(2022) 07 SC CK 0017

Supreme Court Of India

Case No: Criminal Appeal Nos. 410-411 Of 2015

Ravi Sharma		APPELLANT
	Vs	
State (Government Of Nct Of Delhi) And Anr.		RESPONDENT

Date of Decision: July 11, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 21
- Code Of Criminal Procedure, 1973 - Section 378, 384, 417
- Evidence Act, 1872 - Section 27
- Indian Penal Code, 1860 - Section 419, 302

Citation: (2022) 7 JT 251 : (2022) 10 Scale 393

Hon'ble Judges: Abhay S. Oka, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: Mohit D. Ram, B. V. Balaram Das, Ashiesh Kumar

Final Decision: Allowed

Judgement

M. M. Sundresh, J

1. An order of acquittal passed on a scrutiny of evidence before it by the District and Sessions Judge, North-East District, Karkardooma Court, Delhi

in S.C. No.6/12 got overturned by the impugned judgment of the Division Bench of the High Court of Delhi based upon the existence of motive along

with the recovery made under Section 27 of the Indian Evidence Act (for short Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢).

FACTS IN BRIEF:

2. On 30.05.2011, the first information report was recorded on finding a dead body. PW2, brother of the deceased, identified the body. Statements of

both PW1, father of the deceased and PW2 have been recorded, which did not indicate any specific suspect. The Investigating Officer conducted the

inquest and prepared the map. On the next day, doubts were raised by PWs 1 and 2 pointing the finger of suspicion on the accused who happens to be

a friend of the deceased. Upon securing the accused, recovery of the material in the form of firearm was made. Both the observation Mahazar along

with the sketch and the recovery Mahazar under Section 27 of the Act were signed by the police officers with the exception that the latter one was

signed by PW2 as well.

3. The trial Court disbelieved the evidence of PWs 1 and 2; PW2 with reference to the motive, and PW1 on the ground that it did not support the case

of the prosecution. It raised a serious suspicion over the recovery made under Section 27 of the Act. From the place of occurrence, recoveries were

made by way of a wooden piece of the butt of a gun along with the cartridges. Of this, four cartridges were found in the pocket of the deceased.

4. Having found that the motive has not been proved and the recovery being doubtful despite the presence of scores of independent witnesses on both

occasions, the Court in the first instance deemed it appropriate to extend the benefit of doubt in favour of the appellant.

5. The Division Bench of the Delhi High Court, despite concurring with the views expressed by the trial Court qua the last seen theory, nonetheless

accepted the evidence of PW2 with respect to the motive coupled with the recoveries made. Though the trial Court eschewed the evidence of the

Ballistic Expert, which remained inconclusive with respect to the bullet which caused the death, relatable to the gun belonging to the appellant, the

High Court felt that it could be relied upon. Incidentally, it was held that the wooden piece of the butt did belong to the appellant. Therefore, the

circumstances forming a chain were sufficient enough to point out guilt towards him and accordingly the High Court rendered a conviction.

6. Learned counsel, Mr. Krishan Kumar, appearing for the appellant submitted that the well-merited judgment of the trial Court ought not to have been

reversed by the High Court by replacing its own views. Having accepted the views of the trial Court as a plausible one, the conviction ought not to

have been rendered. There was no link in the circumstantial chain as held by the High Court. Motive has not been established in the manner known to

law. In a case of circumstantial evidence, motive assumes more importance. The opinion of the Ballistic Expert was rightly taken note of by the trial

Court and in fact used in favour of the appellant, being inconclusive. The manner in which recoveries were made at the first instance during the

inspection of the place of occurrence and thereafter at the instance of the appellant were rightly doubted by the trial court. The suspicion created by

the trial Court has not been dispelled. As there is no perversity in the decision of the trial Court, the reversal at the hands of the High Court is

unwarranted.

