

State vs.om Prakash

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Court : Delhi

Decided On : May-29-2019

Appellant : State

Respondent : Om Prakash

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved On:

12. 03.2019 Judgment Pronounced On:

29. 05.2019 CRL.A.383/2012 STATE Appellant Versus OM PRAKASH
Respondent Advocates who appeared in this case: For the Appellant For the
Respondent : Ms. Radhika Kolluru, APP for State with SI Ajit Singh, PS-Mehrauli :
Mr. G.S. Sharma, Mr. V.K. Sharma and Mr. R.A. Sharma, Advocates CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MR. JUSTICE MANOJ
KUMAR OHRI

JUDGMENT

SIDDHARTH MRIDUL, J1 The State has instituted the present appeal under section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) assailing the impugned judgment dated 14.02.2011, in Session Case No.47/08, arising out of FIR No.98/06, registered at Police Station -Mehrauli; whereby the learned Trial Court has, acquitted the accused Om Prakash, the respondent herein, of the charges framed against him under section

302/363/376/201 Indian Penal Code (hereinafter referred to as IPC) 1860. CRL.A.383/2012 Page 1 of 19 2. The case of the prosecution as elaborated by the trial court is briefly encapsulated as follow: - site plan taken; That on 17.02.2006 an information was received regarding missing of a child Ms. Bobby in P.S-Mehrauli which was noted vide DD No.8A. The case was registered for the offence under section 363 IPC was registered on 21.02.2006 on the statement of Sh. Vijay Poddar (PW1). Ex. PW1/A vide FIR. Ex. PW6/A, hue and cry notice was released. On 25.02.2006 a dead body was recovered from a water tank situated in a godown in plot No.

Yog Maya temple complex, Mehrauli. The presence of the dead body in a water tank was noticed when a foul smell started emanating from a water tank. The dead body was recognized by the Sh. Vijay Poddar (PW1) as that of his daughter, relevant seizures were made, and investigation was commenced to try and find the murderer of the child. photographs prepared, During the investigation two rehriwala Suraj(PW14) and Bablu told the police that the deceased was last seen with the accused on 17.02.2006 going toward the forest; when police arrested the accused, the pocket diary was recovered at the instance of the accused from his room which was seized by the investigating officer vide Ex.PW11/1; and the same clothes of the accused which he wore at the time of occurrence of incident were also seized by the police vide memo Ex.P9-P10. The pocket diary Ex. PW11/F was containing a writing on page of 17.02.2006; MAI17TARIQ KO KAAM KIYA EK LADKI KE SAATH. Since the diary was bearing the handwriting of the accused as per his disclosure statement, the investigating officer took place specimen handwriting of the accused S-1 to S-12(Ex. PW15/F-1 to Ex. PW15/F-12). The exhibits, thereafter, were deposited in the malkhana and the investigation was handed over to Inspector C.K Sharma. As per the report of the handwriting expert the questioned writing as Ex. Q1 and Q2 in the black diary tallied with the specimen handwriting of the accused S1 to S12(Ex. PW15/F-1 to Ex. PW15/F-12); clothes of the deceased were having some blood stains and semen stains, therefore, they were sent for FSL and per the FSL(Ex. PW19/B) the sweater of the deceased Ms. Bobby was having semen stains of blood A group and pant(Ex. P9) of the accused was also having semen stains of the blood A group. Therefore, on the basis of the evidence of the last seen of one Babloo and Suraj, handwriting

expert report and the FSL CRL.A.383/2012 Page 2 of 19 report, charge-sheet was prepared and the accused was sent for trial for the offence under section 302/363/376/201 IPC. 3. In order to establish the guilt of the accused, the prosecution has examined 19 witnesses in all. Statement of the accused was recorded under section 313 of Criminal Procedure Code, (hereinafter referred to as Cr.P.C), 1973, wherein he denied the case of the prosecution in toto and pleaded not guilty.

