Sanwat Singh & Others

Vs

State of Rajasthan

Criminal Appeal No. 119 of 1958.

(Syed Jafar Imam, K. Subha Rao, Raghuvar Dayal)

09.12.1960

JUDGMENT

SUBBA RAO, J. -

This is an appeal by special leave against the conviction and sentence by the High Court of Judicature for Rajasthan at Jodhpur of the 9 appellants under s. 304, read with s. 149, and s. 148 of the Indian Penal Code.

The 9 appellants, along with 34 other persons, were accused before the Sessions Judge, Merta. Briefly stated the case of the prosecution was as follows : There were two factions in village Harnawa - one consisting of Rajputs and other of the cultivators of the village. Admittedly there were disputes between these two factions in respect of certain fields. At about 3-30 p.m. on October 31, 1951, the day after Diwali, popularly known as Ram Ram day, both the groups went to a temple called Baiji-kathan. The cultivators went first to the temple and sat in the place which was usually occupied by the Rajputs. Subsequently when the Rajputs went there, they found their usual sitting place occupied by the cultivators and took that as an insult to them. Though they were invited by the pujari to sit in some other place, they refused to do so and went to a banyan tree which was at a short distance from the temple. There they held a brief conference and then returned to the temple armed with guns, swords and lathies. The Rajputs fired a few shots at the cultivators and also beat them with swords and lathies. As a result, 16 of the cultivators received injuries and of these 6 received gun-shot injuries, of which two persons, namely, Deena and Deva, succumbed to the injuries. Out of the remaining 14 injured persons, 3 received grievous injuries and the rest simple ones. Forty-three persons, alleged to have taken part in the rioting, were put up for trial before the Sessions Judge, Merta, for having committed offences under s. 302, read with s. 149, and s. 148 of the Indian Penal Code. Five of the accused admitted their presence at the scene of occurrence but pleaded that after they had made their customary offerings at the temple and when they were returning they were attacked by the cultivators. Others pleaded alibi.

The learned Sessions Judge held that it had not been established that the accused had a common object to kill the cultivators and that it had also not been proved beyond any reasonable doubt that any of the accused was guilty of a particular offence. On these findings, he acquitted all the accused.

On appeal the learned Judges of the High Court found that the accused were members of an unlawful assembly, that they were animated by a common object of beating the cultivators and that further out of the 43 accused it had been clearly established that the appellants, who are 9 in number, took part in the activities of the unlawful assembly. On that finding they held that the accused were guilty of culpable homicide not amounting to murder under s. 304, read with s. 149,

Indian Penal Code; they also held that appellants 1, 2, 3 and 4 were also guilty under s. 148 of the Indian Penal Code, as they were armed with deadly weapons, and the rest under s. 147, Indian Penal Code. For the offence under s. 304, read with s. 149, the appellants were sentenced to ten years' rigorous imprisonment, and for the offence under s. 148, appellants 1 to 4 were further sentenced to one year's rigorous imprisonment and the rest under s. 147, to six months' rigorous imprisonment. Having examined the entire evidence, they agreed with the learned Sessions Judge that no case had been made out against the other accused beyond any reasonable doubt. The appeal was, therefore, allowed in respect of the nine appellants and dismissed in respect of the others.

Learned counsel for the appellants contended that the Sessions Judge came to a reasonable conclusion on the evidence and that the High Court had no substantial and compelling reasons to take a different view.

In recent years the words "compelling reasons" have become words of magic incantation in every appeal against acquittal. The words are so elastic that they are not capable of easy definition; with the result, their interpretation varied between two extreme views - one holding that if a trial court acquitted an accused, an appellate court shall not take a different view unless the finding is such that no reasonable person will come to that conclusion, and the other accepting only the conscience of the appellate court as the yardstick to ascertain whether there are reasons to compel its interference. In the circumstances we think it necessary to clarify the point.

The scope of the powers of an appellate court in an appeal against acquittal has been elucidated by the Privy Council in Sheo Swarup v. King-Emperor [(1934) L.R. 61 I.A. 398.]. There Lord Russell observed at p. 404 thus :

> "..... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses....."

