Bajwa and Others

Vs

State of U. P.

Criminal Appeal No. 189 of 1969

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

06.03.1973

JUDGMENT

DUA, J. -

1. The ten appellants have appealed to this Court by special leave under Article 136 of the Constitution from the judgment and order of the High Court of judicature at Allahabad, dated October 31, 1968, allowing the appeal of the State of U.P., from the judgment and order of the Temporary Sessions Judge, Hamirpur, dated January 15, 1965, acquitting all the 15 accused persons, including the appellants, of the charges under Sections 148, 302/149 and 201, I.P.C. During the pendency of the State appeal in the High Court against the order of acquittal Chandrapal Singh, accused No. 1 (in the trial court) died on September 30, 1967, with the result that appeal against him abated on his death. The appellants were, held liable to be convicted under Section 302/149, 201/149 and 148, I.P.C. Against the remaining accused person the order of acquittal was affirmed. Under Sections 302/149, I.P.C. each of the appellants was sentenced to imprisonment for life and under Sections 201/149, I.P.C. sentence of two years' rigorous imprisonment was imposed on each one of them. They were also sentenced to one year's rigorous imprisonment each under Section 148, I.P.C. All the sentences were directed to be concurrent.

2. According to the prosecution Pannalal and Gulzarilal, appellants Nos. 7 and 8 and brothers : so are Achche Lal, Ramdhar and Bansi, appellants 4 to 6. Surwa, appellant No. 3 is the first cousin of Bansi : Ramdayal, appellant No. 10 is also Bansi's cousin No. 1 too is related to Bansi : he is the son of Ramsahai who turned an approver and was examined as a prosecution witness. It is alleged that all the appellants, along with the other persons arrayed as accused in the trial court, belong to one party and there was some litigation under Section 107, Cr.P.C. between most of the accused persons on the one side and the deceased Ramratan and men of his party on the other. During the course of proceedings under Section 107, Cr.P.C. it appears that under pressure of Ramdayal, Achche Lal and Ramdhar on unwilling Ramratan, a compromise was signed in those proceedings but as there was no genuine change of heart amongst the rival parties the Station Officer of the Police Station did not agree to drop the proceedings. There was also another proceedings under Section 107, Cr.P.C. in which Gulzarilal, Pannalal, Gurwa and Ramgopal had been bound down. It is also alleged that on the murder of one Munni Banin, Chandrapal Singh, Gulzarilal, Pannalal, Banshi, Ramgopal and Gurwa were prosecuted and Ramratan, deceased, conducted the case for the prosecution. There was thus no love lost between the two factions. On August 16, 1963 at about 5.30 p.m. Sheoratan (P.W.1), Jagroop Singh (P.W.2), Maheshar Din (P.W.3), Sughar Singh and deceased Ramratan were proceeding to the house of one Sheoraj Singh for attending a recital of Alha. On their way while proceeding from the direction of Korionwali Gali they entered Banshiwali Lane. There they noticed accused Bansi and Gulzarilal standing in front of the door of Bansi's Gurwahi Bakhari. As soon as

Sheoratan (P.W.1) and his companions turned into the Banshiwali Khor for going to Sheoraj Singh's house, Gulzarilal asked them to stop. Bansi is also said to have shouted "kill them". Thereupon Chandrapal Singh fired his gun hitting Ramratan, deceased, as a result of which the latter died at the spot. The ten appellants were said to be present in the company of Chandrapal Singh at the time of the occurrence. Gulzarilal, Pannalal, Bansi and Achche Lal were stated to be armed with pharsa, Ramdhar, Ramdayal, Gurwa and Ram Gopal had Kulharis while Bajwa and Tej Singh were carrying gandasas. Chandrapal Singh was armed with a gun with which he shot down the deceased Ramratan. Sheoratan (P.W.1) and his partymen tried to advance towards the dead body of Ramratan but the appellants and Chandrapal Singh rushed at them threatening to kill them as well. Sheoratan Singh and his partymen thereupon ran away towards their village raising an alarm. On their arrival in their own Mohalla Sheoratan Singh and his companions collected about 30 or 40 persons and returned to the place where Ramratan had been shot dead. There they found that the dead body of Ramratan had been removed. They divided themselves into two groups. One party going towards the house of Sheoratan Singh in search of Ramratan's dead body and the other going towards Bansi's house for the same purpose. Outside the village both the parties met again and continued their search. Climbing over the "Jogi Nala" they noticed the appellants along with Chandrapal Singh going away with the dead body towards "Bari Bhawani". They also noticed that the dead body had been cut into pieces and its dismembered parts were carried in three baskets one of the partymen carrying the head of the deceased in his hand. The party of Sheoratan tried to chase the accused and on coming closer they recognised the persons running away with the different parts of the dead body. Ramgopal was carrying the head of the deceased in his hand whereas Bajwa, Tej Singh and Ramdayal were carrying three baskets. On seeing the party of Sheoratan the appellants are stated to have thrown away various parts of the dead body and escaped. Sheoratan Singh and his companions recovered the trunk but could not find the head and the thighs of the deceased. Picking up the parts of the dead body which they were able to recover, they returned to their village.

