Ram Jag and Others

Vs

The State of U. P.

Criminal Appeal No. 110 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

21.12.1973

JUDGMENT

CHANDRACHUD, J. -

1. The appellants, eleven in all, were acquitted by the Additional Sessions Judge, Gonda, but the order of acquittal was set aside in appeal by the High Court of Allahabad (Lucknow Bench). The High Court has convicted the appellants under Sections 302, 325 and 323 read with Section 149 and under Section 147 of the Penal Code. They have been sentenced to life imprisonment for the offence of murder and to shorter terms for the order offences. This appeal by special leave is directed against that judgment. The charge against the appellants is that on the evening of September 17, 1966 they formed an unlawful assembly and in prosecution of the common object of that assembly they caused the death of Hausla Prasad and injuries to Rampher, Dwarika and Lakhu.

2. On September 17, 1966 which was a Kajri Tij day, Rampher and the deceased Hausla Prasad had gone to a temple which is at a distance of about 8 miles from the village of Jhampur where they lived. They left the temple late in the afternoon along with Dwarika and Lakhu whom they met at the temple. Soon after they crossed a river near the village of Singha Chanda they are alleged to have been attacked by the appellants. Dwarika brought a bullock-cart from a village called Gauhani and thereafter the four injured persons proceeded to the Tarabganj police station. On the way Rampher dictated the First Information Report to a boy called Gorakhnath and soon thereafter, the report was lodged at the police station at about 12.30 at night.

3. Hausla Prasad succumbed to his injurise just before the party reached the police station. He had 12 injuries on his person, Lakhu had a swelling, Rampher had received 6 injuries while Dwarika had received 9 injuries. The injuries received by these persons including Hausla Prasad were mostly confused lacerated wounds and abrasions.

4. The prosecution examined Rampher, Dwarika, Lakhu, Ram Shanker and Ram Kripal (P.Ws. 2 to 6) as eye-witnesses to the occurrence. The learned Additional Sessions Judge held that these witnesses were not worthy of credit and acquitted the appellants. The High Court was not impressed by the evidence of Ram Shanker and Ram Kripal but accepting the evidence of Rampher, Dwarika and Lakhu it convicted the appellants of the offences of which they were charged.

5. Learned Counsel for the State, when called upon, raised a fundamental objection to our entertaining the various questions raised on behalf of the appellants. He contends that the sole question in the appeal is whether the High Court was right in accepting the evidence of the three eye-witnesses and therefore this Court, in the exercise of its powers under Article 136 of the

Constitution, ought not to re-appreciate that evidence in order to determine whether it can sustain the conviction of the appellants.

6. The question as regards the power of this Court in criminal appeals by special leave form the judgments of High Courts setting aside acquittals has been discussed in numerous cases but the precise scope of that power is still being debated as a live issue. In case after case, Counsel have contended that this Court does not under article 136 function as yet another Court of appeal and therefore on matters of appreciation of evidence, the final word must rest with the High Court. Considering the staggering mass of work which is gradually accumulating in this Court, such a rule will bring welcome relief. But it is overstating the rule to say that the verdict of the High Court on questions of fact, including assessment of evidence, cannot ever be re-opened in this Court.

7. The true position is that if the High Court has set aside an order of a quittal, this Court in an appeal under Article 136 from the Judgment of the High Court will examine the evidence only if the High Court has failed to apply correctly the principles governing appeals against acquittal. In a series of decisions, High Courts had taken the view that upon an appeal from an acquittal the appellate Court is not entitled to interfere with the decision of the trial Court on facts unless it has acted perversely or otherwise improperly or has been deceived by fraud. (See Express of India v. Gayadin; (1881) ILR 4 All 148 : 1881 AWN 159. Queen-Emrpress v. Robinson; (1894) ILR 16 All 212 : 1894 AWN 49. King-Emperor v. Deboo Singh; (1927) ILR 6 Pat 496 : AIR 1929 Pat 491. King-Emperor v. U San Win) (1932) ILR 10 Rang 312 : AIR 1932 Rang 146 : 33 Cri LJ 701. A country line of cases had, on the other hand, ruled that the Code of Criminal Procedure drew no destination between an a appeal from an acquittal and an appeal from a conviction, and no such distinction could be imposed by judicial decision. (See Queel-Empress v. Prag Dat; (1898) ILR 20 ALL 459 : 1898 AWN 117. Queen-Empress v. Bibhuti bhusan Bit; (1890) ILR 17 Cal 485. Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh; (1915) 20 CWN 128 : 32 IC 137. Re Sinnu Goundan; (1914) ILR38 Mad 1028, 1034 : 26 Mad LJ 160 : 1914 MWN 273 : 23 IC 188. Queen-Empress v. Karigowda) (1894) ILR 19 Bom 51.