Adverting to the facts of the case, the Privy Council proceeded to state,

> "..... They have no reason to think that the High Court failed to take all proper matters into consideration in arriving at their conclusions of fact."

These two passages indicate the principles to be followed by an appellate court in disposing of an appeal against acquittal and also the proper care it should take in re-evaluating the evidence. The Privy Council explained its earlier observations in Nur Mohammad v. Emperor [A.I.R. 1945 P.C. 151.] thus at p. 152 :

> "Their Lordships do not think it necessary to read it all again, but would like to observe that there really is only one principle, in the strict use of the word, laid down there; that is that the High Court has full power to review at large all the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed."

These two decisions establish that the power of an appellate court in an appeal against acquittal is

not different from that it has in an appeal against conviction; the difference lies more in the manner of approach and perspective rather than in the content of the power. These decisions defining the scope of the power of an appellate court had been followed by all the courts in India till the year 1951 when, it is said, this Court in Surajpal Singh v. The State [[1952] S.C.R. 193.] laid down a different principle. But a perusal of that judgment does not bear out the construction which is very often placed thereon. The passage relied upon is found at p. 201 and it reads thus :

> "It is well-established that in an appeal under section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

On the facts of that case this Court held, "we are inclined to hold that the Sessions Judge had taken a reasonable view of the facts of the case, and in our opinion there were no good reasons for reversing that view". We think that these observations are nothing more than a restatement of the law laid down by the Privy Council and the application of the same to the facts of the case before the Court. Though in one paragraph the learned Judges used the words "substantial and compelling reasons" and in the next paragraph the words "good reasons", these observations were not intended to record any disagreement with the observations of Lord Russell in Sheo Swarup's case [(1934) L.R. 61 I.A. 398.] as to matters a High Court would keep in view when exercising its power under s. 417 of the Criminal Procedure Code. If it had been so intended, this Court would have at least referred to Sheo Swarup's case [(1934) L.R. 61 I.A. 398.], which it did not. The same words were again repeated by this Court in Ajmer Singh v. The State of Punjab [[1953] S.C.R. 418.]. In that case the appellate court set aside an order of acquittal on the ground that the accused had failed to explain the circumstances appearing against him. This court held that as the presumption of innocence of an accused is reinforced by the order of acquittal, the appellate court could have interfered only for substantial and compelling reasons. The observations made in respect of the earlier decisions applied to this case also. Mahajan, J., as he then was, delivering the judgment of the court in Puran v. State of Punjab [A.I.R. 1953 S.C. 459.] again used the words "very substantial and compelling reasons", but immediately thereafter the learned Judge referred to the decision of Sheo Swarup's case [(1934) L.R. 61 I.A. 398.] and narrated the circumstances which an appellate court should bear in mind in interfering with an order of acquittal. This juxtaposition of the so-called formula and the circumstances narrated in Sheo Swarup's case [(1934) L.R. 61 I.A. 398.] indicate that the learned Judge used those words only to comprehend the statement of law made by the Privy Council. Mukherjea, J., as he then was, in C. M. Narayan v. State of Travancore-Cochin [A.I.R. 1953 S.C. 478.] again referred to the Privy Council decision and affirmed the wide power of an appellate court and also the proper approach in an appeal against acquittal. The learned Judge did not introduce any further limitation on the power of the appellate court. But it was observed that the High Court had not clearly kept before it the well settled principles and reversed the decision of the trial court 'without noticing or giving due weight and consideration to important matters relied upon by that court'. In Tulsiram Kanu v. The State [A.I.R. 1954 S.C. 1.] this Court used a different phraseology to describe the approach of an appellate court against an order of acquittal. There the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion. This observation was made in connection with a High Court's judgment which had not taken into consideration the different detailed reasons given by the Sessions Judge. In Madan Mohan Singh's

