

Gopi Nath Ganga Ram Surve and Others

Vs

State of Maharashtra

Criminal Appeal No. 99 of 1967

(V. Ramaswami-I, I.D. Dua JJ)

15.10.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought special leave from the judgment of the Bombay High Court, dated 29-30th March, 1967, in Criminal Appeal No. 1560 of 1965.

2. The prosecution case was that on December 12, 1964, Vijay Kumar Patil, Vital Lad and Subhas Nagvekar and the deceased Chandrakant Gajna had gone to Chinchpokli at about 5.30 p.m. in order to play a game of hututu. They finished their game at about 7.30 or 7.45 p.m. and started their journey back to their houses by a local train from Chinchpokli station. They alighted at the Dadar railway station at about 8 p.m. and proceeded on foot via Kabutarkhana and Kumbharwada land in order to go to their respective houses in Agar Bazar locality. When they came near the building Meera Sadan they heard someone shouting from behind "catch him". He is Mohan's brother" and the three appellants came and surrounded Vijay Kumar. Appellant No. 2 caught hold of Vijaykumar by his shirt and started giving him first blows. Appellant No. 1 also arrived thereafter and assaulted Vijaykumar on his legs with a stick which he was carrying. Chandrakant intervened and questioned the appellants as to why they were assaulting Vijaykumar in that manner. Thereupon appellant No. 2 took out an open knife from his right side trouser pocket and dealt a knife blow on Chandrakant on the right side of his abdomen. Appellant No. 1 also struck Chandrakant with a stick on his head. P.Ws Vithal and Subhas who were standing nearby ran towards the Portuguese Church. Vital hired a taxi put Chandrakant in the taxi and took him to the Dadar police station. When Vital and Chandrakant arrived at the Dadar Police station. Vijaykumar had already reached the police station and he was giving his statement to S. I. Bhave who was in charge of that police station then. S. I. Bhave arranged to send Chandrakant to Podar Hospital with the custody of police constable, P. W. Deshmukh. The injuries of Chandrakant were examined by Dr. Gavde. Appellant No. 3 was arrested at 9.15 p.m. the same night. The other two appellants were arrested at about 11.30 p.m. Chandrakant died condition became serious and at 6.45 p.m. on December 13, Chandrakant died of his injuries inflicted upon him. The defence of appellants 1 and 2 was that they were falsely implicated on account of enmity. They further alleged that there were two factions in the area and that there was rivalry between the two factions. The defence of appellant No. 3 was that there was an incident earlier in the day in which he was arrested by the police at 8 p.m. and at the time when he was arrested by the police at 8 p.m. and at time when the present offence was alleged to have been committed he was in fact in the Dadar Police station lock-up. The Sessions Judge held that the evidence of three eye witnesses Vijaykumar, Vittal and Subhas could not be believed. The Statement of S. I. Bhave that he recorded the first information report at 8.45 p.m. conflicted with the entry which shows that at 8.30 p.m. S. I. Bhave left the police station for enquiry of a traffic accident on

Sayani Road and had not returned from the investigation of the offence to the police station till about 11.40 p.m. the same night. The Sessions Judge therefore held that the first information report lost all its probative value. The Session Judge found that the prosecution has not established the case and acquitted all the appellants. The State of Maharashtra preferred an appeal to the High Court which allowed the appeal and convicted the appellants of the charges under Section 324, read with Section 34, I.P.C. and sentenced them with rigorous imprisonment for six months. The High Court accepted the explanation of S. I. Bhave that at about 8.30 p.m. he made an entry in the station diary with a view to go to the Sayani Road accident spot. In the meantime P.W. Vijaykumar came to the police station with some injuries on him S. I. Bhave did not, therefore, go out of the police station but deputed one of his constables, namely, P.C. No. 10080/F to go and make enquiries at the place of the traffic accident. He himself remained at the police station and recorded the statement of Vijaykumar. He completed recording the statement at about 10.30 p.m. The High Court accepted the explanation of S. I. Bhave for various reasons. In the first place appellant no. 3 was put in the police lock-up at 9.15 p.m. the same night and this is supported by entry in the police register Ex. 41. So far as appellants 1 and 2 are concerned the head constable Nadkarni had deposed that he was given instructions by S. I. Bhave at about 11.45 p.m. The evidence of Nadkarni was not challenged by the defence. The records of the Podar Hospital also show that deceased Chandrakant was admitted at about 8.15 p.m. and P.W. Vijaykumar was also treated in the hospital at 9.10 p.m., vide the entry in the hospital register Ex. 15. In view of the documents the High Court has accepted the explanation of S. I. Bhave that he did not actually leave the police station for Sayani Road traffic accident at 8.30 p.m. but continued to remain at the police station for investigation of the present case. With regard to the evidence of the alibi of appellant no. 3 the High Court considered the evidence of defence witness Nadan Rawat and discarded it as false. On the contrary the High Court held that the three eye witnesses P.Ws. 1, 2 and 3 have given true evidence in the case and on the basis of their statements convicted the appellants on the respective charge.

3. On behalf of the appellants it was contended that the High Court should not have accepted the explanation of S. I. Bhave with regard to entries in Exts. 55 and 56 and should have held that S. I. Bhave was not in Dadar police station on the night of December 12, 1964. It was also argued that the story of S. I. Bhave that appellant no. 3 was arrested at 9.15 p.m. was untrue and the evidence of Nadan Rawat should have been accepted on this point. It was said that the High Court had no justification for reversing the judgment of the Sessions Judge who acquitted the appellants.

4. 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* (61 I.A. 398) 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."

The Privy Council explained its earlier observations in *Nur Mohammad v. Emperor* (AIR 9154 PC 151), thus at p. 152 :

"Their Lordship do not think it necessary to read it all against, 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 powers 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. In *Sanwat Singh v. State of Rajasthan* ((1961) (3) SCR 120 : AIR 1961 SC 715 : (1961) 2 SCJ 179), it was observed by this Court that the words "substantial and compelling reasons" for setting aside an order of acquittal used by this Court in *Surajpal Singh v. The State* ((1952) SCR 193 : AIR 1952 SC 52 : 1952 SCJ 32 : 1952 Cr LJ 331), were intended to convey the idea that an Appellate Court shall not only bear in mind the principles laid down by the Privy Council in *Sheo Swarup's case* (supra), but must also give its clear reasons for coming to the conclusion that the order of acquittal was wrong. It was pointed out that (1) an Appellant 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* (supra), afford a correct guide for the Appellate Court's approach to a case disposing of such an appeal; (3) the difference in 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 arriving at a conclusion on those facts, but should express the reasons in its judgment, which led to it to hold that the acquittal was not justified.

5. Having examined the judgments of the High Court and the Sessions Judge in this case and having heard counsel for the appellants we are satisfied that the High Court has approached the evidence from a correct perspective and gave definite findings on a consideration of the entire evidence and so had not departed from any principle laid down by this Court.

6. For these reasons we hold that there is no reason for interfering with the judgment of the High Court and the appeal accordingly fails and is dismissed.

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