3. A report of the occurrence was written out by Sheoratan Singh (P.W.1) at his house and lodged by him at the police station about 8 miles away at about 12.30 midnight between August 16 and 17, 1963. He had gone there with the village chowkidar and five or ten other persons including Jagdeo Singh who was armed with a gun. The Station Officer not being present in the police station at that time the report was handed over to the moharar Girinder Singh, constable (P.W.7). In that report the names of the ten appellants and Chandrapal Singh were specifically mentioned as the perpetrators of the alleged crime. On his return home P.W.1 learnt that the head and thighs of the deceased had also since been recovered and kept with the other parts of the dead body. The papers relating to the report lodged with the police were sent to the Station Officer in village Guyari where the happened to be at that time. The said officer reached village Geondi at about 11.00 a.m. on August 17 and found the truncated body of the deceased under a peepal tree and after preparing the inquest report he despatched the recovered parts of the body for post-mortem examination. At the place where Ramratan was alleged to have been shot down, blood stains were found by the investigating officer on the ground. Bloodstained and unstained earth was collected from that spot. He then went to "Gurwahi Bakhari" of Ramsahai where the dead body was suspected to have been dismembered. Blood was discovered inside the "Bakhari". Blood stains were also found of the Chaukat and door leaves of the said "Bakhari". Some bricks lying there were also found to have blood stains on them. There were blood marks as well on the cattle fodder lying in that Bakhari. The investigating officer (P.W.8) took the bloon-stained pieces of various articles from the said Bakhari and duly sealed them. The necessary recovery memos were prepared. The investigating officer also found four wads behind the said Bakhari in the vicinity of the place where Ramratan was stated to have been shot dead. Those wads were sealed and the necessary recovery memos prepared. Search was made by the

investigating officer (P.W.8) for the alleged miscreants but they were not traceable with the result that proceedings under Sections 87 and 88, Cr.P.C. were taken for the wanted accused. Accused Nos. 12 to 15 in the trial court were arrested on August 25, 1963, the remaining accused having surrendered in court were arrested on August 25, 1963, the remaining accused having surrendered in court on various dates. The post-mortem examination was performed on the dead body of Ramratan by Dr. J. S. Panwar, Medical Officer-in-charge of Mahoba on August 18, 1963 at about 9.30 a.m. Only seven different parts of the dead body were available for autopsy. Maggots were found on the injured parts of the dead body and fragments of skin with peeling off in several areas in big patches were also found. The following ante-mortem injuries on the trunk of the dead body were observed by Dr. Panwar :

> "1. Bruise 6" X 5" on the front side of the chest with thick layer of coagulated blood under it.
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> 2. Two gun shot wounds measuring 3/10" X 3/10" on the chest left side 1/2" away from the fourth and fifth ribs. The two wounds are 1/5" apart and one was upon the other. Coagulated blood was present under the skin of those injuries.
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> 3. 8 gun shot wounds on the back left side, each measuring 4/10" X 4/10" scattared in an area of 6 1/2" X 5"."

4. All the accused denied their complicity, Chandrapal Singh pleading alibi, claiming that on the morning of August 16, 1963 at about 5 a.m. he had left for village Kharala were he remained for three or four hours, and in an auction purchased a buffalo from the cattle pound. From there he went to Bambhari and as he happened to be a history-sheeter he informed the village chowkidar of his arrival there at about 4 p.m.