case [A.I.R. 1954 S.C. 637.], on appeal by special leave, this Court said that the High Court 'had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated by non-advertence to and misappreciation of various material facts transpiring in evidence and the consequent failure to give true weight and consideration to the findings upon which the trial court based its decision'. In Zwinglee Ariel v. State of M.P. [A.I.R. 1954 S.C. 15.] this Court again cited the passage from the decision of the privy Council extracted above and applied it to the facts of that case. In Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [A.I.R. 1954 S.C. 322.], Bhagwati, J., speaking for the Court, after referring to an earlier decision of this Court, accepted the principle laid down by the Privy Council and, indeed, restated the observations of that Privy Council in four propositions. It may be noticed that the learned Judge did not use the words "substantial and compelling reasons". In S. A. A. Biyabani v. The State of Madras [A.I.R. 1954 S.C. 645.], Jagannadhadas, J., after referring to the earlier decisions, observation at p. 647 thus :

> "While no doubt on such an appeal the High Court was entitled to go into the facts and arrive at its own estimate of the evidence, it is also settled law that, where the case turns on oral evidence of witnesses, the estimate of such evidence by the trial court is not to be lightly set aside."

The learned Judge did not repeat the so-called formula but in effect accepted the approach of the Privy Council. The question was again raised prominently in the Supreme Court in Aher Raja Khima v. The State of Saurashtra [[1955] 2 S.C.R. 1285.]. Bose, J., expressing the majority view, stated at p. 1287 thus :

> "It is, in our opinion, well settled that 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 the trial court was wrong : Ajmer Singh v. State of Punjab [[1953] S.C.R. 418, 423.]; and if the trial Court takes a reasonable view of the facts of the case, interference under section 417 is not justifiable unless there are really strong reasons for reversing that view."

It may be noticed that the learned Judge equated "substantial and compelling reasons" with "strong reasons". Kapur, J., in Bhagwan Das v. State of Rajasthan [A.I.R. 1957 S.C. 589.] referred to the earlier decisions and observed that the High Court should not set aside an acquittal unless there are "substantial and compelling reasons" for doing so. In Balbir Singh v. State of Punjab [A.I.R. 1957 S.C. 216.], this Court observed much to the same effect thus at p. 222 :

> "It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

These observations only restate the principles laid down by this Court in earlier decisions. There are other decisions of this Court where, without discussion, this Court affirmed the judgments of the

High Court where they interfered with an order of acquittal without violating the principles laid down by the Privy Council.

There is no difficulty in applying the principles laid down by the Privy Council, and accepted by this Court, to the facts of each case. But appellate courts are finding considerable difficulty in understanding the scope of the words "substantial and compelling reasons" used by this Court in the decisions cited above. This Court obviously did not and could not add a condition to s. 417 of the Criminal Procedure Code. The words were intended to convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear reasons for coming to the conclusion that the order of acquittal was wrong.

The foregoing discussion yields the following results : (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case [(1934) L.R. 61 I.A. 398.] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.

With this background we shall now look at the judgment of the Sessions Judge and that of the High Court to ascertain whether the High Court anywhere departed from the principles laid down by the Privy Council.

The framework of the judgment of the learned Sessions Judge may be shortly stated thus : The first question was whether the case of the prosecution that the Rajputs met under a banyan tree, conspired to beat the Jats and came back to the temple armed with weapons was true. This fact was spoken to by several eye-witnesses, including Goga (P.W. 1), Chandra (P.W. 2) and Doongar Singh (P.W. 21). This fact was also mentioned in the First Information Report lodged by Doongar Singh (P.W. 21). There were 20 eye-witnesses who spoke about the conspiracy; and, out of them, P.Ws. 5, 8, 9, 11, 12, 15, 16, 17, 18, 19, 24 and 25 received injuries during the riot. The learned Sessions Judge considered the evidence of P.Ws. 1 and 2 and rejected it on unsubstantial grounds and on the basis of insignificant discrepancies. Thereafter, he noticed that all the other eye-witnesses, with slight and inconsequential variations, spoke to the fact of their returning from the banyan tree with lathies, swords and guns, but he did not give a definite finding whether he accepted that evidence or not, though at the fag end of the judgment he found that he could not hold that the assembly of Rajputs had any common object of killing anybody. Then the learned Sessions Judge proceeded to consider whether any of the Rajputs were recognized by any of the witnesses. He divided the accused into three groups, namely, (i) those accused who were amongst the Rajputs when they had come for darshan of Baiji, (ii) those accused who were amongst the Rajputs when they returned from the banyan tree but for whom the evidence of taking part in the actual rioting is divided, and (iii) those accused for whom most of the eye-witnesses have stated that they had committed rioting and inflicted injuries on the assembly of cultivators. Taking the first group, the learned Sessions Judge, for the reasons given by him earlier, rejected the evidence of Goga and Chandra, pointed out that 28 accused had not been named unanimously by all the eye-witnesses, noticed that there was long standing enmity between the Rajputs and the cultivators, and laid down a criterion that, for

