
(2014) 10 AHC CK 0145

In the Allahabad High Court

Case No : Criminal Misc. Application (Leave to Appeal) Nos. 366 and 367 of 2014

Malti Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 372
Penal Code, 1860 (IPC) — Section 120A, 120B, 302, 34

Citation : (2014) 87 ALLCC 1002

Hon'ble Judges : Vijay Lakshmi, J; Rakesh Tiwari, J

Bench : Division Bench

Advocate : K.K. Singh and Sunil Kumar Singh, Advocate for the Appellant

Judgement

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Vijay Lakshmi, J.—Both the above-mentioned appeals arise out of the same judgment and order dated 25.7.2014 passed by learned Additional Sessions Judge, Court No. 6, Ghazipur in two connected Sessions Trial No. 413 of 2008, (State v. Simpoo Yadav @ Avinash Yadav and others) under sections 302, 120-B IPC and S.T. No. 408 of 2008, (State v. Simpoo Yadav @ Avinash Yadav) under section 3/ 25 Arms Act, whereby the learned Additional Sessions Judge has convicted only two accused persons namely Simpoo Yadav @ Avinash Yadav and Navneet under section 302 r/w 34 I.P.C. but has acquitted the other six persons from the charge under section 302 r/w 120-B, I.P.C. and has also acquitted the accused Simpoo Yadav from the charge under section 3/ 25 Arms Act. Aggrieved by the aforesaid judgment and order, the appellant has approached this Court by way of filing these two applications for leave to appeal under section 372 Cr.P.C.

2. As both the appeals relate to the same occurrence, both the applications are being disposed of by a common order.

3. Heard learned Counsel for the appellant, learned AGA and perused the record.

4. It has been vehemently argued by learned Counsel for the appellant that P.W.-1 and P.W.-2 who are the witnesses of the fact have clearly proved the participation and roles of the other 6 accused persons in hatching the criminal conspiracy after pre-concert of their minds therefore, the offence under sections 302 r/w section 120-B, I.P.C. is clearly made out against all of them and they were liable to be convicted by the Trial Court. Learned Counsel for the appellant has contended that findings recorded by the Trial Court for acquitting the accused are per se illegal and are liable to be set aside because the learned lower Court, without properly appreciating the evidence on the record has passed an illegal order. It has further been argued by learned Counsel for the appellant that the Trial Court has wrongly acquitted the accused Simpoo Yadav from the charge under section 3/ 25 Arms Act ignoring the following facts:--

That country made pistol and cartridges (live and empty) were recovered from his possession by P.W. 5 and the aforesaid articles were sealed on the spot; there was sufficient light of torch at the time of recovery of articles, besides it a red coloured motorcycle was also recovered from the possession of Simpoo Yadav; there was also available sufficient evidence of ballistic expert regarding the use of aforesaid weapon in murder of the victim; the learned Trial Court, although convicted the accused Simpoo Yadav for committing murder of the victim Rajman in connected sessions trial, has wrongly acquitted him in connected case under section 3/ 25 Arms Act, only on the ground that there is no public witness of the recovery.

5. Learned Counsel for the appellant has lastly contended that the oral evidence led by the prosecution is credible and trustworthy so the leave to appeal in both the cases be granted.

6. On a careful scrutiny of the judgment of the Trial Court, it appears that the prosecution in order to prove its case has produced 9 witnesses in all, out of which only two witnesses are of fact and the remaining 7 witnesses are of formal nature. The learned Lower Court after elaborately appreciating the evidence produced by the prosecution, found the prosecution case under section 302 IPC r/w 34 against accused Simpoo Yadav @ Avinash Yadav and Navneet as proved to the hilt and convicted both of them. So far as the complicity of accused numbers 2 to 8 in the occurrence was concerned, the Court below did not find any cogent evidence in proof of the fact that any criminal conspiracy was hatched among the remaining accused persons to commit the murder of Rajman Chauhan. While coming to such conclusion, the learned Lower Court relied upon the law laid down by the Hon'ble Apex Court in the case of Hori Lal Bhagwati v. C.B.I. New Delhi 2003 Cri LJ 304 (SC).

7. Section 120-B of IPC provides for punishment of "criminal conspiracy" which is defined in section 120-A of IPC as follows:--

"120-A. Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,--

- (a) an illegal act, or
- (2) an act which is not illegal by illegal means.

Such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

8. The Apex Court in the case of Vijayan @ Rajan Vs. State of Kerala, has reiterated the well settled law with regard to criminal conspiracy as under:--

"to bring home the charge of conspiracy within the ambit of section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act."

9. The impugned judgment shows that the learned Trial Court has expressed its clear view that prosecution has failed to prove that any such agreement took place between Kailash Yadav, Radhey Yadav, Bandhoo Yadav, Virandra Yadav and Subedar Chauhan hence, they could not be held guilty for such offence.

10. So far as the charge under section 3/ 25 Arms Act levelled against accused Simpoo Yadav only, is concerned, the learned Trial Court, after considering the statement of P.W.-2 who has stated that when accused Simpoo Yadav was arrested a large crowd had gathered at the spot, has expressed its doubts in the prosecution story for the obvious reason that despite availability of several public witnesses, (members of crowd gathered at the spot) no one from public was asked to be a witness of recovery. Moreover, although it has been stated that in the light of torch recovery memo was prepared, but nowhere it has been stated that from where the torch came or to whom the torch belonged. The Trial Court has also considered the fact that recovery of two empty cartridges from the possession of the accused after two days of the occurrence, appears unnatural as no one would keep the empty cartridges in his pocket even after expiry of two days as proof of his committing the murder. On the basis of the aforesaid grounds, the learned Court below acquitted accused Simpoo Yadav @ Avinash Yadav from the charge under section 3/ 25 Arms Act by giving him benefit of doubt.

11. The reasons given by the learned Trial Court in the impugned judgment appears cogent and reasonable and it cannot be said that the view taken by the Trial Judge is not a reasonably possible view.

12. In a catena of judgments, the Hon''ble Supreme Court has reiterated the law that where two views are reasonably possible from the very same evidence, Appellate Court should not reverse the judgment of acquittal by Trial Court viz. C. Antony Vs. K.G. Raghavan Nair, Chandravpa v. State, 2007 (54) AIC 172 (SC) : 2007 (58) ACC 402 (SC) K. Prakashan Vs. P.K. Surenderan, and T. Subramanian Vs. State of Tamil Nadu, . In this view of the matter, there appears

no merit in the application for leave to appeal which is liable to be rejected and is hereby, rejected. Consequently, the appeal is also dismissed.