

**Court No. - 43**

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**Case :-** CRIMINAL MISC. APPLICATION U/S 372 CR.P.C  
(LEAVE TO APPEAL) No. - 86 of 2018

**Applicant :-** Virendra Singh

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Rajesh Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Vivek Kumar Birla,J.**

**Hon'ble Subhash Vidyarthi,J.**

**1.** Heard Sri Rajesh Yadav, learned counsel for the appellant-applicant and Ms. Nandprabha Shukla, learned A.G.A. appearing for the State.

**2.** As already held by this Court in number of cases that leave application filed under Section 378(3) Cr.P.C. is not required in the appeal filed by the victim under Section 372 Cr.P.C. like the present appeal. A reference may be made to the order dated 4.8.2021 passed in Criminal Appeal U/S 372 Cr.P.C. No. 123 of 2021 (Rita Devi vs. State of U.P. and another). As such, the application for leave to appeal stands rejected as not maintainable and / or not required.

**3.** This appeal has been filed against the order dated 12.7.2017 passed by the Additional Sessions Judge, Court No. 5, Mathura acquitting the respondent nos. 2, 3 and 4 under Section 302 I.P.C. and Section 25 of Arms Act in Sessions Trial No. 764 of 2013 arising out of Case Crime No. 85 of 2012, under Section 302 I.P.C. and Session Trial No. 765 of 2013 arising out of Case Crime No. 97 of 2012, under Section 25 of Arms Act, P.S. Maant, District Mathura.

**4.** According to the first information report on 4.6.2012 at

about 09:00 P.M. [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN) certain persons on highway were committing theft of electricity cable from the electricity poll. On coming to know father of the informant (Virendra Singh) deceased Dorilal s/o Chhitariya reached on the spot along with certain other persons. The persons, who were committing theft, fired hitting the chest of Dorilal (father of the informant), who died on the spot. First information report was registered at 21:50 against unknown persons as Case Crime No. 85 of 2012, under Sections 302, 379, 511 I.P.C., P.S. Maant, District Mathura.

**5.** In support of prosecution case P.W.-1 Virendra, P.W.-2 Parsadi, P.W.-3 Shivcharan, P.W.-4 Dalchand, P.W.-5 Phoolwati, P.W.-6 S.O Sri Arvind Kumar, P.W.-7 Dr. D.S. Naviyal, P.W.-8 Constable Clerk Sher Singh, P.W.-9 H.C.P. Manni Singh, P.W.10- S.I. Sri Rajendra Singh, P.W.-11 S.I. Sri Radhakrishna and P.W.-12 Sri Sri Omprakash were produced. Two accused persons Geetaram s/o Jagna and Talewar s/o Ramjilal were arrested by the police on pointing out of the informant in the night of 12/13.7.2012 at about 01:00 A.M and a countrymade pistol of 315 bore with one live and one empty cartridge were recovered from the possession of Geetaram. No other recovery was made by other co-accused Talewar. The Case Crime No. 97 of 2012, under Section 25 of Arms Act, P.S. Maant, District Mathura was registered against Geetaram. In the statement recorded under Section 313 Cr.P.C. the accused persons denied the incident and submitted that they have not committed the offence and their claim was that some other unidentified persons, who were committing theft of electricity cable, had committed the crime.

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6. The accused persons were acquitted by the trial court on the ground that all the witnesses are related witnesses and the recovered weapon could not be connected with the crime. It was further found that the statement made by the prosecution witnesses were contradictory in nature and the incident was described in different ways and there was no eye witness of the spot. It was found by the trial court that all the alleged eye witnesses have not proved the incident. It was also found that the eye witnesses were present when report was given by the informant but names of such persons were not disclosed in the first information report and it was alleged that some unidentified persons have committed the crime. It was further found that the incident had taken place in the night of 4.6.2012 at about 09:00 P.M., whereas the accused persons Geetaram and Talewar were arrested after about 5-6 weeks on 12/13.7.2012 and apart from countrymade pistol of 315 bore one live cartridge and one empty cartridge were also recovered from them. Since, it was not understandable that how the used cartridge is connected with the incident herein, therefore, the F.S.L. report was found not worth-believe and no assistance could have taken therefrom by the prosecution. Regarding arrest of the persons it was found that site plan is incorrect and was not supported by the formal witnesses. On the site plan one hut, wherefrom arrest of the accused and recovery of weapon was made, was shown, whereas there was no such hut on the spot. It was also found that the site plan (Ex. 6) and (Ex. 14) are of the same spot but there was material difference in the same. It was also found that countrymade pistol recovered from Geetaram was rusted,

