

Court No. - 28

Case :- GOVERNMENT APPEAL No. - 2457 of 1997

Appellant :- State Of U.P.

Respondent :- Yatendra Dev And Others

Counsel for Appellant :- Vijay Shanker Mishra

Hon'ble Rajeev Misra,J.

This Government Appeal arises out of the judgement of the First Additional Chief Judicial Magistrate, Banda, dated 7.5.1997 acquitting the accused-respondents, under sections 323 read with 34, 324 read with 34 and 325 read with 34, 504 and 506 I.P.C., in Case Crime No. 28 of 1995.

I have heard learned A.G.A. and perused the trial court's judgement and record.

On a careful perusal of the judgement and record, it cannot be said that the view taken by the trial judge is perverse or unreasonable. Simply because another view is possible on re-appreciation of evidence provides no ground for interfering with the order of acquittal unless the view taken by the trial judge is wholly perverse. Learned A.G.A. could not point out any such perversity in the impugned judgement.

The Apex Court recently in **Jayaswamy Vs. State of Karnataka, (2018) 7 SCC, 219**, has laid down the principles for laying down the powers of appellate court in re-appreciating the evidence in a case where the State has preferred an appeal against acquittal which read as follows:-

"10. It is by now well settled that the Appellate Court hearing the appeal filed against the judgment and order of acquittal will not overrule or otherwise disturb the Trial Court's acquittal if the Appellate Court does not find substantial and compelling reasons for doing so. If the Trial Court's conclusion with regard to the facts is palpably wrong; if the Trial Court's decision was based on erroneous view of law; if the Trial Court's judgment is likely to result in grave miscarriage of justice; if the entire approach of the Trial Court in dealing with the evidence was patently illegal; if the Trial Court judgment was manifestly unjust and unreasonable; and if the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of the ballistic expert etc. the same may be construed as substantial and compelling reasons and the first appellate court may interfere in the order of acquittal. However, if the view taken by

the Trial Court while acquitting the accused is one of the possible views under the facts and circumstances of the case, the Appellate Court generally will not interfere with the order of acquittal particularly in the absence of the aforementioned factors.

.....It is relevant to note the observations of this Court in the case of Ramanand Yadav vs. Prabhu Nath Jha And Ors., (2003) 12 SCC 606, which reads thus:

"21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not." (emphasis supplied)"

In this view of the matter, there is no merit in the application for leave to appeal which is rejected and consequently the Government Appeal is also dismissed.

Order Date :- 31.5.2019

HSM