determining the presence of any particular accused, there should be an allegation against him about doing any overt act in the unlawful assembly. By applying the said yardstick he held that none of the accused falling in the first group, which included appellants 7, 8 and 9, was guilty of the offences with which they were charged. Coming to the second category, with which we are not concerned in this appeal, the learned Sessions Judge again applied the test that an overt act should be proved against each of the accused and held that no case had been made out against them. Adverting to the third group, after noticing that 12 of the eye-witnesses were those who received injuries, the learned Sessions Judge applied another test for accepting their evidence. In effect and substance the test adopted by him was that an accused identified only by one witness and not proved to have done any overt act should be acquitted by giving him the benefit of doubt. Applying this test to the said witnesses he held that the said accused were not guilty. After considering the evidence in the aforesaid manner, he came to the following final conclusion :

> "I cannot hold that the assembly of Rajputs had any common object of killing anybody. All happened at the spur of the moment. Those Rajputs who took part in the rioting have not been truthfully named. Innocent persons have been implicated and the cases of those persons who are alleged to have committed any overt acts are also full of doubts."

On appeal the learned Judges of the High Court, as already stated, allowed the appeal in respect of the 9 appellants and dismissed it in regard to the others. The learned Judges of the High Court observed that it had not the slightest hesitation in holding that the case put forward by the prosecution, by and large, represented the substantial truth and that the incidents at the banyan tree were true. They pointed out that the reasons given by the Sessions Judge for not believing the evidence of the main witnesses, Goga and Chandra, who spoke as to what happened at the banyan tree, could not be sustained and that the alleged discrepancies and contradictions in their evidence were not such as to detract from truthfulness. We have also gone through the evidence of Goga and Chandra and we entirely agree with the observations of the learned Judges of the High Court that their evidence was natural and consistent and that the alleged discrepancies pointed out by the Sessions Judge were not either contradictions at all or, even if they were so, they were so trivial as to affect in any way their veracity. The learned Judges further pointed out that the evidence of Goga and Chandra was supported by the evidence of Doongar Singh (P.W. 21), a police constable, who gave the First Information Report at the earliest point of time. The recitals in the First Information Report corroborate his evidence. The learned Judges then indicated that this version was practically supported by other eye-witnesses and that they did not see any reason why it should have been invented, if it was not true. Having regard to the said evidence, they found themselves entirely unable to accept the conclusion of the learned trial Judge that this was a case where a stray beating was given by some individuals on the side of the Rajputs to some individuals on the side of the Jats. They found that the Rajputs were members of an unlawful assembly and that they were all animated by a common object of beating the cultivators. Having held that the learned Sessions Judge was clearly wrong on the question of unlawful assembly, the learned Judges proceeded to consider the case of each accused. They adopted the following principle, based upon the decision of this Court in Abdul Gani v. State of M.P. [A.I.R. 1954 S.C. 31.] :

> "We quite recognise that in a case of rioting where two inimical factions are involved, exaggerations are bound to be made, and some innocent persons are likely to be falsely implicated; but all the same, it is the duty of the courts not to throw out the whole case by following the easy method of relying on discrepancies, and, where the case for the prosecution is substantially true, to find out if any of the accused

participated in the offence, and if their presence is established beyond all reasonable doubt, punish them for the offences committed by them."

