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Court No. - 45
Case :- GOVERNMENT APPEAL No. - 1549 of 1984
Appellant :- State of U.P.
Respondent :- Kailash Nath
Counsel for Appellant :- A.G.A.
Counsel for Respondent :- V.S. Singh,Virendra Kumar Yadav
Hon'ble Rajiv Gupta,J.
Hon'ble Shiv Shanker Prasad,J.

(Delivered by Hon. Rajiv Gupta,J.)

1. Heard Shri Arun Kumar Pandey, learned Additional Government Advocate for the appellant, Shri Virendra Kumar Yadav, learned counsel for the accused-respondent and perused the trial court record.

2. The instant Government Appeal has been preferred against the judgement and order dated 24.2.1984 passed by the Sessions Judge, Varanasi in S.T. No. 219 of 1983, State vs. Kailash Nath by which the accused respondent has been acquitted of charge under section 302/34 I.P.C.

3. Briefly stating, the prosecution case, as unravelled in the FIR is that one Geeta Devi was married to the accused-respondent about one and half years back. After the said marriage, it is alleged that on account of non-fulfillment of demand of dowry she has been done to death in the night

between 4-5/7/1982 by setting her ablaze at her matrimonial house. In respect of the said incident, a written information marked as Ex. Ka-2 in respect of the death of Geeta Devi after receving burn injuries, was also given by Gopal Prasad, P.W.3 at police station Sarnath at about 5.00 a.m. in the morning. In the said report it was stated that at about 2.30 a.m. in the night when all the family members had gone to sleep after taking their meals, they suddenly saw smoke emerging out and smell of kerosene oil emitting. Hearing sighs of the deceased, his mother rushed there and opened the door and saw her daughter-in-law Geeta Devi lying in a burning state. On alarm being raised by her mother, they also rushed to the room of the deceased and saw that her Sister-in-law had died on account of burn injuries. On the basis of the said report, the police reached at the place of incident and conducted the inquest on the person of the deceased and after preparing relevant documents had sealed the dead body and despatched the same for autopsy.

4. Perusal of the record shows that an autopsy was conducted on the person of the deceased on 5.7.1982 at 4.00 p.m. wherein the doctor had noted number of injuries on her neck and burn injuries on her person which is evident from the postmortem report which has been proved and marked as Ex. Ka.14. It is

further stated that in the morning of 5th July 1982, Munni Lal PW-1, was also informed by one Swaminath Yadav resident of the same village that his daughter has been done to death by the accused-respondent Kailash Nath and his father Raghunath by setting her ablaze. On the basis of the said information, Munni Lal father of the deceased reached at the police station Sarnath and lodged a written report stating therein that in the night between 4-5/7/1982 at about 12.00 in the night his daughter has been done to death by setting her ablaze by his in-laws on account of a dispute over demand of dowry. On the basis of said written report an F.I.R. was lodged at P.S. Jaitpura on 6.7.1982 at 7:30 p.m., vide case crime no. 117 of 1982 under section 302, 201 I.P.C., at P.S Jaitpura, District Varanasi. Subsequently, all the relevant documents, namely, inquest report, postmortem examination report, F.I.R. lodged at the instance of P.W.1, Munni Lal and other connected papers were transmitted by Sarnath police to police station Jaitpura, Varanasi within the territorial jurisdiction of which the incident had taken place. Consequent thereto, the investigation of the said case was entrusted to P.W.7, Prem Chandra Pandey who visited the place of incident and prepared the site plan which has been proved and marked as Ex. Ka. 8. Thereafter the Investigating Officer recorded the statement of

Munni Lal, Suraj Prasad, Kewala Devi and Swaminath Yadav. However, thereafter the investigation of the said case was taken over by Jagat Bahadur Singh PW-8, who after concluding the investigation submitted the charge sheet against the accused-respondent.