5. The trial again summoned Dr. Panwar examined him as C.W.1 on October 22, 1964. He had already been examined in the committing court in November 4, 1963. He had, however, not been cross-examined then through full opportunity been afforded, because according to the defence counsel he could effectively do so only after the examination of the other prosecution witnesses. During the course of his examination in the court of the committing magistrate Dr. Panwar had, after giving full details of the injuries on the person of the deceased as noticed by him and after proving the post-mortem report stated :

> "I cannot say it correctly which of the gunshot wounds was a wound of exit which was the wound of entrance. For this reason I have put these facts inside the bracket. It is my opinion that injury no.2 is the wound of entry and injury no.3 is the wound of exit. It might also be that injury no.2 is the wound of exit and injury no.3 is the wound of entrance."

In the trial court his examination-in-chief and cross-examination by the State counsel reads :

> "As regards injury nos. 2 and 3 both I had stated in the court of committing magistrate that both of them could be the wounds of exit as well as wounds of entry. As regards wound no. 2 it is more probable to be the wound of entry than exit wound. At the time of post-mortem there was no such data with regard to all these gun wounds except their dimensions from which it could be ascertained as to which were entry wounds and which were exit wounds. These gunshot wounds were

inflicted from a distance of more than four feet.

Cross-examined by State counsel :

As regards wound no. 2, I am telling it to be more probable to be entry wound because its dimensions are large and there is no other reason except this. By considering this fact, that there are 8 wounds on the back and two wounds on the chest and that they have been caused from a distance of more than 4 feet, it can also be said that in comparison to the wounds on the chest the wounds on the back have more probability to be entry wounds. No track formed by pellets have been found. It is possible that eight pellets might have entered from the back and two of them might have gone out of the chest and six of them might have fallen on account of the body being cut into pieces or they might not have been detached at the time of post-mortem."

He was cross-examined on behalf of the defence at great length. It was elicited from him that it was not his practice to write in the post-mortem report that the tracks of pellets are not traceable. He could not say whether or not the tracks were visible in the present case as he could only remember about the tracks for about 2 or 4 days after the post-mortem, indicating thereby that after such a long time he could not say anything definite from memory. He had tried to find the pellets but none were available. From this he could deduce that no pellets were present in the body. He did not find any hole in the trunk of the dead body on the basis of which it could be said that the pellets had fallen out. He added that if it could be held that no pellets had fallen from the dead body and none were present at the time of post-mortem the it could be said with certainly that wounds on the chest were the entry wounds and the wound sat the back the exit wounds. We have stated the broad trend of the doctor's evidence.

6. The trial court dealt with the medical evidence and came to the conclusion that there was nothing in the post-mortem report to suggest that Dr. Panwar was in any way in doubt at the time of the post-mortem. The court refused to accept the doctor's explanation that in the post-mortem report he had written the wounds of exit and wound of entry within brackets because he was doubtful. This conclusion was based on the ground that this doubt was not expressly stated in the post-mortem report. On this reasoning the trial court felt that the medical evidence instead of supporting the prosecution case, established that the prosecution version of Ramratan Singh having been shot at from behind was unbelievable. It may here be mentioned that in the court an application had been moved by the prosecution for a demonstration to be held by firing cartridges to show dispersal of the pellets. This was allowed and a demonstration held when a shot was fired from a distance of 42 1/2 ft. because, according to the prosecution story, Ramratan Singh, deceased, had been shot at from that distance. The first shot in the demonstration created ten holes in an area of 12" X 12"; 9 of them being identical in size while one being a very big hole having an area size as big as that of anyone of the other nine holes. Another cartridge was fired which created 8 holes in an area of 9" X 9". According to the defence the cartridges supplied by the prosecution for this demonstration were very likely not authentic. The court then commenced upon the result of this demonstration and also referred to same observation in Modi's Text book on Medical Jurisprudence and Toxicology and came to the conclusion that the dispersal of the pellets suggests that the deceased had been shot at from close range from the front and not from behind from a distance of 42 1/2 ft. The court then proceeded to discuss the prosecution evidence and expressed the view that as the original post-mortem report suggested the wounds in the chest being the entry wounds, the prosecution tried to make out a case of the deceased having been fired at from the front. Later on when it transpired that