8. In Sheo Swarup and Ors. v. The King-Emperor, 61 IA 398 : AIR 1934 PC 227(2) : 36 CriLJ 786. these conflicting decisions were canvassed before the privy Council but it saw no useful purpose in examining the long list of decisions. Observing that the answer to the question in issue would depend upon the construction of the provisions in the Code of Criminal Procedure, the Privy Council noticed Sections 404, 410, 417, 418 and 422, examined Section 423 and concluded that the Code drew no distinction between an appeal against an acquittal and an appeal against a conviction, as regards the powers of the High Court. Speaking for the Judicial Committee, Lord Russell Observed :

> "There is, in their opinion, no foundation for the view, apparently supported by the judgments of some Courts in india, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.
>
> Sections 417, 418 and 423 of the Code give to the High Court full power to review at large 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. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

The amplitude of the power of the High Court in appeals against acquittal was reiterated by the Privy Council in Nur Mahomed v. Emperor. AIR 1945 PC 151 : (1945) 2 Mad LJ 362 : 47 CriLJ 1.

9. While holding that in appeals against acquittals the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reverse, the Privy Council had pointed out that before reaching its conclusions on facts the High Court must always give proper weight to certain matters like the presumption of innocence, the benefit of doubt etc. This qualification upon a power otherwise wide and unlimited was no more than differently expressed by this Court in Surajpal Singh v. The State, 1952 SCR 193 : AIR 1952 SC 52 : 1952 CriLJ 331. by saying that though it is well-established that the High Court has full power to review the evidence on which the order of acquittal was founded, "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". The phrase "substantial and compelling reasons" became almost a part, as it were, of codified law and was repeatedly used by this Court with emphasis in cases like Ajmer Singh v. State of Punjab, 1953 SCR 418 : AIR 1953 SC 76 : 1953 CriLJ 521. Puran v. State of Punjab, AIR 1953 SC 459 : 1953 CriLJ 1925. Aher Raja Khima v. The State of Saurashtra,(1955) 2 SCR 1285 : AIR 1956 SC 217 : 1956 CriLJ 421. Bhagwan Das v. State of Rajasthan AIR 1957 SC 589 : 1957 CriLJ 889. and Balbir Singh v. State of Punjab. AIR 1957 SC 216 : 1957 CriLJ 481. Judgments of several High Courts in appeals against acquittals could bear evidence of the magic spell which the phrase had cast and how it had coloured their approach to the evidence before them. The apparently rigorous requirement of the rule of "substantial and compelling reasons" and to some extent its tedium was relieved by the use of words "good and sufficiently cogent reasons" in Tulsiram Kanu v. The State. AIR 1954 SC 1 : 1954 CriLJ 225. In Aher Raja Khima's case (supra), the formula of "substantial and compelling reasons" though adopted, was treated as synonymous with "strong reasons".

10. This statement was resolved by this Court in Sanwat Singh v. State of Rajasthan. (1961) 3 SCR 120 : AIR 1961 SC 715 : 1961(1) CriLJ 766. Observing that "In recent years the words 'compelling reasons' have become words of magic incantation in every appeal against acquittal", the Court said : "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 principles laid down by the Privy Council in Sheo Swarup's case (supra), were expressly approved and it was held that :

> "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 question 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".

11. The principles governing appeals against acquittal as explained in Sanwat Singh's case have been adopted and applied by this Court in numerous cases over the past many years. No case has struck a discordant note though one or the other requirement of the well-established principles has been highlighted more in some judgments than in others. These, however, are variations in style and do not reflect a variation in approach.

12. In Harbans Singh v. State of Punjab, (1962) Supp 1 SCR 104 : AIR 1962 SC 439 : 1962 (1) CriLJ 479. a four Judge Bench observed :

> "What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable."

In Ramabhupala Reddy and Ors. v. The State of Andhra Pradesh, (1970) 3 SCC 474 : 1971 SCC (Cri) 80. the same thought was expressed by saying :

> "If the two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the findings of the trial Court."

Very recently, in Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033. this Court rejuvenated the suspect formula of "substantial and compelling grounds" thus :

> "We are clearly in agreement ..... that an acquitted accused should not be put peril of conviction on appeal save where substantial and compelling grounds exist for such a course ..... In law there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the High Court not to upset the holding without very convincing reasons and comprehensive consideration."