5. On the basis of the said charge sheet, learned magistrate had taken cognizance and since the case was exclusively triable by the court of sessions, committed it to the court of sessions where it was registered vide S.T. No. 219 of 1983, State Vs Kailash Nath. The trial court framed the charges against the accused-respondent on 3.1.1984 u/s 302 read with section 34 IPC, which was read out and explained to the accused-respondent who abjured the charges, pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove the guilt against the appellant examined PW1 Munni Lal, PW2 Mewa lal, and PW3 Gopal Prasad as witnesses of fact. PW4 Rajbali Yadav, PW5 Jai Nath Singh, PW6 Kali Charan Verma, PW7 Prem Chandra Pandey, PW8 Jagat Bahadur Singh, PW9 Chaturi Prasad and PW10 Bhonu were produced as formal witnesses. One Dr. K.C. Gupta was also examined as court witness.

7. Their testimony in brief is enumerated as under.

8. P.W.1, Munni Lal is the first informant of the instant case and father of the deceased, he in examination-in-chief has stated that the deceased, Geeta Devi was his daughter who was married to one Kailash Nath son of Raghunath. On 5.7.1982 at about 6.00 a.m. one Swami Nath Yadav informed him at his house that Kailash Nath and Raghunath has killed his daughter by setting her ablaze. Her marriage had taken place about one and half years back. At the time of the marriage whatever dowry was demanded was given to them. However, only a motor cycle and Goderaj Steel Almirah was not given. After receiving the said information from Swaminath, he rushed to the P.S. Sarnath and lodged the FIR which has been proved by him as Ex. Ka.1. Before lodging the report, he had reached at the place of incident and had seen his daughter lying dead in a burnt condition, in a room on the first floor. During cross examination he denied the suggestion that Swaminath, had informed him about the death of his daughter, at the instance of accused-respondent, on the contrary, on his own, he had informed him about the death of his daughter.

9. P.W.2, Mewa Lal is another witness of the incident who in his examination in chief has stated that about one and half years back at about 10.00p.m. while he was having tea at a distance of 50 metres from the house of the accused-respondent. He heard

shrieks coming out from the house of the accused-respondent, however, then corrected himself and denied having heard any shrieks coming out from the house of the accused-respondent rather saw number of persons standing outside the house of accused-respondent raising alarm. He went at the door step of the accused-respondent house but did not knock the door. After 2-3 days he came to know about the death of daughter-in-law of Raghunath(now dead). On the basis of the said statement, he was declared hostile. On cross-examination by the public prosecutor, he stated that he is the resident of the village of accused-respondent and Munni Lal's daughter was married to kailash. After about 5-7 months of the incident, the Investigating Officer had recorded his statement. However, on further cross examination he denied to have given any statement to the police, and when his attention was drawn to his statement shown to be recorded under section 161 Cr.P.C., he denied to have given any such statement to the police. He further denied the suggestion that he has colluded with the accused and as such is falsely deposing.

10. P.W. 3, Gopal Prasad is the real brother of the accused-respondent who was present in the house at the time of incident. He in his examination-in-Chief has stated that about one and half

years back at about 2.30 a.m his mother woke up hearing sighs of the victim and his servant raised alarm on which he woke up and then it was disclosed that his brother's wife received burn injuries who soon thereafter died. It is further stated that at about 5:00 in the morning he reached at the police station and lodged the report which has been proved as Ex. Ka. 2. Deceased Geeta was sleeping in a room at the upper floor of the house. During cross examination he stated that the information regarding unfortunate death of Geeta Devi was sent to his father Munni Lal through one Markandey. The room in which Geeta was sleeping a nylon rope tied with the hook was found, which too was burning.

11. P.W.4, Rajbali Yadav, Constable is the person who had taken the dead body of the deceased at 4 p.m. to the Mortuary for post mortem examination who identified the same, however, he has not been cross examined by the defence.

12. P.W.5, Jainath Singh, is the Head Constable posted at police station Sarnath. who had received the written information given by Gopal prasad PW3, regarding the unfortunate death of the deceased Geeta Devi proved & marked as Ex. ka. 2. The corresponding G.D. entry of which was made and proved as Ex. Ka. 3. He further states that a written report Ex. ka. 1 was also given by one Munni Lal in respect of which corresponding G.D.

entry No. 10 at 8:40 hrs was drawn by him which is proved and marked as Ex. Ka. 4. Thereafter the investigation was transferred to P.S. Jaitpura. on 5.7.1982 itself which has been noted in the general diary and marked as Ex. Ka.-5. The said witness has not been cross-examined.