They found, on the evidence, that appellant I, Sanwat Singh, who was present on the spot was a member of the unlawful assembly and had actually struck Sheonath with his sword as a result of which his three fingers were cut; that appellant 2, Dhan Singh, was one of the persons who took a leading part in the beating; that appellant 3, Mangej Singh, was undoubtedly one of the participants in the unlawful assembly; that appellant 4, Kalu Singh, was armed with a sword and attacked the Jats and that his version that he had been first attacked by the Jats was not true; that appellant 5, Narain Singh, was one of the members of the unlawful assembly and that he had given beatings to P.W. 25; that appellant 6, Gulab Singh, struck Sheokaran Jat with lathies; and that appellant 7, Sabal Singh, appellant 8, Baney Singh, and appellant 9, Inder Singh, who admitted their presence at the spot but stated that they were attacked by the Jats, were clearly participators in the beating. As regards the other accused, the learned Judges, having examined the entire evidence, agreed with the Sessions Judge in holding that no case had been made out against those accused beyond all reasonable doubt. So far as these accused are concerned there is no evidence to show that any of them had a weapon or that they had taken any active part in assaulting one or other of the Jats. In the result, the learned Judges of the High Court found that the appellants formed an unlawful assembly to beat the Jats and that they must have known that murders were likely to be committed in prosecution of that common object. On that finding, they convicted and sentenced the appellants as stated earlier in the judgment.

Now, can it be said that, as learned counsel for the appellants argues, the Judges of the High Court had ignored any of the principles laid down by the Privy Council and subsequently accepted by this Court ? We think not.

The foregoing analysis of the findings of the two courts discloses the following facts : The Sessions Judge, on the general case of the prosecution that the Rajputs, chagrined by the attitude of the Jats in occupying their usual place in the temple, went to the banyan tree, conferred for a short time and came back to the temple to attack the Jats, rejected the evidence of the main witnesses for the prosecution, namely, Goga, Chandra and Doongar Singh, on grounds which do not stand a moment's scrutiny and ignored the voluminous evidence, which corroborated the evidence of the said three witnesses, without giving valid or acceptable reasons for the same. The learned Sessions Judge did not even give a definite finding on this version of the prosecution case, though impliedly he must be deemed to have rejected it. In regard to the individual cases he divided the witnesses into three categories, and, applying mechanical tests, refused to act upon their evidence. The High Court rightly pointed out that there was no reason why the voluminous evidence in support of the general case and why the evidence of the three witnesses, Goga, Chandra and Doongar Singh, should be rejected. The learned Judges of the High Court accepted their evidence, which conclusively established that the general case was true and that the appellants actually took active part in attacking the Jats with swords and lathies. In doing so, the learned Judges did not depart from any of the principles laid down by the Privy Council. Indeed, they interfered with the judgment of the Sessions Judge, as they came to the conclusion that the said judgment, in so far as the appellants were concerned, was clearly wrong and contrary to the overwhelming and reliable evidence adduced in the case. The learned Judges of the High Court, in our opinion, approached the case from a correct perspective and gave definite findings on a consideration of the entire evidence.

The question now is, whether the appellants have made out any case for interference with the judgment of the High Court under Art. 136 of the Constitution.

Article 136 of the Constitution confers a wide discretionary power on this Court to entertain appeals in suitable cases not otherwise provided for by the Constitution. It is implicit in the reserve power that it cannot be exhaustively defined, but decided cases do not permit interference unless "by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done". Though Art. 136 is couched in widest terms, the practice of this Court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the court. In the present case, the High Court has not contravened any of the principles laid down in Sheo Swarup's case [(1934) L.R. 61 I.A. 398.] and has also given reasons which led it to hold that the acquittal was not justified. In the circumstances, no case has been made out for our not accepting the said findings.

In the result, the appeal fails and is dismissed.

Appeal dismissed.

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