therefore, could not have been used in the incident. Insofar as arrest of the accused persons are concerned, the G.D. report dated 12.7.2012 indicates the police party was gone out for patrolling was not proved and there was no independent witness of the arrest of the accused persons and recovery. It was also found that it is proved from the witnesses that one of the accused Talewar was a Panchayatnama witness. The court also observed that as per the statement recorded under Section 313 Cr.P.C. Geetaram was aged about 75 years and therefore, at the time of incident he must be aged about 70 years and under all circumstances trial court found that the prosecution has failed to prove its case beyond doubt.

**7.** Submission of learned counsel for the appellant is that the accused persons were arrested and weapon used in the incident was recovered from the possession of the accused Geetaram and even the F.S.L. report Ex. 22 has proved that one empty cartridge which was recovered from the possession of Geetaram was fired from the same countrymade pistol, which was recovered from the possession of the accused. Therefore, it is clear that the said weapon was used in the incident. He further submitted that all the statement of the eye witnesses have been incorrectly rejected on the ground that the prosecution witnesses are related to the deceased and the informant. He further submitted that the presence of the eye witnesses on the spot is natural in such circumstances and even otherwise no other person, who is not related, usually does not come forward to give evidence. He, therefore, submitted that merely because they were relative of the deceased, their eye witness account could not have

been rejected. He further pointed out that once there is a direct evidence, the motive is not relevant and, as such, the judgment of the trial court acquitting the accused persons is liable to be reversed and the accused persons are liable to be punished under Section 302 I.P.C. and Geetaram is liable to be punished under Section 25 of Arms Act as well.

**8.** We have considered the submissions and perused the original record.

**9.** Before proceeding further it would be appropriate to take note of the law laid down by Supreme Court on the issue involved.

**10.** In the case of **Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179**, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into

consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* AIR 1974 SC 2165; *Shambhoo Missir & Anr. v. State of Bihar* AIR 1991 SC 315; *Shailendra Pratap & Anr. v. State of U.P.* AIR 2003 SC 1104; *Narendra Singh v. State of M.P.* (2004) 10 SCC 699; *Budh Singh & Ors. v. State of U.P.* AIR 2006 SC 2500; *State of U.P. v. Ramveer Singh* AIR 2007 SC 3075; *S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* AIR 2008 SC 2066; *Arulvelu & Anr. Vs. State* (2009) 10 SCC 206; *Perla Somasekhara Reddy & Ors. v. State of A.P.* (2009) 16 SCC 98; and *Ram Singh alias Chhaju v. State of Himachal Pradesh* (2010) 2 SCC 445).

**13.** In *Sheo Swarup and Ors. King Emperor* AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

**14.** The aforesaid principle of law has consistently been followed by this Court. (See: *Tulsiram Kanu v. The State* AIR 1954 SC 1; *Balbir Singh v. State of Punjab* AIR 1957 SC 216; *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200; *Khedu Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).

**15.** In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

(1) An appellate court has full power to review, re-appreciate 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 emphasise 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 is 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."

**16.** In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

**17.** In *State of Rajasthan v. Naresh @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

**18.** In *State of Uttar Pradesh v. Banne alias Baijnath & Ors.* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

- i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
- ii) The High Court's conclusions are contrary to evidence and documents on record;
- iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
- iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
- v) This Court must always give proper weight and consideration to the findings of the High Court;
- vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal v. State by Public Prosecutor, Madras* (2009) 10 SCC 401.

**19.** Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

**11.** Hon'ble Apex Court in the case of **Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225 : 1996 SCC (Cri) 972** has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing



with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.