13. P.W. 6, Kali Charan Verma, is the Head Moharrir who had drawn the chik F.I.R. at police station Jaitpura, on the basis of the written report given by P.W.1 which has been proved and marked as Ex. Ka. 6. and corresponding G.D. entry of which was also drawn which has been proved and marked as Ex. Ka. 7. He has also not been cross examined by the defence.

14. P.W.7, Prem Chandra Pandey is the first Investigating Officer of the incident who had recorded the statement of the relevant witnesses and prepared the site plan which has been proved and marked as Ex. Ka. 8. Thereafter the investigation has been handed over to one Jagat Bahadur PW-8, who concluded the investigation and submitted the charge sheet which has been proved and marked as Ex. Ka. 9. However, the said witness has also not been cross examined by the defence.

15. P.W.8, Jagat Bahadur Singh is the second Investigating Officer who after recording the statement of the relevant

witnesses submitted the charge sheet against accused-respondent and other co-accused Raghunath(now dead) who has also not been cross examined by the defence.

16. P.W.9, Chaturi Prasad is another witness of the incident who stated that at the time of marriage, PW-1 Munni Lal had sent the Customary Chimmi(peas) and sugarcane juice at the house of the accused-respondent who had refused to accept the said ceremonial articles but later accepted the same with reluctance but did not show any resentment. He further stated that on the said date, he met Geeta Devi, who asked him to inform her father to give motor cycle and Godrej Steel Almirah else there is threat to her life. In cross examination he denied the suggestion that he had not gone to deliver the Customary Chimmi(peas) and sugarcane juice at the house of Raghunath.

17. P.W. 10, Bhonu is another witness who has been produced to prove the alleged motive for commissioning of the said offence and stated that after marriage, for several days, the victim did not go to her matrimonial house and when accused Raghunath father of Kailash Nath, came for her 'Bidai', he asked for providing him a motor cycle and Godrej Steel Almirah. However, P.W.1 showed his inability to provide the said articles and promised to give it later. In respect of giving of the said articles no Panchayat was

held. During cross examination he stated that after about 3-4 months of the marriage Raghunath had asked for giving him a motor cycle and a Godrej Steel Almirah. However, when P.W.1 assured him to give it later then he performed Bidai of his daughter. He further categorically stated that in respect of giving of a motor cycle and Godrej Steel Almirah there was no dispute/altercation between the two.

18. C.W. 1, Dr. K.C. Gupta is the doctor who has proved the post mortem report of the deceased which is marked as Ex. Ka 14. The post mortem examination was in-fact done by Dr.D.B. Singh who has gone for two months training to Bangalore. He perused the injuries noted in the postmortem examination report and expressed the opinion that the burn injuries are postmortem burn injuries and not anti mortem as noted by Dr. D.B. singh who conducted the post mortem. In his cross examination he has discussed the cause of the death of the deceased and its symptoms on the basis of Modi's medical jurisprudence.

19. After adducing of the said evidence, the statement of the accused-respondent under section 313 Cr.P.C. has been recorded by putting all the incriminating circumstances to him in which he has denied the incident and has categorically stated that on the night of incident, he was not present at or near his house and had

gone to Vindhyachal. His father had also gone to Vindhyachal at the relevant time. His other brothers and servant were only present in the house.

20. On the basis of the entire evidence produced before the trial court, the trial court held that there is no direct evidence in the instant case to prove the guilt of the accused persons and the instant case is based on circumstantial evidence. The trial court further held that even from the statements of P.W.1 Munni Lal, P.W. 9 Chaturi Prasad and P.W.10 Bhonu, factum of alleged motive has not been proved moreover, it has been held by the trial court that motive alone can not prove the guilt of the accused. Even the alleged demand of dowry in the form of motor cycle and Godrej Steel Almirah had not been proved and it was shown from the evidence that accused-respondent were only unhappy in respect of the non-fulfilment of said demand but it did not provide any motive to commit the murder of the deceased. The trial court further held that on the basis of evidence on record, there is no incriminating evidence to prove the guilt of the accused-respondent though the incident has taken place within four corners of his house, yet no reliable inference could be drawn against the accused-respondent. The trial court further held that the chain of circumstances is not complete so as

to hold the accused-respondent guilty of the incident and thus acquitted the accused-respondent.