4. The prosecution in order to prove the case beyond reasonable doubt relied upon the following circumstances: - a. The testimony of PW-14 Suraj, who had last seen the deceased in the company of the accused, in the morning of 17.02.2006. b. The extra-judicial confession of the accused before Dr. Rajat Mitra (PW13), who gave the assessment report about the accused and opined that the accused was a Pedophilic, a term used for a person who is sexually attracted towards children. c. The recovered items: clothes (Ex.P9, Ex.P10) worn at the time of incident by the accused which were recovered pursuant to his disclosure statement and the FSL report (Ex.PW19/A) connecting the semen stains on the pant Ex. P9 with the semen stains on the sweater of the deceased; and the pocket diary Ex.PW11/F in which the accused had made some noting about the incident dated 17.02.2006.

5. Broadly, the learned Trial Court acquitted the accused by returning findings which are, as follows: - 17.8 . Thus, whatever extra judicial confession he has made before it was made when his movement was this extra judicial Dr Rajat Mitra, controlled by the police. Therefore, CRL.A.383/2012 Page 3 of 19 19.4 19.5 20. confession before Dr. Rajat Mitra cannot be proved against the accused. XXXXX to the disclosure So, the recovery of the pocket diary Ex. PW11/F was not pursuant accused Ex.PW11/A as the existence of the pocket diary of the accused was already known to the investigating officer. Thus, the disclosure statement Ex. PW11/A did not infact led to the discovery of the fact about pocket diary Ex. PW11/F. statement of the law is that The circumstantial evidence on which the prosecution, thus, had relied is not forming a complete chain of evidence excluding hypothesis of innocence of the accused. The basic principle of criminal in case of circumstantial evidence, the evidence must be of a definite tendency clearly pointing towards the guilt of the accused and the circumstances taken

cumulatively must form a chain to draw inference with all human probabilities that the accused was the perpetrator of the crime, and thus, the circumstantial evidence must be incapable of any other hypothesis than that of the guilt of the accused. Thus, it must be inconsistent with his innocence.. The seizure of the pocket diary Ex. PW11/F on 16.03.2006 when it was already in the notice of the investigating officer on 02.03.2006 cast doubt with regard to the writings in the dairy. Apart from the fact that the chain of circumstantial evidence is not complete, there were other circumstances in the present case which raises questions for which no answer has been offered. A very vital question has arisen in the trial as to the time and the cause of the death of the deceased. So far as the time of death concerned mathematical precision of the exact in the postmortem report the estimated time of death was one week prior to 26.02.2006, when the postmortem was conducted. As per the case of the prosecution the accused had killed the child on 17.02.2006 in the morning and threw the dead body in the water tank in the night. A very pertinent question arise if the child was killed in the morning and the accused left her in the forest, thereafter in the night he picked up the dead body and threw it in the water tank was the dead body lying in the forest throughout the day without it being noticed by anybody?. The dead body if lying unattended will attract the stray dogs and other animal of this type and the body found intact in all time of death was not made out. However, CRL.A.383/2012 Page 4 of 19 21.

22. probabilities. But the postmortem report shows that there was not even a scratch on the body of the deceased. There was no injury on any part of the body of the deceased. Further, this theory of the prosecution as to how dead body came in water tank is thrown to the ground by the subsequent opinion given by the PW12, Dr. Manish Kumath. In his subsequent report Ex.PW12/B Dr. Manish Kumath has categorically opined the cause of death in this case was drowning. If drowning is the cause of death than the child must have been alive when it was thrown into the water tank but this is not the case of the prosecution. If the child was alive when the accused left her in the jungle in the morning and he picked up the child and threw it in the water tank in the night, then the question arises how the child could remain lying in the forest unattended though it was alive. It sound highly improbable that the accused would have left the deceased in the jungle and picked her in the night and threw her in the water tank when as per the

