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Court : Madhya Pradesh

Decided On : Nov-28-2001

Reported in : 2002(1)MPHT558

Judge : Deepak Verma and ;S.L. Kochar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 378(3); [Indian Penal code, 1860](#) - Sections 147, 148, 149, 302, 323 and 336

Appeal No. : Misc. Criminal Case No. 3057/2001

Appellant : Arjun

Respondent : Ranchhod and ors.

Disposition : Misc. criminal case dismissed

Judgement :

ORDER

S.L. Kochar, J.

1. This petition has been directed by the applicant under Section 378(3) of Cr.PC for grant of leave to file appeal against the judgment of acquittal of non-applicants Ranchhod and seven others, passed by Sessions Judge, Dewas in S.T. No. 78/2000, dated 6-5-2000.

2. Police of Police Station Industrial Area, Dewas filed a charge sheet for offences under Sections 147, 148, 323, 336, 302 read with Section 149 of IPC against the non-applicants and other two convicted accused persons i.e., Dr. Bhagirath and Bhojraj.

3. The prosecution case in short was that on 28-1-2000 in the noon at 12.15 p.m., in Village Chhota Tigaria, voting was going on, at Booth Nos. 148 and 149 for Gram Panchayat Election. At the time of said voting, deceased Raghu alias Ashok s/o Doulatram reached at Polling Centre and asked for Ballet Papers. On which the Polling Officer (Pithasin Adhikari) disclosed that Ashok had already polled his vote. It is further alleged by the prosecution that the accused Munna alias Bhojraj got agitated and after taking out knife from his pocket caused injury at the neck of deceased Raghu alias Ashok. In the meanwhile accused Dr. Bhagirath had also whipped out the Gupti from behind and dealt a blow on the neck of deceased Ashok. Deceased Ashok fell on the ground thereafter other accused persons/non-applicants reached over there from village having lathi and also assaulted the deceased. P.W. 7 Arjun, the applicant tried to intervene. He too was assaulted. It was also the case of prosecution that accused persons pelted stones and also threw chilly powder at the Polling Centre.

4. Deceased Ashok received three incised wounds on his person and applicant Arjun received one simple lacerated wound on his head. Learned Sessions Judge while delivering the judgment acquitted the non-applicants from all charges i.e., under Sections 147, 148, 302, 323, 336/149 and in alternative 302 of IPC whereas convicted the other co-accused persons Dr. Bhagirath and Bhojraj for the offence under Section 302 of IPC and sentenced them to R.I. for life and fine of Rs. 1000/- each, in default, S.I. for six months.

5. On behalf of applicant Arjun this petition for grant of leave to file an appeal against the judgment of acquittal has been filed by the Advocates Shri Rahi, Sunil Verma and Naveen Soni.

6. Learned counsel for the applicant Shri Verma has contended that judgment and finding of acquittal recorded by learned Trial Court is contrary to the evidence adduced by prosecution. The prosecution witness P.W. 6 Manohar has

categorically stated about active participation of the non-applicants in the said incident and therefore, all the accused persons are responsible for death of Raghu alias Ashok with the help of Section 149 of IPC.

7. We have heard learned counsel for applicant and after perusing the application for grant of leave to file an appeal, memo of appeal as well as the copy of judgment, we are of the considered view that first of all this application under Section 378(3) of Cr.PC by a Private Party is not maintainable, because the charge-sheet was filed by State through Police Station Industrial Area, Dewas. Application under Section 378(3) of Cr.PC for grant of leave to file an appeal can only be filed by the State because the prosecution was launched by the State, not otherwise. So this application is liable to be dismissed, summarily on the ground of maintainability.

8. Apart from the question of maintainability on merits also there is no substance in the application filed by the applicant against the judgment of acquittal. Learned Trial Court has considered and discussed the prosecution evidence elaborately and come to conclusion that prosecution has utterly failed to prove beyond all reasonable doubt, the participation of non-applicants in the alleged incident, being members of unlawful assembly whose common object was to commit murder of deceased Raghu alias Ashok.

9. We were taken through the statements of P.W. 6 as well as P.W. 7 Arjun by learned counsel for the applicant. The statements of both these witnesses are general and of omnibus character against the present non-applicants regarding their active participation in the incident. The incident was none but a chance encounter which is clear from the prosecution story, the same had occurred when the deceased Ashok reached to the Polling Booth for voting. The FIR is also disclosing the fact that deceased was firstly assaulted by convicted accused Munna alias Bhojraj with knife and thereafter by Bhagirath with Gupti and at that time the present non-applicants were not present and they reached over there just after blow of knife and Gupti dealt by the said convicted/accused persons, so non-applicants cannot be held responsible for the act of convicted accused Munna alias Bhojraj and Dr. Bhagirath with the aid of Section 149 of Cr.PC.

10. The over act attributed to the non-applicants about pelting stones and throwing chilly powder in Polling Booth has not been corroborated by medical evidence because on the person of deceased Raghu alias Ashok except three incised wounds no other injuries were seen by autopsy surgeon.

11. The Privy Council in a judgment of Sheo Swamp and Ors. v. King Emperor [AIR 1934 Privy Council 227 (2)] held as under :--

It cannot be said that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the Lower Court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice or has been tricked by the defence so as to produce a similar result.

12. Supreme Court while dealing in the case of appeal against the acquittal laid down the law in State of Uttar Pradesh v. Samman Das (AIR 1972 SC 677) as under;--

There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the Court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the Trial Judge, the Appellate Court should take into the fact that the Trial Judge had the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and as observed recently by this Court, the doubt should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy, though unwittingly it may be, or is afraid of the logical consequences, if that benefit was not given.

13. The same legal position has been reiterated by Supreme Court in a case of Ramesh Babu Lal Doshi v. State of Gujarat, reported in [1996 Cr.LJ 2867 (SC)]

held as under:--

The 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.

14. Applying the aforesaid tests we find ourselves unable to interfere in a well reasoned judgment of acquittal passed by learned Trial Court because there is no illegality, perversity and infirmity present in the impugned judgment.

15. Consequently, the application for grant of leave to file appeal is hereby dismissed.

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