7. Ms. Aishwarya Bhati learned Additional Solicitor General appearing for the respondents submitted that the power of the High Court in deciding the

appeal is rather wide. The High Court may reappreciate the evidence which in fact it did. There is no perversity in the cogent reasons rendered by the

High Court. PW2 has deposed about the motive due to enmity between the deceased and the appellant. This along with the recoveries made would

form sufficient grounds to convict the appellant.

8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short

Ã¢â‚¬Ëœ Cr.P.C.Ã¢â‚¬â„¢) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a

recent judgment of this Court in Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495) as follows:

25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's

view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the

presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court

rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that

enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

9. This Court in the aforesaid judgment has noted the following decision while laying down the law:

Precedents:

Mohan alias Srinivas alias Seena alias Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233] as hereunder:

Ã¢â‚¬Å“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be

exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength

before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence.

Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The

Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether

the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is

to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the

accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to

play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available

before it. There is no room for subjectivity, nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An

Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a

trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the

Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to

be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one

rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it,

should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under

Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali v. State

of Himanchal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid

decision, which reads as under: [Babu v. State of Kerala, [(2010) 9 SCC 189]:

Ã¢â‚¬Å“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant

material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is Ã¢â‚¬Å“against the weight of

evidenceÃ¢â‚¬, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn.

[(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics

v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Aruvelu v. State, [(2009) 10 SCC 206] and Gamini Bala

Koteswara Rao v. State of A.P. [(2009) 10 SCC 636]).Ã¢â‚¬â€‹

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10], that if a decision is arrived at

on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is

some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse, and the findings

would not be interfered with.

14.3. In the recent decision of Vijay Mohan Singh v. State of Karnataka, [(2019) 5 SCC 436], this Court again had an occasion to consider the scope

of Section 378 CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732] in an appeal

against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

Ã¢â‚¬Å“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai v. State of Gujarat, [(1978) 1 SCC 228]. In the case

before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on

record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the

accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

Ã¢â‚¬Ëœ10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence

independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same

were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an

absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.Ã¢â‚¬â„¢

31.1. In Sambasivan v. State of Kerala, [(1998) 5 SCC 412], the High Court reversed the order of acquittal passed by the learned trial court and held

the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether

the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming

the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the

order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of

conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

Ã¢â‚¬Ëœ8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that

the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9

SCC 225] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or

the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered

a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment

under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate

court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the

evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free

from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate

court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer

from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the

judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having

regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.Ã¢â‚¬â„¢

31.2. In K. Ramakrishnan Unnithan v. State of Kerala, [(1999) 3 SCC 309], after observing that though there is some substance in the grievance of

the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according

an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the

Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was

unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the

accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence

of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This

Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High

Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P., [AIR 1955 SC 807], in para 5, this Court observed and held as under:

Ã¢â‚¬Ëœ5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not

have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial

Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion

that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to

come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but

strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence

have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case

of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial

court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the

order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have

been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State [1951 SCC 1207]; Wilayat Khan v. State of U.P.

[1951 SCC 898]. In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in

reviewing the entire evidence and coming to its own conclusions.Ã¢â‚¬â„¢

31.4. In K. Gopal Reddy v. State of A.P., [(1979) 1 SCC 355], this Court has observed that where the trial court allows itself to be beset with fanciful

doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the

High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.Ã¢â‚¬â€‹

N. Vijayakumar v. State of T.N., [(2021) 3 SCC 687] as hereunder:Ã¢â‚¬

Ã¢â‚¬Å“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a

Ã¢â‚¬Å“possible viewÃ¢â‚¬, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its

findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By

considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, [(2007) 4 SCC 415] has laid down the

general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment

which is relevant reads as under: (SCC p. 432)

Ã¢â‚¬Å“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 Code of Criminal Procedure, 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, Ã¢â‚¬Å“substantial and compelling reasonsÃ¢â‚¬, Ã¢â‚¬Å“good and sufficient groundsÃ¢â‚¬, Ã¢â‚¬Å“very strong circumstancesÃ¢â‚¬,