subsequent opinion Ex.PW12/B the child was alive because she has died due to drowning and not due to asphyxia or suffocation which could have been the cause of the death. Therefore, the subsequent opinion of the Doctor Ex.PW12/B giving the cause of death of the deceased as drowning is inconsistent with the story of the prosecution. Further, the Investigating Officer in this case deposed that he first got the clue about the accused on 02.03.2006 when PW-14 Suraj told him that he had seen the deceased with the accused in the morning. If this was the case then, why the accused was present in the police station on 25.02.2006 and even after that. PW1 Vijay Poddar and PW2 Anil Poddar both have deposed in their statements that the accused was present in the police station on 25.02.2006 itself. PW-2 Anil Poddar in the cross- examination stated that when he visited the police station Mehrauli on 25.02.2006 accused was present in the police station. Similarly, PW1 Vijay Poddar deposed that he had seen the accused in the police station two days after 25.02.2006. He deposed that he had visited the police station two times and found the accused present on both the occasions in the police station. The statement of a PW1 and PW2, therefore, create a doubt with regard to the prosecution story that it was only on 02.03.2006 that the Investigation Officer got a clue about the accused and they apprehended him on 03.03.2006 from his room. CRL.A.383/2012 Page 5 of 19 therefore, 23. Thus, the evidence which the prosecution has led is not found sufficient enough to prove its case against the accused beyond reasonable doubt. The FSL reports Ex. PW-19/A and Ex. PW- 19/B of course show a nexus between the pant Ex. P9 and the sweater of the deceased which were both having semen stains and of the same blood group. But the recovery of the pant (Ex. P9) was not free from the doubt. It also cannot be said with certainty that this pant Ex.P9 belong to the accused. Similarly, the extra-judicial confession on which the prosecution had relied was taken in the police station when the movement of the accused was controlled by the police, this evidence cannot be taken against the accused by the virtue of section 26 of the Indian Evidence Act. The handwriting expert report Ex. PW17/A by which the prosecution intended to connect the writing on the pocket diary Ex. PW11/F with the accused is also not admissible against the accused because the specimen handwriting Ex.PW15/F-1 to Ex.PW15/F-12 was taken without the permission of the court, and in the police station. Therefore, in the present case,

though the prosecution has brought some evidence on record but the same is inadmissible in evidence against the accused. There are certain questions raised in the trial which remains unanswered. The prosecution story as to how the dead body from the jungle reached in the water tank is not convincing especially in view of the subsequent opinion given by Dr. Manish Kumath (PW12) vide his report Ex.PW12/A that the death in this case has occurred due to drowning. The prosecution is silent as to how the child was thrown in the water tank when it was left in the forest by the accused in the morning. Therefore, this is a case where some reasonable doubts have cropped in the prosecution version of the accused deserves the benefits of doubt and, thus, an acquittal in this case. the story. Therefore, 6. The case of the prosecution is founded on circumstantial evidence. A crime committed can be proved by direct evidence, as well as, by indirect or circumstantial evidence. Learned Additional Public Prosecutor(APP) appearing on behalf of state, urged that there is circumstantial link between the accused and the recovered items belong to the accused; the recovered CRL.A.383/2012 Page 6 of 19 clothes (Ex.P9-P10) worn by the accused at the time of incident; and the pocket diary (Ex.PW11/F) that belong to the accused, wherein the accused had mentioned about the incident; and the last seen testimony given by PW14; and the FSL report (Ex.PW19/A) which matches the blood stain and semen stains on the clothes of the accused.

7. Per contra, learned counsel appearing on behalf of the respondent whilst supporting the impugned judgment in its entirety, would urge that the same does not call for any interference; and further contended that there were major contradictions and discrepancies in the case of prosecution.

