

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.(S) 1486 OF 2017
[Arising out of Special Leave Petition
(Criminal) No.3000 of 2013]

KAPIL DEV SINGH . . . APPELLANT (S)

VERSUS

THE STATE OF UTTAR PRADESH
AND ANR. . . RESPONDENT (S)

ORDER

1. Leave granted.
2. The accused appellant who has been convicted for the offence of murder by the High Court in reversal of the acquittal by the learned trial Court is in appeal before this Court.
3. The High Court by the impugned judgment had directed a retrial of the case but only for the limited purpose of rehearing of arguments on the basis of the

evidence already on record. We may also point out at this stage that the State of Uttar Pradesh did not feel aggrieved by the acquittal of the accused appellant and had chosen not to file any appeal against the said order of acquittal.

4. We have perused the order of the learned trial Court as well as the order of the High Court. We have considered the materials on record including the evidence of P.W.3 - Dharmendra Singh and P.W.5 - Dr. M.P. Verma. We have heard the learned counsels for the parties.

5. The conclusion of the learned trial Court that the accused appellant deserves to be acquitted is on a finding that P.W.3, the sole eye-witness, was unworthy of credence and the other alleged eye-witness, one Meenu Singh, was not examined by the prosecution. The learned trial Court was

also persuaded to hold in favour of the accused appellant on the ground that in contra-distinction to the medical report with regard to the injuries suffered on account of the firing allegedly committed by the accused appellant on the deceased there were no blood-stains recovered from the place of occurrence. The learned trial Court also took into account certain additional facts, namely, the contradictory statements of P.W. 3 with regard to the direction from which the accused appellant came and the absence of any blackening or charring on the person of the deceased in spite of the firing being from a close range. The fact that though P.W.3 was present on the spot after the firing for about fifteen (15) minutes and the deceased was his nephew and, yet, he did nothing to help the deceased was another fact that the learned trial Court took into account to

hold that the accused appellant is not guilty of the offence alleged.

6. As already noted, the State did not file any appeal against the acquittal. Rather, it is the first informant who filed Criminal Revision (No.5840 of 2006) under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) against the acquittal of the accused appellant before the High Court.

7. While it is correct that in exercising jurisdiction under Section 397 read with Section 401 Cr.P.C. the High Court would have the power to traverse the evidence on record what ought not to be lost sight of is the fact that the revision petition before the High Court was directed against an order of acquittal. All limitations on the power of the High Court to reverse an order of acquittal would thus

apply to the exercise of jurisdiction in the present case. The cardinal principle that the High Court ought to have kept in mind while considering the revision application is whether the view taken by the learned trial Court is so improbable that it needs to be interfered with. Time and again, it has been stressed that while hearing an appeal against acquittal or for that matter a revision against an order of acquittal, the High Court ought not to supplant its views in place of the learned trial Court, if the view taken by the learned trial Court is a possible view.

8. Reading the order of the High Court it transpires that so far as the evidence of P.W.3 is concerned, the High Court took the view that lack of any response on the part of P.W.3 to help the deceased can be explained by the fact that different

persons react differently in different situations. Other inconsistencies taken note of by the learned trial Court were brushed aside by the High Court as expression of a hyper-technical view of the matter. So far as the absence of blood-stains on the place of occurrence is concerned, the High Court, on its own, held that the same can be explained by the three layers of clothing that the deceased must have been wearing as the occurrence took place in the month of December, 1995.

9. Even if we are to examine the aforesaid conclusion of the High Court in some detail we find from the inquest report, which is on record, that the clothes of the deceased did not show any blood-stains whatsoever. The High Court also came to the finding that the investigation may have been manoeuvred by

the accused. If that is so, the present would have been ideally a case of retrial by permitting the prosecution to lead fresh evidence which order the High Court did not pass. The aforesaid part of the order of the High Court has also not been challenged either by the State or by the first informant. The learned trial Court, therefore, will have to reconsider the matter on the basis of the evidence already on record which has already been noticed by us. On a consideration of the evidence on record we find no ground to sustain the conclusions of the High Court. Rather, we are of the view that the conclusions recorded by the learned trial Court reflect a possible view/conclusion and merely because the High Court could not be in agreement with the same, would not be a sufficient basis for interference with the order of acquittal passed by the learned

trial Court.

10. We, therefore, set aside the order of the High Court and restore that of the learned trial Court. The accused appellant shall stand acquitted of the charge brought against him under Section 302 of the Indian Penal Code, 1860.

11. The appeal consequently is allowed and the order of the High Court is set aside.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
AUGUST 23, 2017

ITEM NO.7

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 3000/2013
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 06-03-2013
IN CRLR NO. 5840/2006 PASSED BY THE HIGH COURT OF JUDICATURE AT
ALLAHABAD)

KAPIL DEV SINGH

PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

Date : 23-08-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Mr. Sudhir Walia, Adv.
Mr. Sanjay K. Singh, Adv.
Mr. Ajeet Singh, Adv.
Mr. Vikas K. Singh, Adv.
Mr. Umang Tripathi, Adv.
Mr. T. N. Singh, AOR

For Respondent(s)

Mr. Ratnakar Dash, Sr. Adv.
Mr. Ardhendumauli Kumar Prasad, AOR

Mr. Manoj Goel, Adv.
Mr. Nanan Kanboj, Adv.
Mr. Shuvodeep Roy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]