perhaps the wounds at the back were more likely to be considered as the entry wounds, the place of occurrence was also changed from the entrance of Korionwali Gali to Banshi Wali lane and instead of deposing that Ramratan Singh had been shot at from the front the prosecution witnesses started deposing in court that he was shot at from behind. This inference was drawn by comparing statements of P.Ws. 2 and 3 under Section 161, Cr.P.C. (Exs. Kha 7 and Kha 9 and the deposition of the witnesses in court. The trial court also expressed doubts about the evidence of the investigating officer that he had found some drops of blood at the site when he inspected it the day following the alleged occurrence and indeed considered this statement to be totally incorrect. In the opinion of the trial court it was just a matter of chance that the party of the accused persons had met Ramratan Singh and there could thus no question of their having formed an unlawful assembly and having waited in front of Bansi's house for killing Ramratan Singh, deceased. The motive of the accused for the murder was not accepted by the trial court and it was observed that it was the court which did not accept the compromise in the proceedings under Section 107, Cr.P.C. between the party of the accused and that of the deceased. Lastly the court felt that the deceased Ramratan Singh having himself been a man of bad character the possibility of someone else killing him could not be ruled out. Chandrapal Singh's plea of alibi was also accepted as according to the trial court the entry about his visit to village Barwah could not be held to be untrustworthy. The trial court in a brief discussion of the evidence of P.Ws. 1, 2 and 3, the eye-witnesses, considered their statements to be unacceptable, being the statements of interested witnesses. The testimony of Ramsahai (P.W. 4) the approver was also considered to be unworthy of credence and it was observed that he had not implicated himself in the offence. The story of the blood having been washed by the ladies from the house was also not believed by the trial court. In these circumstances the trial court did not place any reliance on the testimony of what it described the "socalled approver". On this view all the accused person were acquitted. We have dealt with the trial court's view at some length because on behalf of the appellant the principal argument was that the trial court judgment was quite reasonable and that the High Court was in serious error in law in reversing it on its own appreciation of the evidence and material on the record.

7. On appeal to the High Court by the State, a Division Bench closely went into the evidence. On scrutiny of the testimony of Dr. Panwar that court came to the conclusion that his evidence left the question as to whether the wounds on the chest or the wounds on the back were the wounds of entry in a state of uncertainty. In its opinion the doctor had oscillated in his deposition so many times that it was impossible to draw any definite conclusion contrary to the evidence of the eye-witnesses on the basis of his testimony. The High Court felt on the appreciation of the medical evidence that there were several explanations of the pellets being in the body and not traced by the doctor during the post-mortem. The pellets after they enter the human body often take a very erratic course on account of their being deflected by coming into contact with the bones and indeed according to the High Court the doctor himself had admitted that it was not unlikely that eight pellets entered the body through the back and two of them came out of the chest, the remaining six having either fallen out of the body, because of its having been cut up or having not been traced by him (the doctor) at the time of post-mortem examination. The High Court also took notice of the fact that the maggots were found by the doctor to be crawling on fragments of the body and skin was peeling off in several places in big patches with the result that there was a possibility of the maggots having themselves played a part in bringing about the change in the dimensions of the injuries. It further felt that there was no hard and fast rule that the wounds of entry must necessarily be smaller in size than the wounds of exit. After considering all the relevant aspects the court felt that the dimensions of the injuries of the chest as compared to the wounds on the back were insufficient to justify the inference drawn by the trial court that the shorts had been fired from the front thereby discarding the

testimony of the eye-witnesses with any degree of certainty. The gun having not been recovered the court was not able to come to any conclusion whether the cartridge fired was a factory manufactured one or refilled. On a full survey of the entire medical evidence and the other material on the record the High Court did not find it possible to reject the evidence of the eye-witnesses on account of its being "allegedly inconsistent with the shaky medical evidence". The High Court went into the oral evidence with great care and after fully considering it held that evidence to be acceptable. It also observed that the trial court had (sic) unnecessary importance to the question of motive on the part of someone else for the murder. The evidence made it clear that there were a number of proceedings between the deceased Ramratan Singh and members of his family on the one side and Chandrapal Sing and members of his party on the other. The mere fact that there was a possibility of some other persons also having a motive in murdering Ramratan Singh was not a cogent reason by itself to doubt the testimony of the eye-witnesses which the High Court found to have been corroborated by other unimpeachable evidence on the record. Chandrapal Singh's plea of alibi which had been upheld by the trial court was also carefully gone into by the High Court and rejected as unsupported by cogent evidence. In any event on the assumption that Chandrapal Singh had actually taken part in an auction held on August 16, 1963, at Kharela as pleaded, his presence there till 3 p.m. was held unacceptable. The State appeal was accordingly allowed in part but Chandrapal Singh having died in the meanwhile on September 30, 1967, the appeal against him was said to have abated. The appellants were convicted and sentenced, as already noticed, but the finding of acquittal against the other accused persons was not interfered with.