8. Learned counsel appearing on behalf of the respondent would also urge that, the learned Trial Court has while acquitting the respondent, appropriately appreciated the evidence led by the prosecution in the back drop of the following judgments - i. C.Chenga Reddy &Orsv. State of Andhra Pradesh, (1996) 10 SCC193 wherein it was held that; in the case based on the circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved

circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence ii. Padala Veera Reddy v. State of A.P and ors, reported as AIR 1990 SC79 where it was CRL.A.383/2012 Page 7 of 19 postulated circumstantial satisfy the following tests: - that when evidence, case a upon such evidence must rests (1) The circumstances from which an inference of guilt is to be drawn, must be cogently and firmly sought established; (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. iii. v. State Sarda Birdhichand Sharad of Maharashtra, reported as AIR 1984 SC1622 where the Honble Supreme Court of India observed that the condition precedent before conviction could be based on circumstantial evidence, must be fully established and condition precedents are as follow: - (1) the circumstance from which the conclusion of the guilt is to be drawn should be fully established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused; (3) the circumstances should be of a conclusive nature and (4) they should exclude every possible hypothesis except the tendency; one to be proved, and any reasonable ground for (5) there must be a chain of evidence so complete as not to leave conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. the CRL.A.383/2012 Page 8 of 19 9. A conspectus of the decisions above extracted clearly provide that, in a case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete so as not to leave

any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such, as to show that within all human probability the act must be done by the accused.

10. In *Sujit Biswas vs. State of Assam*, reported as 2013 (12) SCC406 and *Raja Alias Rajinder vs. State of Haryana*, reported as 2015 (11) SCC43 the Supreme Court held that, while scrutinizing circumstantial evidence, the Court is required to evaluate it in a manner so as to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle emphasized is that, whether the chain of circumstances is complete or not, would depend on the facts of each case emanating from the evidence and CRL.A.383/2012 Page 9 of 19 there cannot be a straightjacket formula laid down in this behalf. But it is germane and necessary that, the circumstances adduced, when considered collectively, must lead to the inescapable conclusion that there cannot be a person other than the accused alone, who is the perpetrator of the crime alleged and the circumstances must further establish the conclusive nature and hypothesis, consistent alone with the guilt of the accused.

11. In the present case, the critical circumstance determined by the trial court, relates to the time and the cause of death of the deceased. Although, as urged on behalf of the State by the learned Public Prosecutor, mathematical precision cannot be applied in this behalf, the post-mortem report estimates the time of death as one week prior to 26.02.2006, the date on which the post-mortem was conducted. The case sought to be established by the prosecution to the effect that the accused had killed the child in the morning of 17.02.2006, evidently leaves a time-gap of two days between the time of death on 19.02.2006-predicated on the post-mortem report-and the last seen evidence available on record. This circumstance evidently renders the last seen evidence unreliable. It is for this reason that the trial court rejected the evidence of the last seen witness by returning a finding that :-

"16.8 PW14 has stated in the cross-examination that after two days of the incident, he had heard that the dead body of a girl was recovered from the jungle. Which

girl he is CRL.A.383/2012 Page 10 of 19 referring to in this statement is not known. The dead body of the deceased Ms. Bobby was recovered, admittedly, on 25.02.2006 PW14 who is the last seen witness, says that he saw the deceased with the accused on 17.02.2006 in the morning. He heard about the recovery of a dead body of girl two days after the incident. The question arises whether the girl who was seen by PW14 with the accused on 17.02.2006 was the deceased Ms. Bobby whose dead body was recovered on 25.02.2006 or some other girl whose dead body he heard was recovered from the jungle after two days. The prosecution has not been able to clarify this anomaly in the statement of PW14.

12. In this regard, on a conspectus of the decisions of the Honble Supreme Court in State of U.P. vs. Satish, reported as 2005 (3) SCC114 Ramreddy Rajeshkhanna Reddy v. State of A.P, reported as 2006 (10) SCC172 Navaneethakrishanan Vs. State by Inspector of Police, reported as AIR 2018 SC2027 and Anjan Kumar Sarma and others Vs. State of Assam, reported as AIR 2017 SC2617 the following legal position emerges:-

"(i) (ii) The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible; Even in such a case, the Courts are required to look for some corroboration; CRL.A.383/2012 Page 11 of 19 (iii) In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt; and (iv) An accused cannot be convicted solely on the basis of last seen theory.

13. In this view of the matter and in the light of the evidence on record, we find ourselves in agreement with the rejection by the trial court of the last seen evidence of PW-14.