13. The principles governing appeals against acquittal are thus firmly established and the issue cannot now be re-opened. The Code of Criminal Procedure by Section 423, has accorded parity to appeals against conviction and appeals against acquittal; the Code makes no distinction between the powers of the appellate Court in regard to the two categories of appeals and therefore the High Court has powers as full and wide in appeals against acquittal as in appeals against conviction.

Whether the High Court is dealing with one class of appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of Criminal Jurisprudence that unless the statue provides to the contrary, there is a presumption of innocence in favour of the accused and secondly, that the accused is entitled to the benefit of reasonable doubt. Due regard to the views of the trial Court as of the credibility of witnesses in matters resting on pure appreciation of evidence and the studied slowness of the appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well-known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. They are self-imposed limitations on a power otherwise plenary and like all voluntary restrains, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed.

14. If after applying these principles, not by their mechanical recitation in the judgment, the High Court has reached the conclusion that the order of acquittal ought to be reversed, this Court will not reappraise evidence in appeals brought before it under Article 136 of the Constitution. In such appeals, only such examination of the evidence would ordinarily be necessary as is required to see whether the High Court has applied the principles correctly. The High Court is the final Court of facts and the reserve jurisdiction of this Court under Article 136, though couched in wide terms, is by long practice exercised in exceptional cases where the High Court has disregarded the guidelines set by this Court for deciding appeals against acquittal or "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" or where the findings is such that it shocks the conscience of the Court. (See Sanwat Singh & Ors. v. State of Rajasthan; Supra fn. 20, SCR pp. 134-135. Harbans Singh & Anr. v. State of Punjab, Supra fn. 21, SCR p. 111. Ramabhupala Reddy & Ors. v. The State of Andhra Pradesh, Supra fn. 22, SCC(Cri) pp. 83-84 : SCC pp. 477-78. and Shivaji Genu Mohite v. State of Maharashtra. (1973)3 SCC 219, 227 : 1973 SCC (Cri) 214,222. A finding reached by the application of correct principles cannot shock judicial conscience and this Court does not permit its conscience to be projected save where known and recognised tests of testimonial assessment are totally disregarded; otherwise, conscience can become an unruly customer.

15. The High Court in the instant case was evidently aware of these principles but it failed to apply them to the case on hand. In an effort to justify its interference with the order of acquittal it has characterised one of the findings recorded by the trial Court as 'perverse' but with that we must express our disagreement. We will now proceed to show how the view taken by the learned Sessions Judge is clearly an unreasonable view to take of the evidence.

16. According to the prosecution the occurrence took place at about 4 p.m. and since the First Information Report was lodged at about 12.30 at night at the Tarabganj police station which is at a distance of about 4 miles from the scene of occurrence, the learned Sessions Judge held that there was undue delay in lodging the Report and that the delay was not satisfactorily explained. It is true that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the First Information Report was lodged after an undue delay so as to afford enough scope for manipulating evidence. whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would

vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution.

17. In the instant case the importance of the question whether there was delay in filing the First Information Report is of a different order. The case of the appellants is that the occurrence must have taken place under the cover of darkness, that is, long after the time at which it is alleged to have taken place and that is why the First Information Report could not be lodged earlier than at 12.30 a.m. This defence is well-founded and the High Court was clearly in error in discarding it.

18. The village of Singha Chanda is just about a furlong away from the scene of offence and yet Dwarika claims to have gone to Gauhani, which is about 3 or 4 miles away, to get a bullock-cart. The High Court observes : "It is not an unreasonable conduct on the part of the witnesses not to take chance in the nearby village for arranging for a bullock-cart when they felt sure that they would be able to procure one from a village which was somewhat farther away, the persons who owned the bullock-cart being known to one of them." We find it difficult to endorse this view. After the bullock-cart was brought to the place where the incident took place Rampher and his two companions claimed to have taken a longer route to reach the police station for the reason that taking the shorter route would have meant crossing a river twice. The river had but ankle-deep water and was only 12 paces from one end to the other. Hausla Prasad was in a critical condition and it is impossible to believe that a longer route was taken thoughtfully in order to facilitate the journey. The High Court observes : "The taking of a longer route also was justified in order to avoid the jolts for the injured on the way for we find in the official map that there is a route by the road of sufficiently good distance along which the bullock-cart could go if it took the longer route." This reasoning is wholly devoid of substance because in situations like the one in which the injured persons were placed, there is neither time nor leisure to consider calmly the pros and cons of the matter. The uppermost thought would be to reach the hospital and the police station as early as possible and it is in the least degree likely, as observed by the High Court that the injured persons avoided going through the tiny river because it "might have done damage to Hausla Prasad whose condition was by no means good."

