IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL APPEAL NO.183 OF 2007

(STATE OF M.P.

Vs.

HARIRAM AND ANOTHER)

Appearance:

SHRI APS TOMAR – PUBLIC PROSECUTOR FOR THE APPELLANT/STATE. SHRI VILAS TIKHE WITH SHRI UTKARSH TIKHE – ADVOCATE FOR THE RESPONDENTS.

Reserved on : 01.05.2025

Delivered on : 07.05.2025

JUDGMENT

Per: ANIL VERMA J.

Appellant has preferred this criminal appeal under Section 378 of Criminal Procedure, 1973 (in short Cr.P.C.) after obtaining leave vide order dated 28.2.2007 from this Court under Section 378(4) of Cr.P.C. against the judgment of acquittal dated 27.10.2006 passed by Special Judge (SC/ST Act) Guna in Special Case No.34/2004 for the offence under Section 3 (1)(10) and 3(1)(11) of SC/ST Act and under Section 506 Part-II and 324 of IPC.

2. As per prosecution story on 5.1.2004 the prosecutrix lodged an FIR at Police Station AJAK Guna by stating that on 4.1.2004 when she was irrigating her field, at that time respondent/accused persons came there and told her that this is our field, they abused her in filthy language

and also used caste related humiliated word. Accused Laxman torn her blouse with bad intention and accused Hariram put the hot iron rod on the back of Ramratibai, when the prosecutrix cried, then Naval Singh and Hariom came there for intervention. Accused persons threatened that if you come again in this field, they will kill her. Prosecutrix narrated the whole incident to her husband and thereafter on the next day she lodged the FIR. After completion of investigation, charge sheet has been filed.

3. The Trial Court after due appreciation of entire evidence available on record, came to conclusion that that the prosecutrix has failed to establish the charges framed against respondent/accused persons beyond reasonable doubt and by the impugned judgment acquitted the respondent/accused from all the aforesaid charges.

4. Being aggrieved by the acquittal of the respondents/accused, appellant has preferred this appeal against the impugned judgment of acquittal.

5. Learned Public Prosecutor for the appellant submits that the Trial Court has not properly appreciated the evidence and wrongly acquitted the respondent/accused from the charges leveled against him.

6. Statement of prosecutrix (PW-1) has been duly supported by eyewitness Naval Singh and Hariom and her statement is also supported by Dr. Raghuvanshi (PW-8) and MLC report but the Trial Court committed error in not believing the testimony of the prosecutrix and wrongly acquitted the respondents/accused. Hence, he prays that the impugned judgment of acquittal of respondents/accused be set aside.

7. Per contra, learned counsel for the respondents/accused opposed the prayer and prayed for its rejection by supporting the impugned judgment passed by the Trial Court.

8. Both the parties are heard and perused the record with due care.

9. On due consideration of the arguments advanced by learned Public Prosecutor for the appellant and the impugned judgment as well as the finding recorded by the Trial Court in paras 17 to 31 of the impugned judgment it appears that although the prosecutrix (PW-1) deposed against the respondents/accused persons regarding the aforesaid offences but eyewitness Naval Singh (PW-3) and Hariom (PW-4) did not mention anything in their statement that the accused persons torn the blouse of the prosecutrix with bad intention. There is a material contradictions and omissions in the statement of Naval Singh (PW-3) and his police statement Ex.D/6 and also in the statement of Hariom (PW-4) and his police statement.

10. Raju (PW-5) has also been examined as an eyewitness but he has turned hostile and not supported the statement of prosecutrix.

11. Prakash (PW-7) has also been examined as an eyewitness. There are material contradictions and omissions in the statements of Prakash (PW-7) and his police statement Ex.D/7 regarding the injuries sustained by the prosecutrix by fire.

12. Dr. Y.S. Raghuvanshi (PW-8) admits in his cross-examination that burn injury marks found on the body of the prosecutrix were more wider than Article B.