14. Furthermore, the post-mortem report clearly reflects that there was not even a scratch or injury on any part of the body of the deceased. This circumstance a fortiori belies the case of the prosecution that the accused had killed the deceased in the morning of 17.02.2006 but thrown the dead body of the child in the water

tank later that night. What the prosecution has been unable to explain is the circumstance, how the dead body lay in the forest throughout the day without being noticed and why the dead body alleged to be lying unattended, did not attract stray dogs or other animals of the kind, which is evident from the lack of any bruise, injury or laceration on the dead body.

15. The case of the prosecution as to how and when the dead body was thrown into the water tank is also negated by the opinion rendered by PW-CRL.A.383/2012 Page 12 of 19 12, Dr. Manish Kumath to the effect that, in his opinion the cause of death was drowning. That being so, the child must have been alive when she was thrown into the water tank, which is not the case of the prosecution. Further, it is highly improbable that; if the child was alive, when the accused left her in the jungle in the morning, he would have left her in the forest unattended, only to return later at night to pick her up and throw her into the water tank. In other words, the opinion of Dr. Manish Kumath Ex.PW-12/B, giving the cause of death of the deceased as drowning is inconsistent and contrary to the case of the prosecution.

16. There is yet another glaring contradiction that is evident from the testimony of the IO, when he deposes that, he first got the clue about the accused only on 02.03.2006, when PW-14 Suraj informed him that, he had seen the deceased with the accused on the morning of 17.02.2006; since from a bare perusal of the testimonies of PW-1 and PW-2, it is evident that the accused was present in the Police Station on 25.02.2006 itself. In this behalf PW-1 Vijay Poddar deposed that he had visited the Police Station two times prior to 02.03.2006 and had found the accused present in the Police Station on both those occasions. CRL.A.383/2012 Page 13 of 19 17. What remains to be considered is the extra judicial confession, purportedly made by the accused in the presence of Dr. Rajat Mitra (PW- 13).

18. In this behalf, it would be relevant to observe that PW-13 first held sessions with the accused on 03.03.2006 and conducted three more sessions thereafter on consecutive dates.

19. A plain reading of the above clearly establishes that the accused is alleged to have made an extra judicial confession before PW-13, Dr. Rajat Mitra, whilst he

was in the constructive custody of the police. The extra judicial confession, if any, therefore, was made when the movement of the accused was controlled by the police and, consequently, cannot be proved against him. Our view is further buttressed by the circumstance that the deposition of SI Sandeep Ghai (PW-15) and Dr. Rajat Mitra (PW-13), unequivocally establish that the accused was examined by PW-13 in the Police Station, where he had been summoned by the Investigating Officer on each of days, on which the counselling sessions were held.

20. Coming to the submission made on behalf of the State to the effect that, there is a circumstantial link between the accused and the recovered items, it would be relevant to observe that when the basic foundation of the CRL.A.383/2012 Page 14 of 19 prosecutions case has failed to connect the accused with the incident, it would be difficult for the court to return a finding of guilt founded on the sole circumstance that the items recovered belonged to the accused. Further, with respect to the subject recovery, it is observed that the prosecution has failed to establish, when the key to the dwelling of the accused was deposited with the Malkhana Incharge, upon his arrest; and the absence of the Delivery Memo, required to be prepared, with respect to the deposit of the key, of the dwelling of the accused. This casts grave doubts on the recoveries that were made by the IO.

21. Lastly, coming to the emphasis supplied by the prosecution to the disclosure statement made by the accused, leading to the recovery of the Pant Ex.P9, the recovery thereof at his instance, in our view, would be a relevant fact only, if it is established by evidence aliunde that the pant recovered was connected with the accused and the offence with which he was charged. In other words, the disclosure statement made by the accused Ex.PW-11/A can be read in evidence only to the extent it leads to the recovery of the Pant and the submission that the accused was wearing the same at the time of the occurrence of the offence or that it belongs to him, is CRL.A.383/2012 Page 15 of 19 inadmissible in evidence against him. [Ref: Pulukuri Kotayya vs. Kind Emperor, reported as AIR1947 Privy Council 65.].