19. The truth of the matter is that the occurrence had taken place long after 4 p.m. and witnesses were hard put to explaining why on their own theory they took more than 8 hours to cover a distance of 4 miles. They offered a fanciful explanation which was rightly rejected by the Sessions Court and was wrongly accepted by the High Court. It is significant that Rampher had stated in the committing Court that all of them were waiting at the spot of occurrence for about 2 hours after "night-fall".

20. Ram Kripal, a brother of Rampher, himself was examined by the prosecution as an eye-witness. His name was not mentioned in the First Information Report in spite of the fact that the names of other witnesses and several other minute details were mentioned therein. If Ram Kripal was present at the time of the incident, he rather than the injured Dwarika would have gone to fetch the bullock-cart. The Sessions Court therefore rejected the evidence of Ram Kripal and indeed the High Court also came to the conclusion that Ram Kripal was not a reliable witness, that "he might not have been present at all and has been added as an after-thought in support of the prosecution or in any case his statement is of doubtful value, but that does not mean that Rampher's statement should be discarded for the principle of falsus in uno, falsus in omnibus is a principle that does not applying our country." If Rampher has no compunction in creating an eye-witness his evidence had to be

approached with great caution. The High Court was not justified in holding that the only impact of the false discovery of an eye-witness on the prosecution case was that Rampher's evidence had to be rejected in part.

21. Ram Shanker is also alleged to have been present at the time of the incident but he had admitted before the committing magistrate that he left his house for the temple at about 2.30 p.m. That would make it impossible for him to be at the scene of offence at about 4 p.m. on his way back from the temple. He therefore improved his version by stating in the Sessions Court that he had left his house at about 6 a.m. He had also stated in the committing Court that he was waiting at the scene of offence till about 8 p.m. but he denied in the Sessions Court that he had made any such statement. The learned Sessions Judge was therefore justified in rejecting the evidence of Ram Shanker also. While dealing with the evidence of this witness the High Court observes that "the statement of a witness should be examined as a whole and the mere fact that the witness has denied certain statements made by him earlier under the challenge thrown to him in the witness-box during cross-examination should not detract from the value of his testimony made on oath before the trial Judge". One can be unconventional in the assessment of evidence but the approach of the High Court is impossible to accept. Ram Shanker had made conflicting statements on oath before the two Courts on an important aspect and the question which the High Court had to ask itself in the appeal against the order of acquittal was whether the view taken by the Sessions Court in regard to the presence of Ram Shanker was not a reasonable view to take. After indicating its disapproval of the conclusion record by the Sessions Court that Ram Shanker was not a witness of truth, the High Court proceeded to say that even if his evidence was left out, there was no reason to discard the testimony of the other eye-witnesses.

22. The High Court also failed to appreciate the true implication of Rampher's evidence in the Sessions Court that the assailants were dacoits or 'Looteras' and that they had searched his pockets as well as the pockets of his companions. Appellants are alleged to have assaulted Hausla Prasad and his companions not with the motive of thieving but for the alleged motive that Hausla Prasad was in illicit intimacy with Sheshkali, the daughter of Gaya Prasad who was the principal accused but who dies during the proceedings. If that be true motive, it is hardly likely that Gaya Prasad and his companions would search the pockets of Rampher and his troupe. The Sessions Court was justified in attaching due importance to Rampher's evidence on this aspect of the matter. We are unable to appreciate the criticism of the High Court that "It is again the case of an unnecessary emphasis being laid on a minor matter". Indeed witnesses themselves thought the matter to be so important that in order to render the story of motive probable, they introduced in their evidence the embellishment that before hitting Hausla a Prasad, Gaya Prasad said "Is ko ..... Aashani ka Maza Chakha do". The endeavor at the trial was to snow that the incident was connected with the illicit affair between Hausla Prasad and Sheshkali. Significantly, the First Information Report makes no mention of any one of the accused referring to the 'Aashani (illicit intimacy) before, during or after the attack.

23. In the concluding portion of its judgment the High Court has observed that the injured persons must have been present at the spot and as the occurrence took place in "broad day-light", there was no reason why their evidence should not be accepted, "even though they might have one reason or the other to falsely implicate one or the other accused". It was wrong to conclude that the incident had taken place in broad day-light and it was even more wrong that the High Court did not warn itself of the danger of accepting the evidence of witnesses who had reason to implicate the appellants falsely.

24. For these reasons we are of the view that the High Court was not justified in interfering with the order of acquittal passed by the learned Sessions Judge. We therefore allow this appeal, set aside the order of conviction and sentence and direct that the appellants shall be set at liberty if they are not already on bail.

</html