Ã¢â‚¬Å“distorted conclusionsÃ¢â‚¬, Ã¢â‚¬Å“glaring mistakesÃ¢â‚¬, 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 Ã¢â‚¬Å“flourishes of languageÃ¢â‚¬ 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 disturb the finding of acquittal

recorded by the trial court.Ã¢â‚¬â€‹

21. Further in the judgment in Murugesan v. State, [(2012) 10 SCC 383] relied on by the learned Senior Counsel for the appellant, this Court has

considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this

Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the

acquittal to that of conviction. In the said judgment, distinction from that of Ã¢â‚¬Å“possible viewÃ¢â‚¬ to Ã¢â‚¬Å“erroneous viewÃ¢â‚¬ or Ã¢â‚¬Å“wrong viewÃ¢â‚¬ is

explained. In clear terms, this Court has held that if the view taken by the trial court is a Ã¢â‚¬Å“possible viewÃ¢â‚¬, the High Court not to reverse the

acquittal to that of the conviction.

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23. Further, in Hakeem Khan v. State of M.P., [(2017) 5 SCC 719] this Court has considered the powers of the appellate court for interference in

cases where acquittal is recorded by the trial court. In the said judgment it is held that if the Ã¢â‚¬Å“possible viewÃ¢â‚¬ of the trial court is not agreeable for

the High Court, even then such Ã¢â‚¬Å“possible viewÃ¢â‚¬ recorded by the trial court cannot be interdicted. It is further held that so long as the view of the

trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted

and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under; (SCC pp.722-23)

Ã¢â‚¬Å“9. Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving

at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read

with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to

7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled

with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly

create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being

deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on

both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party

was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled

with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by

bus after the incident took place.Ã¢â‚¬â€‹

24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material

contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a Ã¢â‚¬Å“possible

viewÃ¢â‚¬. By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no

ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the

Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was

not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of

PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no

reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested

by PW 11 till 7.00 p.m.Ã¢â‚¬â€‹

10.Applying the said principles and after going through the judgment rendered by the trial Court as well as the High Court, we do feel that it is a case

where the High Court has not acted within the legal parameters.

11. In this connection, we would like to note the following paragraphs of the High Court, wherein it did concur with the views of the trial Court with

respect to the last seen theory:

Ã¢â‚¬Å“12. It is from this cross-examination the learned Trial Court concludes that the last seen evidence as deposed by Jawahar Singh is an after-

thought and in fact in retrospect when the family of the deceased had strong suspicion that Ravi was the accused, statement dated May 30, 2011 was

introduced by the Police claiming him to be the last seen witness. A perusal of the cross examination of Ashok can reasonably lead to the inference as

has been drawn by the learned Trial Court.

13. Inspector Vijay Sirotiya PW-14 the investigating officer in his cross examination has stated that the father and brother of the deceased had arrived

at the spot around 7.30/7.45 AM, however at that point of time they did not disclose the name of any person whom they could suspect as the

perpetrator of the murder as they were crying and were in a bad condition. He stated that statement of Ashok and Jawahar Singh were recorded on

the same day i.e. May 30, 2011 somewhere in the afternoon after the body had been subjected to post-mortem. In cross-examination he stated that

the name of the suspect had come in the statement without any further address of the suspect and thus his house could not be visited at that point of

time, though the witnesses mentioned some Gali number as well as the house number but since it was a Katcha colony it was difficult to locate the

said address, unless the address was specifically ascertained with the help of witness or other sources.

14. In view of this cross-examination of Ashok Kumar and Vijay Sirotiya we cannot hold that the finding of the learned Trial Court on the point that

the last seen evidence is not reliable is perverse. Though both views are possible, however the view taken by the learned Trial Judge is also a plausible

view.

12. Thus, when the last seen theory is found to be not true, there has to be much more concrete and clinching evidence to implicate the appellant.

PW1 is the father of the deceased who not only deposed that there was no animosity between the deceased and the appellant, but also that he did not

know about the past transaction.

