. The findings reached by the learned trial court giving benefit of doubt to the accused persons is neither found to be perverse nor illegal and the same appears to us to be based on sound reasoning, after objective analysis of the material placed on record by the prosecution.

7. It is a settled legal position that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the findings of fact arrived at by the learned Trial Court unless the reasoning given by the learned Trial Court is perverse or illegal on the very face of it. It is useful here to refer to the judgment of

the Honble Apex Court in the matter of Rangaiah vs. State of Karnataka reported in AIR 2009 SC1411 Relevant paras of the same are reproduced as under:

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, reappraise 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 emphasize 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.

8. In the aforesaid background of the legal position and on appreciation of the material on record, we are not persuaded to take any contrary view as has been arrived at by the learned Trial Court in acquitting the accused.

9. In view of the above factual matrix and legal position, we find no merit in the present leave to appeal petition and the same is hereby dismissed. KAILASH GAMBHIR, J SUNITA GUPTA, J JANUARY02 2014 pkb