

(2014) 04 AHC CK 0105
In the Allahabad High Court
Case No : U/s. 378 Cr.P.C. No. 212 of 2013

State Of U.P.

APPELLANT

Vs

Lallu Pandey @ Gaya Prasad Pandey

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(XI)

Citation : (2014) 04 AHC CK 0105

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surendra Vikram Singh Rathore, J.—Heard learned AGA on the application for grant of leave to appeal.

2. The instant appeal has been preferred against the judgment and order dated 07.08.2013 passed by learned Special Judge, SC/ST Act, District-Faizabad in Sessions Trial No. 06 of 2011, case crime no. 560 of 2010, whereby the opposite party-Lallu Pandey was acquitted for offences u/s 504, 506 IPC and 3(1)(XI) SC/ST Act.

3. Brief facts are that on 07.06.2010 at about 03.30 pm, the complainant along with her children had gone to field to pick wood. At that time, the opposite party-Lallu Pandey reached there and after holding her hand tried to drag her. On an alarm being raised by the victim, her son reached there and accused Lallu Pandey ran away extending threats to the victim. The first information report of this case was lodged after about twelve days of the occurrence.

4. Submission of learned A.G.A. is that the trial court has not appreciated the evidence in correct perspective. There was sufficient evidence to convict the opposite parties.

5. Law is settled on the point that in appeal against acquittal, if the view taken by the trial court is possible, then the judgment of acquittal shall not be interfered with.

6. It is the cardinal principle of criminal jurisprudence that every accused shall be presumed to be innocent unless otherwise proved. This presumption of innocence stands strengthened by the acquittal of the accused persons by the Trial court. In the instant case, the respondents have been acquitted for the charges levelled against them.

7. Hon"ble the Apex Court in the case of State of Madhya Pradesh Vs. Dal Singh and Others, has held as under:-

It is a settled legal circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by lower court, if the findings recorded by the lower court are found to be perverse, i.e. if the conclusions arrived at by the court are contrary to the evidence on record, or the courts approach with respect to dealing with the evidence is found to be patently illegal, leading to miscarriage of justice or if the judgment is unreasonable and is based on erroneous understanding of the law and of the facts of the case. While doing so, the court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the lower court bolsters such presumption of innocence.

8. A reference may also be made to the judgment of Hon"ble the Apex Court in the case of Shivasharanappa and Others Vs. State of Karnataka, .

9. Hon"ble the Apex Court in the recent judgment in the case of Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, , has held as under:-

This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal u/s 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.

Under the scheme of the Cr.P.C., acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law. In the case of State of Rajasthan Vs. Shera Ram @

Vishnu Dutta, , a Bench of this Court, of which one of us (Swatanter Kumar, J.) was a member, took the view that there may be no grave distinction between an appeal against acquittal and an appeal against conviction but the Court has to keep in mind the value of the presumption of innocence in favour of the accused duly endorsed by order of the Court, while the Court exercises its appellate jurisdiction. In this very case, the Court also examined various judgments of this Court dealing with the principles which may guide the exercise of jurisdiction by the Appellate Court in an appeal against a judgment of acquittal. We may usefully refer to the following paragraphs of that judgment:

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

9. We may refer to a recent judgment of this Court in the case of State of Rajasthan th. Secy. Home Dept. Vs. Abdul Mannan, , wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same.

10. Now in the aforementioned legal background, the fact of this case have to be considered. The FIR of this case has been lodged after a considerable delay and the trial court after appreciating the evidence on record has held that the explanation furnished by the prosecution regarding delay in FIR is unsatisfactory. Apart from it, several material contradictions in the statement of the witnesses were also noted and in that background, the trial court gave benefit of doubt to the accused and accordingly acquitted him.

11. The view taken by trial court is probable and therefore the application for grant of leave to appeal deserves to be rejected and is hereby rejected.