21. Being aggrieved and dissatisfied by the said order, the present Government Appeal has been filed.

22. Learned A.G.A. for the appellant has submitted that the factum of marriage of the deceased with the accused-respondent is admitted further the fact that the deceased died within the four corners of her house is also proved therefore, it was incumbent upon the accused-respondent to explain as to under what circumstances the victim died, which explanation has not been furnished by the accused-respondent as such he is guilty of the offence.

23. Learned A.G.A. for the appellant has next submitted that on account of non-fulfilment of demand of dowry, the victim has been done to death, however, the trial court has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of acquittal against the accused-respondent more so when the accused-respondent has failed to discharge the said burden.

24. Learned A.G.A. for the appellant has next submitted that since the victim died within the four corners of her house, therefore,

presumption under section 106 of Evidence Act. Could well have been drawn against him and accused-respondent should have been held guilty for the offence. The contrary finding of acquittal recorded by trial court is therefore perverse and illegal and liable to be reversed by allowing the instant Government Appeal.

25. Per contra learned counsel for the accused-respondent has submitted that the impugned order passed by the trial court is just, proper and legal. He has further submitted that there is no eye witness account of the incident in question and the case is based on circumstantial evidence.

26. Learned counsel for the accused has further submitted that the law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**, wherein the apex Court held thus:

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129].** This case

has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :**

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783],** where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence." It is also settled law that the suspicion, how so ever strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

Learned Amicus-curiae further relied upon a case reported in **(2010) 8 SCC 593 G. Parshwanath Vs. State of Karnataka**, wherein it has been held as under :

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts

called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are

not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

27. Learned counsel for the accused-respondent has further submitted that even the provisions under section 106 of the Evidence Act is not attracted in the instant case, therefore, the finding recorded by the trial court acquitting the accused-respondent is just and proper, legal and do not call for any interference by this Court.

28. Learned counsel for the accused-respondent has further submitted that Hon'ble Apex Court in in-numerable cases has held that finding of acquittal can not be reversed by higher court

until and unless it is found perverse, illegal or impossible as held by Hon'ble Apex Court in ***Criminal Appeal No. 1167 of 2018, Ballu @ Balram @ Balmukund and another Vs. The State of Madhya Pradesh.***

29. Before we delve in the question of the applicability of the provision of Section 106 Indian Evidence Act in the present case, it would be useful to quote the Provisions of Section 106 of the Indian Evidence Act :-

> ***"Section 106 of the Evidence Act envisages that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him."***

Hon'ble Apex Court as well as this Court in catena of decision has held that in order to attract the provision of Section 106 of Evidence Act, it is necessary for the prosecution to prove that the fact was specially in the knowledge of the accused and further that whether the prosecution has discharged its initial burden of proving the guilt of the appellant beyond all reasonable doubt.

While considering the applicability of Section 106 of the Indian Evidence Act, it should be kept in mind that the said provision in anyway does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has proved

that the burden in regard to such facts was within the special knowledge of the accused, then only burden may be shifted to the accused for explaining the same. It may be that in a situation of this nature where the Court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well settled principle of law that suspicion, howsoever grave it may be, cannot take the place of proof, and there is a large difference between something that `may be' proved, and something that `will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be' and `must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be' true and `must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure

conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. **(Vide: Hanumant Govind Nargundkar v. State of M.P., State v. Mahender Singh Dahiya and Ramesh Harijan v. State of U.P.)**

30. Now examining the fact whether appellant's participation in the crime is proved by the prosecution evidence adduced in the trial, we find that none of the four witnesses have stated that at the time of incident, the appellant was present at or near his house nor any other witness has been examined to suggest that the appellant was at or around his residence at the relevant time. In the absence of which in our opinion the presumption under Section 106 of the Evidence Act cannot be drawn. Thus, we are of the opinion that the presumption under Section 106 of the Evidence Act cannot be drawn in the present case on the basis of which the appellant can be convicted. The view taken by the trial

court in this respect is, therefore, just proper and legal and do not call for any interfence. Moreover there is nothing on record to show that within all human probability the act must have been done by the accused when other male members and servants were present in the house.

