

(2021) 12 UK CK 0314

In the Uttarakhand High Court

Case No : Special Leave To Appeal No. 146 Of 2021, Government Appeal No. 71 Of 2021

State Of Uttarakhand

APPELLANT

Vs

Hardayal And Another

RESPONDENT

Date of Decision : 28-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378, 378(3), 386
Indian Penal Code, 1860 — Section 302, 304

Citation : (2021) 12 UK CK 0314

Hon'ble Judges : S.K. Mishra, J; N.S. Dhanik, J

Bench : Division Bench

Advocate : J.S. Virk, Rajesh Joshi

Final Decision : Dismissed

Judgement

S.K. Mishra, J

1. In this application, filed under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code", for brevity),

the appellant-State of Uttarakhand has prayed for grant of leave to appeal against an order of acquittal.

2. The proposed respondents in this case have been acquitted by the learned First Additional District and Sessions Judge, Udham Singh Nagar in

Session Case No. 305 of 2013 as per the judgment dated 31.08.2021 on the ground that the prosecution has failed to establish the complete chain of

circumstances unerringly pointing towards the guilt of the accused respondents.

3. The appeal is filed with a delay of 25 days. Keeping in view the short duration of delay, and the red tapism that is generally found in the

administrative matters, the delay of 25 days is, hereby, condoned. Delay

Condonation Application (IA No. 01 of 2021) is, hereby, allowed.

4. However, considering the facts of the case and the materials available on record, we are of the opinion that no compelling reasons are put forth by

the learned Deputy Advocate General, Mr. J.S. Virk, to grant the leave to appeal against an order of acquittal. In this connection, we take note of the

reported case of State of Orissa v. Urmila Nayak; (2021) 81 OCR 619, in which one of us, (namely S.K. Mishra, A.C.J.), was a member,

wherein the High Court of Orissa, after taking into consideration the case of Ghurey Lal v. State of U.P.; (2008) 10 SCC 450, has held as follows :-

6. After taking into consideration the aforesaid two cases and several other authoritative pronouncements made by the Hon'ble

Supreme Court, the Division Bench of the Hon'ble Supreme Court in the case of Ghurey Lal Vs. State of U.P., (supra) has summarized

the principles that emerged from the referred cases. They are:-

(1) The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure

Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review

the trial court's conclusion with respect to both facts and law.

(2) The accused is presumed innocent until proven guilty. The accused possessed his presumption when he was before the trial court. The

trial court's acquittal bolsters the presumption that he is innocent.

(3) Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness's

credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and

compelling reasons for holding that trial court was wrong. In the light of the above, the High Court and other appellate courts should follow

the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

(1) The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has very substantial and compelling

reasons for doing so. A number of instances arise in which the appellate court would have very substantial and compelling reasons

to discard the trial court's decision. Very substantial and compelling

reasonsâ?? exist when:

- (i) The trial courtâ??s conclusion with regard to the facts is palpably wrong;
- (ii) The trial courtâ??s decision was based on an erroneous view of law;
- (iii) The trial courtâ??s judgment is likely to result in â??grave miscarriage of justiceâ?;
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- (v) The trial courtâ??s judgment was manifestly unjust and unreasonable;
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.
- (vii) This list is intended to be illustrative, not exhaustive.

(2) The Appellate Court must always give proper weight and consideration to the findings of the trial court.

(3) If two reasonable views can be reached, one that leads to acquittal, the other to conviction-the High courts/appellate courts must rule in favour of the accused.â??

7. No doubt the judgment rendered by the Honâ??ble Supreme Court in Ghurey Lal Vs. State of U.P., (supra)â??s case relates to final

judgment of the appeal against acquittal, but we are of the opinion that those Considerations also should weigh in the mind of the Court

while granting the leave to file appeal against acquittal. However, while considering the desirability or otherwise of granting leave to appeal

against acquittal, the appellate Court, at the first instance, is required to, prima facie, be satisfied about the existence of conditions that are

required for overturning a judgment of acquittal to one of conviction While deciding a matter regarding grant of leave to appeal against

acquittal, the Court must be satisfied, prima facie, that at the final hearing of the appeal â??very substantial and compelling reasonsâ??

can be shown, on the basis of which it will be most reasonable to overturn a judgment of acquittal. Only then the appellate court should grant

the leave to appeal against acquittal.â??

5. Thus, keeping in view the aforesaid principles, this Court comes to the conclusion, after analysis of the impugned judgment, that the prosecution has

not only failed to prove a complete chain of circumstances unerringly pointing towards the guilt of the accused respondents, but also the prosecution

has failed to establish any compelling reasons to grant leave to appeal against an order of acquittal.

6. It may be noted here that the learned Deputy Advocate General has pointed out that the deceased and the accused respondents were residing in

one house. The deceased being their tenant, they gave information to the parents of the deceased that he committed suicide, whereas the deceased

met with a homicidal death by asphyxia as a result of strangulation. However, such facts may give rise to a strong suspicion, but it cannot take the

place of a legal proof.

7. In that view of the matter, we are of the opinion that as per the reported cases of State of Orissa v. Urmila Nayak, (supra) and Ghurey Lal v.

State of U.P., (supra), this is not a fit case to grant leave to appeal against acquittal by the State of Uttarakhand.

8. Though, the application for condonation of delay has been allowed, the application for grant of leave to appeal (SPLA No. 146 of 2021) is, hereby,

dismissed.

9. Consequently, Government Appeal No. 71 of 2021 is, hereby, dismissed as not admitted.

10. Urgent certified copy of this judgment be granted to the parties on proper application.