13. It is also remarkable that Gappalal (PW-2) who is husband of the prosecutrix also admits that he did not inform the village Chowki or Kotwar and did not lodge any report nearby Police Station Bajranggarh. The incident took place on 4.1.2004 at about 5:00 PM and FIR Ex.P/1 has been lodged on the next day about 10:00 AM. Prosecutrix (PW-1) and her husband Gappalal (PW-2) did not give any satisfactory

explanation for the aforesaid delay, therefore, on the basis of delay in FIR the entire prosecution story appears to be doubtful.

14. Apart from above, Gappalal (PW-2) husband of the prosecutrix admits in his cross-examination that it is true that Hariom and Imrat filed a civil suit against them and in that, order Ex.D/2 has been passed and the Court has prevented them to enter into the disputed land. They have filed an appeal against that order and Ex.D/3 is the order of Appellate Court. Gappalal (PW-2) has also admitted in his cross-examination that he along with his wife and other persons filed a civil suit Ex.D/4 against Imrat Singh, Hariram, Dhanram and Mohanlal and later on they have dismissed their own suits but the civil suit filed against them is still pending and accused persons also filed proceeding for cancellation of their lease deeds. Gappalal (PW-2) in his statement of para 20 admits that he wants to take his land but accused persons do not agree for it. On the basis of aforesaid statement of Gappalal (PW-2), it is true that there is a property dispute between both the parties prior to the incident and on the basis of aforesaid land dispute, there is a possibility of false implication of respondents/accused persons by the complainant as mentioned by learned Trial Court in the impugned judgment and on the basis of aforesaid, entire prosecution story appears to be doubtful.

15. In the case of **State of M.P. vs. Arvind Joshi** reported in **2008 (2) Crimes 228 (M.P.)**, this Court has held as under:

> "10. Thus, the court has found that the prosecution has failed to prove the charges and allegations against the respondent by producing evidence beyond reasonable doubt. After considering the evidence as well as the findings of the trial court, we are also of the view that the prosecution evidence is doubtful and with a firmness it cannot be held that the evidence of all the remaining three eye-witnesses is reliable or that they made the

truthful version of the incident or narrated the story correctly in the court or that the findings of acquittal are liable to be reversed merely on their evidence. According to us, the trial court has not committed any illegality in recording the findings of acquittal against the respondent.

11. It is settled principle under law that normally unless the finding of acquittal is totally perverse and wholly unreasonable, the appellate court should not interfere in the finding of acquittal simply on the ground that other views is also possible from the same set of evidence.

12. In a case of State of Goa vs. Sanjay Thakran and Anr. (2007) 2 SCC (Cri) 162 the Hon. Supreme Court has held that: “While exercising the powers in an appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view, which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.”

13. In a case of Peerappaand Ors. v. State of Karnataka (2006) 1 SCC (Cri) 586, their Lordships recalled the observations made by His Lordship of the Supreme Court, in a case of Kashiram v. State of M.P. (2002) 1 SCC 71, as observed, thus: “Though the High Court while hearing an appeal against an acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and arrive at its own

> findings, yet, the salutary principle which would guide the High Court is -if two views are reasonable possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court its view would have been one of recording a conviction. It follows as a necessary corollary that it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons. Failure to discharge this obligation constitutes a serious infirmity in the judgment of the High Court. That obligation has not been discharged by the High Court in the instant case. On the reasons given by the trial court while appreciating the evidence have not been dealt with by the High Court."

16. Now, so far as the present appeal against the judgment of acquittal is concerned, it is settled law that High Court would not ordinarily interfere with the order of acquittal unless the approach of the lower appellate Court is vitiated by some manifest illegality. Merely because two views are possible, the High Court would not disturb the finding of acquittal recorded by the lower appellate Court as held in the decision of **State of M.P. Vs. Ramcharan and others, 1985 MPLJ 714**.

17. Taking this view of the matter, no interference is called for in the judgment of acquittal dated 27.10.2006 passed by the lower appellate Court. Accordingly, the appeal preferred by the State is accordingly **dismissed**.

18. The respondents are on bail. Their bail bonds shall stand discharged.

(ANIL VERMA)
JUDGE

(alok)