**12.** The aforesaid judgments were taken note of with approval by Supreme Court in the case of **Anwar Ali and another vs. State of Himachal Pradesh (2020) 10 SCC 166, Nagabhushan vs. State of Karnataka (2021) 5 SCC 222,** and Babu (supra) in **Achhar Singh vs. State of Himachal Pradesh (2021) 5 SCC 543.**

**13.** Hon'ble Supreme Court, in the case of **Rajput Ruda Maha and others vs. State of Gujarat 1980 SCR (2) 353** after hearing the learned counsel and examining the petition of appeal and after going through the relevant parts of the judgment of the High Court, after recording that there are no sufficient grounds of interference dismissed the appeal summarily under Section 384 of the Code of Criminal Procedure.

**14.** Now we proceed to consider the present appeal on merits.

**15.** It is not in dispute that the first information report was registered with the allegation that the incident had taken place on 4.6.2012 at about 09:00 P.M. and the first information report was registered at 21:50 on the same date and the distance of the police station is about 4 kms. Thus, a prompt first information report was lodged. First information report was undisputedly lodged against unknown persons and no eye witness has been named. The alleged eye witnesses have come only through affidavits that too after about eight



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days. It is also not in dispute that no empty cartridge was recovered from the spot. P.W.-1 the informant, namely, Virendra is son of the deceased and P.W.-5, Phoolwati, is the wife of the deceased. A categorical finding was recorded that the bloodstained clothes of Phoolwati, who embraced the dead body of Dorilal and claimed that her clothes were bloodstained, were not produced or made exhibits in the present case. The accused persons were allegedly arrested after a long gap on 12/13.7.2012 and it is highly improbable that the accused Geetaram would be carrying empty cartridge used in the incident with him. Therefore, in our opinion the importance of F.S.L. report that empty cartridge recovered from the accused Geetaram was fired from the same countrymade pistol of 315 bore, lost its important in the present case.

**16.** It is settled law that the eye witness account of related witnesses cannot be rejected merely on the ground that they are relatives of the deceased. However, we find that in the present case the alleged witnesses have come in picture only through affidavits after about eight days whereas, significantly, the first information report was lodged promptly, which was allegedly written in the presence of the eye witnesses but still their names were not mentioned in the first information report. Therefore, we also find that it was rightly observed by the trial court that there was material contradiction regarding their presence and description of the alleged incident that had taken place. That apart, we also noticed that in the first information report itself it has been stated that the incident had taken place when certain persons

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were committing theft of electricity cable from electricity poll but they could not succeed and the cable was found hanging from the electricity poll itself, as has been clearly mentioned in the judgment.

**17.** Further, if as per the eye witness account the accused-respondents were seen to have committed the offence, they were not named in the first information report. On the contrary, PW-1, Phoolwati had stated that the accused persons were present at the time of preparation of papers by the police and they had gone to Mathura and brought the dead body after postmortem and were also present at the time of cremation.

**18.** Even in regard to the affidavits of alleged eye witnesses sworn on 22.6.2012 they have stated in the cross-examination that they have not executed any such affidavits and further P.W.-1 has barely signed the affidavit and other two witnesses have clearly stated that they are illiterate and they have put their thumb impression in the affidavit but correctness of the affidavits was denied by giving contradictory stand, therefore, the same cannot be form basis of eye witness account of the incident, which otherwise, as held by the trial court, could not be proved by the prosecution.

**19.** In above circumstances, it cannot be said that the trial court has failed to take into consideration the admissible evidence or had taken into consideration the evidence brought on record contrary to law on reaching above finding.

**20.** In such view of the matter, we find that the view as has

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been taken by the trial court and the judgment of the trial court is not perverse in nature so as to call interference of this Court.

**21.** Consequently, after hearing the learned counsel for the applicant and examining the petition of appeal and after going through the detailed discussion of evidence on record, we are of the opinion that the finding recorded by the trial court recording acquittal of the accused is according to the law and we find that there is no sufficient ground for interference. The appeal is summarily dismissed under Section 384 of the Code of Criminal Procedure.

**Order Date :-** 7.2.2022  
Lalit Shukla