8. In this Court Shri R. K. Garg, learned counsel for the appellants addressed elaborate arguments in criticising the judgment of the High Court. The principal challenge was concentrated on the contention that the medical evidence in this case contradicted the version of the occurrence as given by the witnesses professing to have seen it. It was strenuously argued that even if two views were possible on this point the High Court was in serious error in reversing the judgment of acquittal recorded by the trial court into one of conviction, ignoring the law as uniformity enunciated in this Court in a number of decisions, the latest decision in which legal position has again been reiterated being Bhubneshwar Mandal v. The State of Bihar. ((1973) 1 SCC 303 : 1973 SCC (Cri) 323) Emphasis was laid on Paras 3 and 4 of that judgment where reference has been made to the decisions in Sheo Swarup v. King Emperor (ILR 56 All 645 (PC)), Sanwat Singh v. State of Rajasthan ((1961) 3 SCR 120 : AIR 1961 SC 715 : (1961) 1 Cri LJ 766) and State of U.P. v. Sanman Dass ((1972) 3 SCC 201 : 1972 SCC (Cri) 275) and relevant passages from those judgments were reproduced. Shri Garg submitted that in the case before us also the High Court had failed to realise the limitation within which it had to function and the caution it had to observe in considering the appeal against the appellants' acquittal. The counsel also cited Khedu Mahton v. State of Bihar ((1970) 2 SCC 450 : 1970 SCC (Cri) 479) and Kanu Ambu Vish v. State of Maharashtra, ((1971) 1 SCC 503 : 1971 SCC (Cri) 211) in which the guidelines for the High Courts in dealing with appeals against acquittals are laid down. Shri Garg in this connection took us through the judgments of the trial court and the High Court for the purpose of showing that the trial court's judgment proceeded on a possible view of the evidence on the record and, therefore, the High Court acted contrary to the observations made by this Court in the above decisions. We were also taken through the relevant evidence on the record by the appellants' learned counsel in his attempt to substantiate his contention.

9. Shri Garg then referred to certain passages from Modi's Medical Jurisprudence and Toxicology for sustaining the trial court's view that the testimony of the prosecution witnesses did not fit in with the doctor's evidence. In this connection also we were taken through the evidence of the doctor at some length.

10. Now first dealing with the scope of appeal by the State against acquittal as this was the main basis of attack against the judgment of the High Court the position in our view is well-settled and there is hardly any scope for controversy, notwithstanding the use of different language in various decisions of this Court. The passages from the three authoritative judicial pronouncements of this Court quoted in Bhubneshwar Mandal case (supra), clearly illustrate the basic line of approach the High Court is expected to adopt while dealing with the State appeals from the judgments of acquittal. This view has been consistently and uniformly taken ever since the basic decision of the Privy Council in Sheo Swarup case (supra), laying down the broad guidelines of approach to be adopted by the High Courts. We would, however, like to emphasis that this Court on appeal from judgments of conviction after setting aside orders of acquittal would examine evidence only for seeing that the High Court has approached the question properly and applied the principles correctly. Once it is found that the High Court has applied correct principles in dealing with an appeal against acquittal then this Court would not ordinarily go further into the evidence and weigh it for itself to substitute its own opinion for that of the High Court merely as to its sufficiency to supports the conclusions arrived at by the High Court. It would do so only if there is some serious infirmity leading to grave injustice (see Harbans Singh v. State of Punjab (1962 Supp 1 SCR 104 : AIR 1962 SC 439 : (1962) 1 Cri LJ 479) and Shivaji Guru Mohite v. State of Maharashtra ((1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55). In case, however, the High Court's judgment suggests that the correct principles were not kept in view then it would be open to this Court to examine the entire evidence for the purpose of assuring that justice does not fail. We consider it necessary to make it clear that the observations in various decisions prescribing a cautious approach on the part of High Courts in dealing with appeals against acquittals do not cut down, limit or qualify in statutory power under Section 423(a), Cr.P.C., which is co-extensive with that under clause (b). Those observations merely indicate the approach of the High Court leaving it free to reach its own conclusions upon the evidence. It is not necessary that the High Court must hold that the trial court's finding was perverse before reversing it. As some of those observations have very frequently been considered wrongly in our opinion to lay down in law a rigid limit on the power of the High Court while hearing an appeal against acquittal, we consider if necessary to refer to the decision of this Court in M. C. Agarwal v. State of Maharashtra, ((1963) 2 SCR 405 : AIR 1963 SC 200 : (1963) 1 Cri LJ 235) where Gajendragadkar, J. (as he then was) speaking for a bench of five Judges, after referring to various decisions including Sheo Swarup case (supra) and Nur Mohammad v. Emperor, (AIR 1945 PC 115) laid down the correct principle as follows :