13.Having accepted the views of the trial Court holding that the last seen theory has not been proved, a conviction cannot be rendered on the basis of

evidence, which was rejected qua motive, through the mouth of PW2. The trial Court gave its reasons for rejecting the evidence of PW2. It had the

advantage of seeing and assessing the demeanor of this witness, which the High Court did not have. PW2 has stated that there was a money

transaction which led to a dispute between the accused and the deceased and that he had assured the appellant that it would be repaid. This also

occurred few days before the date of occurrence. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance.

Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the

circumstantial evidence. This position of law has been dealt with by this Court in the case of Tarsem Kumar v. Delhi Administration (1994) Supp 3

SCC 367 in the following terms:

Ã¢â‚¬Å“8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity

of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed

out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the

court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the

accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for

purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of

such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the

immediate impelling motive on the part of the accused which led him to commit the crime in question. Ã¢â‚¬Â¦Ã¢â‚¬Â¦.Ã¢â‚¬â€‹

14. We do find that there is no sufficient link to come to the irresistible conclusion pointing the guilt only to the appellant. We do not wish to multiply

the settled position of law regarding the circumstantial evidence, except to quote the following decision in Padala Veera Reddy v. State of A.P., 1989

Supp (2) SCC 706:

Ã¢â‚¬Å“10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no

direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in

a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

Ã¢â‚¬Å“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human

probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See

Gambhir v. State of Maharashtra [(1982) 2 SCC 351].Ã¢â‚¬â€‹

15.However, once again, we would like to reiterate the settled position of law that a mere suspicion, however, strong it may be, cannot be a substitute

for acceptable evidence, as held in Chandrakant Ganpat Sovitkar v. State of Maharashtra, (1975) 3 SCC 16.

Ã¢â‚¬Å“16. Ã¢â‚¬Â¦Ã¢â‚¬Â¦It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that

when we take into account the conduct of an accused, his conduct must be looked at in its entirety. Ã¢â‚¬Â¦..Ã¢â‚¬â€‹

16. Much reliance has been made on the recoveries made. When the observation Mahazar was prepared along with the sketch and the inquest

conducted, admittedly, scores of persons were present. No independent witness was made to sign and the evidence on behalf of the prosecution that

they did not volunteer to do so, cannot be accepted. A witness may not come forward to adduce evidence at times when asked to act as an

eyewitness. However, when a large number of persons were available near the dead body, it is incomprehensible as to how all of them refused to sign

the documents prepared by the police.

17. Similarly, the trial Court rightly doubted the recovery under Section 27 of the Act. There was no need to take PW2 and thereafter make him to

sign. There are a lot of contradictions in the evidence rendered. PW2 has stated that many persons were available at the time of the recovery, but no

statement has been obtained from any of them. PW11, the Head Constable says that the Investigating Officer PW14, did not ask any neighbor to join

the investigation. PW8, who is the Sub-Inspector of Police has deposed that none was forthcoming. A similar statement was also made by the

Investigating Officer. There is a discrepancy on the mode of traveling to the place from where the recovery under Section 27 of the Act was made,

along with the witnesses, namely PWs 2, 8, 11 and 14. While PW2 has stated that the police team used a jeep and motorbike. The other witness has

stated that it was either motorbike or by foot, while one witness says that it was a Gypsy. We do find contradictions with respect to the place of arrest

followed by the disclosure statement.

18. The report of the Ballistic Expert is obviously a scientific evidence in the nature of an opinion. It is required to use this evidence along with the

other substantive piece of evidence available. The report is inconclusive with respect to the firearm belonging to the appellant being used for

committing the offence.

19. All the aforesaid aspects have been considered threadbare by the trial Court. We do not find any perversity in it and the law presumes double

presumption in favour of the accused after a due adjudication by the trial Court. We do believe that the High Court could have been slower in

reversing the order of acquittal rendered by the Court of First Instance.

20. On the aforesaid analysis, the order of conviction rendered by the High Court of Delhi stands set aside, by restoring the acquittal by the trial Court.

The appeals stand allowed.