22. Having given our anxious consideration to the evidence on record and the submissions made on behalf of counsel for the parties, we are of the view that the conclusion arrived at by the trial court qua the serious infirmity in the case of the prosecution, cannot be faulted. The case of the prosecution, founded entirely on circumstantial evidence, fails to establish beyond reasonable doubt, facts consistent only with the hypothesis of guilt of the accused and cannot by stretch of expression be stated to be conclusive in nature and tendency. In other words, the prosecution has failed to prove a chain of evidence, so far complete, so as not to leave any reasonable ground, for any conclusion inconsistent with the innocence of the accused, or show that in all human probability the act must have been done by the accused.

23. In *Bannareddy & Ors. vs. State of Karnataka & Ors.*, reported as 2018 (2) Crimes 94 SC the Supreme Court held as follows:-

"11. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. CRL.A.383/2012 Page 16 of 19 This principle has further been elucidated in the case of *Sambhaji Hindurao Deshmukh and Ors. vs. State of Maharashtra*, (2008) 11 SCC186 para 13, wherein this Court observed that: The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt. 24. In *Mohd. Akhtar & Kari & Ors. vs. State of Bihar & Anr*, reported as 2018 (4) Crime

482 SC it was observed by the Honble Supreme Court as follows:-

"11. It is relevant to refer to another judgment of this Court in Ghurey Lal v. State of Uttar Pradesh reported as (2008) 10 SCC450, in which the principles to be followed by the appellate courts to overrule or otherwise disturb the trial court's acquittal were crystallised as under:

"70. ...

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when: i) The trial court's conclusion with regard to the facts is palpably wrong; ii) The trial court's decision was based on an erroneous view of law; CRL.A.383/2012 Page 17 of 19 iii) The trial court's judgment is likely to result in "grave miscarriage of justice"; iv) The entire approach of the trial court in dealing with the evidence was patently illegal; v) The trial court's judgment was manifestly unjust and unreasonable; vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc. vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court. If acquittal, two reasonable views can be reached-one that leads conviction-the High the 3. to Courts/appellate courts must accused."

rule in favour of to the other 12. Interference with the judgment of the trial court in this case by the High Court is on a re-appreciation of evidence which is undoubtedly permissible. Though the High Court was aware of the well-settled principles of law in matters relating to appeals against acquittals, it failed to apply the same in their proper perspective. Interference with an order of acquittal is not permissible on the ground that a different view is possible. If the acquittal is justified on a probable view taken by the trial court, it should not be interfered with. The reasons given by the trial court for acquittal mainly pertain to the delay in

lodging the FIR, untrustworthy eye witnesses, improbability of identification of the accused, independent witnesses, previous non-examination of between enmity the the witnesses, important prosecution witnesses and nonproduction of improper the case. On a thorough examination of the entire evidence on record and the judgment of the trial court, we are of the considered view that the judgment of acquittal by the trial court is justified which ought not to have been interfered with by the High Court. investigation of accused and CRL.A.383/2012 Page 18 of 19 The High Court could not have reversed a judgment of acquittal merely because another view is possible. The High Court brushed aside the findings recorded by the trial court relating to certain omissions as being minor and held the omissions should not have been the basis on which the Appellants have been acquitted. The High Court ignored the fact that the presumption of innocence in favour of the Appellants is further strengthened by an order of acquittal. No perversity in the judgment of the trial court in acquitting the Appellants has been demonstrated by the High Court for interfering with the judgment of the trial court. 25. In view of the foregoing discussion, we find ourselves unable to conclude that the prosecution was able to prove its case beyond reasonable doubt or that the judgment of acquittal returned by the trial court, suffers from any perversity, so as to warrant reversal by this Court, in the present appeal.

26. Resultantly, the present appeal fails and is accordingly dismissed. SIDDHARTH MRIDUL (JUDGE) MANOJ KUMAR OHRI (JUDGE) MAY29 2019 dn /ad CRL.A.383/2012 Page 19 of 19

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