> "Section 423 (1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. ..... But the

> true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. The King Emperor (supra) and Nur Mohammad v. Emperor (supra)."

The learned Judge then referred to some of the decisions of this Court in which various expression were used for the purpose of expressing the cautious approach of the High Court and observed that those expressions were not intended and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in Sheo Swarup case (supra), the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". After stating the principle the learned Judge dealt with the case before the Court thus :

> "Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt and that the contrary view taken by the trial court was erroneous. In answering this question, we would no doubt consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence."

11. It is in this background that we have to consider the arguments advanced at the bar on the material on the record.

12. Now the High Court has in this case examined entire evidence at great length. In its opinion the trial court was wring in disbelieving the prosecution evidence led to establish the recovery of blood stains from the scene of occurrence and from Gurwahi Bakhari of Ramsahai. On appreciating the evidence for itself the High Court felt that the evidence fully established the recovery of blood stains from the place as deposed by the prosecution evidence with the result that the murder should have appropriately been considered to have been taken place at the spot alleged. The High Court, then dealt with the medical evidence and after a through scrutiny of that evidence did not feel convinced that the testimony of the eye-witnesses could be discarded on the basis of the testimony of Dr. Panwar. The medical evidence was considered by the High Court to be shaky and it came to the considered conclusion that the evidence of the eye-witnesses could not be rejected on this ground. The testimony of the eye-witnesses was also closely scrutinised by the High Court and after considering the relevant aspects canvassed before it this evidence was considered reliable and trust-worthy. The fact that there might have been motive on the part of some others also to murder Ramratan was considered by the High Court not to be a sufficient reason to doubt the testimony of the eye-witnesses who were corroborated by "other unimpeachable evidence", as the High Court put it. The defence evidence was also scrutinised and held unimpressive and unacceptable; it was not so persuasive as to induce the High Court to discard the prosecution evidence which had proved beyond reasonable doubt that, on that date, time and place alleged by it, Ramratan had been

murdered by accused No.1 and his associates in prosecution of the common object of the unlawful assembly of which they were members and that subsequent to the murder they cut up the dead body and removed it from the scene of the murder with the object of screening themselves from legal punishment.