31. We are now left only with the material i.e. the statement of the accused-appellant under Section 313 Cr.P.C. wherein he has stated that at the time he was not present at his house and had gone to Vindhyachal and only his other brothers and servants were present at his house. Now we have to examine the facts as to whether in the absence of any corroborating evidence only on the basis of the statement given by the accused-appellant under Section 313 Cr.P.C. can the appellant be convicted for the offence punishable under Section 302 IPC ?

It is well settled principle of law that the statement of an accused made under Section 313 Cr.P.C. can be taken into consideration is not in dispute; not only in view of the what has been contained under Section 313 (4) of the Code but also because of the law laid down by the Hon'ble Apex Court as well as this Hon'ble Court in several pronouncements. We may in this regard refer to the decision of this Court in the **Sanatan Naskar v.**

State of West Bengal reported in 2010 (8) SCC 249, where this observed: (SCC page 258-59, paras 21-24)

> *"21. The answers by an accused under Section 313 of the Cr.P.C. are of relevance for finding out the truth and examining the veracity of the case of the prosecution.*
>
> *22. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.P.C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.*
>
> *23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any,*

made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) of Cr.P.C. explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.P.C. as it cannot be regarded as a substantive piece of evidence."

To the same effect is the decision of this Court in **Ashok Kumar v. State of Haryana**.

Reference may also be made to the decision of this Court in Brajendra Singh v. State of M.P. where this Court said : (SCC page 297, para 15)

> *"15. It is a settled principle of law that the statement of an accused under section 313 of Cr.P.C can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under section 313 of Cr.P.C simpliciter normally cannot be made the basis for conviction of the accused. But where the statement of the accused under section 313 Cr.P.C is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced."*

32. Thus in view of the aforesaid settled principle of law laid down by the Apex Court, we are of the opinion that the acquittal of the accused-respondent cannot be reversed on the basis of the statement recorded u/s 313 Cr.P.C. The contrary arguments raised by learned AGA in this respect is liable to be repelled.

33. It is further germane to point out here that from the entire evidence adduced during the course of trial, we find that the instant case is based on circumstantial evidence and in order to

bring home guilt against the accused-respondent five golden principles as discussed has to be proved against the accused-respondent. However, in the present case on the basis of evidence, we find that the prosecution has miserably failed to prove chain of circumstances leading to the guilt of the accused-respondent. Even motive has not been conclusively proved by the prosecution rather a faint effort has been made by the prosecution to establish the motive which has not been conclusively proved, moreover, merely on the basis of motive, the accused-respondent can not be held guilty for the offence, as held by the trial court.

34. Moreover the Hon'ble apex court time and again has laid down the principles governing the scope of interference by the High court in an appeal filed by that state for challenging the acquittal of the accused recorded by the trial court. This Court in the case of ***Rajesh Prasad v. State of Bihar and Another*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order

of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 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 distrub the finding of acquittal recorded by the trial court."

35. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka*** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

36. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

a) That the judgment of acquittal suffers from patent perversity;

b) That the same is based on a misreading/omission to consider material evidence on record;

c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

37. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

38. In the light of above proposition of law if we go through the impugned judgment and order, we find that the trial court had given cogent and convincing reasons for recording the finding of acquittal against the accused-respondent and that the acquittal of the accused-respondent is plausible and justifiable view emanating from the discussion of the evidence available on record and does not suffer from any infirmity or perversity. Therefore, we are of the opinion that the impugned judgement and order passed by the trial court is just, proper and legal and do not call for any interference by this Court.

39. The present government appeal lacks merit and is accordingly dismissed.

40. Trial court's record be remitted back forthwith.

Order Date :-17.05.2024
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