Dharam Das and Others

Vs

State of U.P.

Criminal Appeal No. 21 of 1970

(I.D. Dua, K.K. Mathew JJ)

18.04.1973

JUDGMENT

DUA, J. -

1. In this appeal by special, Dharam Das and Ram Das sons of Ram Adhar, and Raja Ram s/o Chunnua have challenged their conviction by the Allahabad High Court after allowing the State appeal against the acquittal of four persons by the II Temporary Sessions Judge, Hamirpur.

2. The three appellants along with Narayan son of Ram Adhar were tried in the court of the II Temporary Sessions Judge, Hamirpur for offences under Section 203/34 and Sections 323/34, I.P.C. The four accused persons were charged with the murder of Sukhdeo and voluntarily causing hurt to Bhogi Lal at about 12.00 noon on April 29, 1965 in village Bidokhar, Police Station Sumerpur, in furtherance of their common intention to commit the said offences. The prosecution story as unfolded in the report Ext. Ka-1 may now be stated. Sukhdeo deceased, according to the rumour prevailing in the village, had intimacy with the wife of Narayan accused. Sukhdeo was once seen by the inhabitants of the Mohalla coming out of the house of Narayan accused, but the Panchayat after considering the matter felt that as the incident involved the honour and respect of the lady and the family, it should be suppressed and not given publicity. Narayan, however, was not pleased with this decision and was on the look-out for an opportunity of giving a beating to Sukhdeo. About 15 or 16 days before the murder of Sukhdeo, Narayan is stated to have abused the deceased and for this incident also a Panchayat was held in which sympathy was expressed with Narayan. However, Narayan still entertained feelings of hostility against Sukhdeo. On April 29, 1965 at about 12.00 noon, Sukhdeo, his wife Smt. Gangiya, P.W. 3, Bhogi Lal, P.W. 1, Sadhgo, P.W. 2, Babu Lal, Baij Nath and Punna were busy working in their Khaliyan about two furlongs towards north-west from village Bidokhar when Narayan armed with a Karauli, Raja Ram, Dharam Das and Ram Das each armed with a lathi arrived at the said Khaliyan and started beating Sukhdeo with their respective weapons. The persons present at the spot raised alarm remonstrating with the assailants to spare Sukhdeo and also attempted to rescue him. Dharam Das gave a blow to Bhogi Lal which struck him on his left hand. After inflicting injuries to Sukhdeo and Bhogi Lal, the assailants made good their escape. Sukhdeo while being removed on a bullock cart to the police station expired on the way near the house of Shyam Lal Ahir in village Bidokhar. The dead body of Sukhdeo was left at the door of Shyam Lal Ahir and Bhogi Lal proceeded to lodge the report which was scribed by Swami Din, P.W. 4 at Bhogi Lal's dictation. This report was lodged at the police station, Sumerpur at 3.40 p.m.

3. The first information report was taken down by Munwar Khan, Head Constable, P.W. 6. Baleshwar Prasad, P.W. 7, the Station Officer was also present. The distance between the place of the occurrence and the police station is said to be about 6 miles. Baleshwar Prasad immediately took

up the investigation of the case and reached village Bidokhar at about 6.30 p.m. The trial court felt that the testimony of Bhogi Lal, P.W. 1, was not in conformity with his statement in Ext. Ka-1, there being discrepancies with respect to the exact spot were the occurrence had taken place leaving an impression that P.W. 1 had not witnessed any part of the occurrence and had drawn up on his imagination in giving the prosecution version. The motive as stated by Bhogi Lal, P.W. 1, was also not considered to be reliable. With respect to the statement of Sadhu, P.W. 2 as well, the trial court felt that he had not seen that part of the occurrence which had taken place before Smt. Gangiya, wife of the deceased raised alarm, Sadhu P.W. 2, had not witnessed the Karauli blow given by Narayan to the deceased because it was after this injury that all the four accused person started beating the deceased. Indeed the trial court went to the length of observing that P.W. 2. Sadhu, had very likely not seen any part of the occurrence and was, to quote the trial court, a "planted witness". Smt. Gangiya, P.W. 3, the third eye-witness, was also considered to have made a statement "full of infirmities and divergences". The Court felt difficulty in holding that she had witnessed any part of the occurrence, there being no stains of blood on her Dhoti though, according to her own version, after her husband had been injured, she clung to him. The trial court, therefore, felt that the prosecution had failed to bring the charge home to any of the accused persons and acquitted them all.

4. The State of U. P. appealed against the order of acquittal and a Division Bench of the Allahabad High Court in a well-considered judgment, dated August 5, 1969, allowed the appeal and reversing the order of acquittal, convicted Dharam Das, Narayan Das, Ram Das, and Raja Ram, under Sections 302/34, I.P.C. and sentenced each of them to imprisonment for life. Dharam Das was in addition convicted under Section 323, I.P.C. and sentenced to rigorous imprisonment for one year. This conviction related to the injury caused to Bhogi Lal, P.W. 1.

5. It seems that Narayan Das died before his co-convicts presented the application for special leave to appeal in this Court in September, 1969, though the counsel at the Bar could not say so with certainty. The fact, however, remains that only three appellants are before us on appeal by special leave.