13. No doubt in the judgment of the High Court we do not find any reference to the decisions in which the Privy Council and this Court have laid down the principle which the appellate court is expected to keep in view when dealing with an appeal against the order of acquittal. But the judgment of the High Court clearly shows that it went into all aspects of which the prosecution evidence could be criticised and concluded that the evidence was fully trustworthy and that the medical evidence, shaky as it is, did not throw any doubt on the trustworthiness of the prosecution witnesses as to the place, time and circumstances in which Ramratan was killed. This, in our view, should be sufficient to justify interference by the High Court with the judgment of the trial court. This Court had in Gopinath and Gangaram v. State of Maharashtra, ((1970) 3 SCC 627) had adopted a similar approach. However, in the peculiar circumstances of this case, we have also ourselves considered the evidence to which our attention was drawn and in our opinion the trial court seems to have attached undue importance to some of the observations of Dr. Panwar in the witness box, extracted in cross-examination in the trial court long after the post-mortem, without correctly and fully appreciating the overall effect of his evidence considered as a whole along with the post-mortem report, which had been prepared contemporaneously with the autospy. Without examining any ballistic expert and without even knowing what kind of fire arm had actually been used for the murder in question, the trial court had also, in our view, erroneously discredited the testimony of the eye-witnesses on the basis of the medical evidence. The evidence of the eye-witnesses was not fully and correctly evaluated : it was discredited on the basis of somewhat unsatisfactory testimony of the doctor which on proper judicial appraisal does not contradict the version of the prosecution witnesses as to the manner in which the deceased was shot at. The evidence of alibi on Chandrapal Singh was also wrongly considered to prove his absence from the place of occurrence at the time of the crime. Similarly the testimony of the investigating officer was doubted for reasons which appear to us unsubstantial and insupportable. The High Court on the other hand paid closer attention to the evidence and material on the record, scrutinised it with greater care and held the testimony of the eye-witnesses to be acceptable with respect to the time, place and manner of the murder of the deceased. This evidence, in our view, was not rendered untrustworthy because of its inconsistency with the medical evidence which was also scrutinised by the High Court with greater care and anxiety. The appraisal of the evidence of the investigating officer by the High Court carries greater conviction, being more rational and objective.

14. The trial court was also in error in observing that the words in the F.I.R. "Mauka Pa Kar Ram Rattan Ko Mar Dala" merely suggest that the "accused had got a chance to kill him and had killed him on account of that chance" and that the said statement negatives the prosecution case of the accused having assembled for the purpose of killing Ramratan. This view is wholly misconceived and is based on a misreading of the first information report read as a whole. The words quoted have been taken out of their context. Considered along with the preceding sentence in the F.I.R. these words merely suggest that the accused found an opportunity of killing Ramratan on this occasion against whom they had been nursing a grudge since a long time. The context by no means suggest that the accused persons had not assembled for the purpose of killing Ramratan if he happened to come their way.

15. Shri Garg, while commenting on the appreciation of evidence by the High Court, criticised its conclusions on various circumstantial facts by submitting that these facts were not established

beyond reasonable doubt. The evidence with regard to the manner in which the party of Ramratan, deceased, and the prosecution witnesses, proceeded, from Korionwali Gali was specifically criticised and it was contended that unless each one of those circumstances could be held proved beyond reasonable doubt the accused should be given the benefit of doubt and the prosecution case should fail on that ground alone. The submission is not easy to accept. The appreciation of the evidence by the High Court, in our view, is unexceptionable and there is no question of any possibility of reasonable doubt on the conclusions about the time and place of the occurrence and the manner in which the deceased met with his death. In our view, therefore, there is hardly any cogent ground for holding that the conclusions of the High Court in this respect are in any way tainted with any infirmity which would justify their reversal.

16. But this does not conclude the appeal. The evidence through which we have been taken by the learned counsel at the bar has been examined by us with care and anxiety because in cases like the present where there are party factions, as often observed in authoritative decisions there is a tendency to include the innocent with the guilty and it is extremely difficult for the court to guard against such a danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on acceptable evidence which in some measure implicates such accused and satisfies the conscience of the court. (See Kashmira Singh v. State of M.P. (1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839) and Bhaban Sahu v. The King (76 IA 147)). In the case in hand, no doubt, the prosecution witnesses claiming to have seen the occurrence have named all the appellants and the approver has even named those acquitted by the High Court, but in our view it would be safe only to convict those who are stated to have taken active part and about whose identity there can be no reasonable doubt. Gulzarilal and Bansi exhorted his companions as a result of which Chandrapal Singh shot at Ramratan, deceased. They could be considered to be guilty beyond any reasonable doubt. Ramgopal was seen to be carrying the head of the deceased when the prosecution witnesses chased the party of the accused. He too can thus be considered to be guilty without giving rise to any doubt about his complicity. So far as the others are concerned we feel that they are entitled to benefit of doubt as it is difficult to come to a positive conclusion about their identity amongst those who actually either assaulted the deceased or dismembered and carried away his dead body. There is, however, no doubt in our mind that some out of those to whom the benefit of doubt is given were clearly amongst the party of the assailants and actively took part in the occurrence though their identity cannot be safely fixed without the risk of implicating the possible innocent. In the final result, therefore, the appeal of Gulzarilal, Bansi and Ramgopal is dismissed but that of the others is allowed and they are acquitted.

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