6. Shri S. C. Agarwala, the learned counsel for the appellants, has submitted that the judgment of the trial court was detailed and reasonable. Indeed, according to the learned counsel, the conclusion arrived at by the trial court was the only reasonable and possible conclusion on the evidence on the record. Even assuming that two views were possible, according to his submission, the High Court was in serious error in differing from the trial court on the appraisal of the evidence on the record. The counsel has in this connection referred us to Khedu Mohton etc. v. State of Bihar ((1971) 1 SCR 839 : (1970) 2 SCC 450 : 1970 SCC (Cri) 479.) where it was observed that unless the conclusion reached by the appellant court that the accused was not guilty, was palpably wrong and was based on erroneous view of the law or the decision acquitting the accused was likely to result in grave injustice, the High Court should be reluctant to interfere with that conclusion. It was added that if two reasonable conclusions can be reached on the basis of the evidence on record, then the view in support of the acquittal of the accused should be preferred. That was a case in which the accused were convicted by a magistrate, acquitted on appeal by the appellate Court, and again convicted by the High Court on appeal by the complainant under Section 417(3), Cr.P.C. Thereafter, the appeal by special leave was allowed by this Court. Our attention was also invited to K. A. Vish v. State of Maharashtra ((1971) 1 SCC 503 : 1971 SCC (Cri) 211.) where it was observed that though the High Court has power on appeal against acquittal to reverse the order of acquittal on a review of the evidence, yet in doing so it should not only consider all matters on record including the reasons given by the trial court in respect of the order of acquittal, but should particularly

consider those aspects which are in favour of the accused and ought not to act on conjectures or surmises nor on inferences which do not arise on the evidence in the case.

7. The appellant's learned counsel has taken us through the judgments of the trial court and of the High Court and has also referred us to certain parts of the evidence for the purpose of showing that the High Court had committed a grave error in reversing the judgment of acquittal recorded by the trial court.

8. The legal position with respect to the power and duty of the High Court while dealing with State appeals against judgments and order of acquittal is fairly well settled. The earliest decision is that of the Privy Counsel in Sheo Swarup v. Emperor (61 IA 398 : AIR 1934 PC 227.). Thereafter, it has been consistently and uniformly laid down that the jurisdiction of the High Court in dealing with appeals from judgments and orders of acquittal is wide enough to empower the High Court to assess and appraise the evidence for itself and come to its own conclusion on the question of guilt or innocence of the accused persons. The statute places no limitation on this power, there being no distinction between an appeal from an acquittal and an appeal from a conviction. If the Court on examining with care the evidence and the reasons for acquittal feels satisfied that the guilt of the accused is established beyond reasonable doubt then it may be considered as much its duty to convict as it would be its duty to acquit if it entertains reasonable doubt about the guilt of the accused : Harbans Singh etc. v. State of Punjab (AIR 1962 SC 439 : 1962 Supp 1 SCR 104 : (1962) 2 SCJ 662 : (1962) 1 Cri LJ 479.). According to the decisions of this Court, the High Court has, of course to bear in mind when sifting and appraising the evidence, the initial presumption in favour of innocence of the accused and the fact that he was acquitted by the trial court. The presumption of innocence has to be considered to be further strengthened to some extent by virtue of the order of acquittal. And then according to the obligation generally imposed on courts of appeal, the High Court should dislodge the reasons on which the trial court recorded the order of acquittal. This is the broad approach in such appeals.

9. We have gone through the relevant evidence and the judgment of the High Court and we are fully satisfied that the High Court had not committed any serious error and has kept in view all the relevant considerations expected of it when differing from the decision of acquittal recorded by the trial court. In our view, the trial court approached the case ignoring the basic principle that unless the exaggeration and falsehood in the evidence are on points destructive of the substance of the prosecution story, it is the Court's duty to sift the evidence, separating truth from falsehood, and come to its conclusion about the guilt or innocence of the persons accused of the offence. Exaggeration or falsehood on points which do not touch the core of the prosecution story are not to be given undue importance, provided, of course, there is trustworthy evidence supporting the real substance and core of the prosecution case. After going through the judgment of the trial court, we cannot help observing that this real test was not properly kept in view by that Court. The High Court has on the other hand, examined the evidence with particular care and has also gone through the reasoning of the trial court on which the order of acquittal made by that Court was based. The High Court disagreed with the trial court on the question of delay in lodging the F.I.R. after dealing with the point at some length and in a manner which, in our view, is both rational and judicious. Complainant Bhogi Lal, P.W. 1, about the receipt of whose injury the trial court had some doubt, was also held by the High Court to have actually received the said injury at the hands of Dharam Das. The question of recovery of blood-stained earth has also been dealt with by the High Court in a detailed manner and according to that Court non-recover of the blood-stained earth from other places near the scene of occurrence could not in any way weaken the prosecution case provided the testimony of the eye-witnesses was found to be credible. The High Court has then considered the

testimony of the three eye-witnesses disbelieved by the trial court. After closely examining their testimony, the High Court believed it and in our opinion rightly.

10. The High Court, having examined the evidence with anxious care and having also examined the reasons on which the order of acquittal was based, was fully justified in interfering with the view taken by the trial court which was obviously unreasonable and therefore, justifiably open to interference by the appellate Court. The High Court having approached the matter in accordance with the correct principles laid down by this Court, we do not think it is necessary for us to embark upon a re-appraisal of the evidence of ascertaining whether the High Court was right in its view of the evidence. All that is necessary for this Court to do is to examine the evidence just to see whether the approach of the High Court was proper and whether it had applied the correct principles. Having done so, we have no doubt that the judgment of the High Court suffers from no such infirmity as would justify interference by this Court.

11. This appeal accordingly fails and is dismissed.

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