SUPREME COURT OF INDIA

Hari Ram

Vs.

State of Rajasthan

Crl.A.No.838 of 1998

(G. B. Pattanaik and S. N. Variava JJ.)

09.05.2000

ORDER

G.B. PATTANAIK, J.

1. This appeal by the four accused persons is under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the Judgment of the Division Bench of Rajasthan High Court in Criminal Appeal No. 299/84. By the impugned judgment, the High Court of Rajasthan set aside the order of acquittal, recorded by the Distt. & Sessions Judge, Bikaner and convicted the appellants under Section 302/34 and sentenced them to imprisonment for life.

2. The prosecution case in nutshell is that on 12.7.82 at about midnight, while the deceased was sleeping outside his house, accused Hariram, Harji, Hahi Ram and Mukhram being armed with axe, Barshi and lathis, assaulted the deceased, on account of which, the deceased sustained serious injuries and ultimately succumbed to those injuries. Brother of the deceased gave an oral report at the Police Station at 3.45 a.m., which was reduced to writing by PW 14 and treating the same to be FIR, he started investigation. It was alleged in the said FIR that earlier a dispute had arisen between the deceased and Hariram and in course of their dispute, deceased had given a blow to Hariram. Hariram then started putting rubbish in front of the house of the deceased and on this score, there was hot exchange of words between Hahi Ram and the deceased on the very morning of the date of occurrence. It is the further prosecution case that Karnaram PW 7 heard some sound and when he reached the place of occurrence, he found all the accused persons assaulting the deceased with their respective weapons and when said Karnaram challenged, the accused persons left the place. Said PW 7 then saw that deceased had already died with several injuries on different parts of his body and, thereafter, the First Information Report was given, as already stated. The post-mortem report Exhibit P20 indicates that the deceased had received as many as 26 injuries and all the injuries were ante-mortem in nature and could be caused by blunt weapon. On the basis of the postmortem report and the medical evidence of the doctor, the Session Judge came to the conclusion that the death of the deceased is homicidal and this conclusion of the Sessions Judge had not been assailed in appeal nor has it been assailed before us. The learned Sessions Judge, however analysed the evidence of the eye-witnesses PWs 6, 7, 9 and 10 and was of the opinion that PWs 6 and 7 could not have seen the occurrence nor had they seen the actual assault by the accused persons and according to the learned Sessions Judge, the absence of injuries by the sharp edged weapons on the dead body of the deceased proves that the two eye-witnesses PWs 6 and 7 have really not seen the occurrence. The learned Sessions Judge also analysed the evidence of PWs 9 and 10 and came to the conclusion that

their evidence cannot be held to be trust-worthy inasmuch as PW 9 had stated that during the whole night, he could not know as to who had killed the deceased, while he was sleeping. After discarding the testimony of the aforesaid four eye-witnesses, which the prosecution had examined to bring home the charge against the accused persons, the Sessions Judge ultimately came to the conclusion that the prosecution case cannot be said to have been proved beyond reasonable doubt and as such, acquitted the accused persons. On appeal being carried by the State, the High Court in the impugned Judgment re-appreciated the evidence of the said eye-witnesses. The High Court, while appreciating the testimony of PWs 6 and 7, focussed its attention to each and every ground on which the learned Sessions Judge did not rely upon their testimony and ultimately came to the conclusion that the appreciation of evidence of the aforesaid two eye-witnesses by the learned Sessions Judge is totally perverse and such erroneous appreciation has vitiated the ultimate conclusion. PW 6 is the wife of the deceased and is the most natural witness, but the learned Sessions Judge even doubted her presence on the scene of occurrence. The High Court also examined the conclusion of the learned Sessions Judge and indicated in the impugned Judgment as to how improper appreciation of evidence has vitiated the conclusion that the occurrence took place in darkness and therefore, the witnesses could not have seen the accused persons, assaulting the deceased. After coming to the conclusion that the Sessions Judge, illegally came to hold that PWs 6 and 7 could not have seen the occurrence and relying upon their testimony, the High Court ultimately held that the prosecution case has been proved beyond reasonable doubt and the order of acquittal is wholly unjustified. Accordingly, the accused-appellants were convicted of the charge under Section 302/34 1PC and have been sentenced to imprisonment for life.

3. Mr. Indra Makwana, the learned Counsel appearing for the accused-appellants, vehemently contended that the learned Sessions Judge had fully appreciated the evidence on record and for justifiable reasons had not placed any reliance on the evidence of PWs 6 and 7 and, therefore, the order of acquittal could not have been lightly interfered with by the High Court. According to the learned Counsel, High Court, therefore, committed serious error in relying upon the evidence of PWs 6 and 7 and as such the conviction of the appellants cannot be sustained. The learned Counsel placed before us the evidence of the aforesaid two eye-witnesses at length and contended that their evidence on the face of it appears to be untrustworthy and no reliance could have been placed upon the same.

4. Mr. Sushil Kumar Jain, the learned Additional Advocate General for the State of Rajasthan on the other hand contended that the power of the High Court while hearing an appeal against an order of acquittal is in no way different from the power while hearing an appeal against conviction and the Court, therefore was fully justified in reappreciating the entire evidence, upon which the order of acquittal was based. The High Court having examined the reasons of the learned Sessions Judge for discarding the testimony of PWs 6 & 7 and having arrived at the conclusion, that those reasons are in the realm of conjectures and there has been gross miscarriage of justice and the miss-appreciation of the evidence on record is the basis for acquittal, was fully entitled to set aside an order of acquittal and no error can be said to have been committed. It is too well settled that the power of the High Court, while hearing an appeal against an acquittal is as wide and comprehensive as in an appeal against a conviction and it had full power to re-appreciate the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would sitting as a trial court, have taken the other view. While re-appreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the learned trial Judge. But if the judgment of the Sessions Judge was

absolutely perverse, legally erroneous and based on wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice. Bearing in mind the aforesaid parameters and having scrutinized the evidence of the two eyewitnesses PWs 6 and 7 as well as the reasoning advanced by the learned Sessions Judge in discarding their testimony, we have no hesitation to come to the conclusion that the learned Sessions Judge, instead of appreciating the evidence as a court of law, entered into an arena of conjecture and recorded the conclusion, which cannot be held to be a conclusion on the basis of the evidence on record. Instead of analysing the evidence of the two eye-witnesses and trying to find out the intrinsic worth of their testimony, the learned Sessions Judge, on wrong assumptions and by mere conjecture was of the opinion that the two eye-witnesses PWs 6 and 7 could not have seen the occurrence at all. The High Court, therefore, while sitting in appeal, was fully justified in examining those reasons of the learned sessions Judge and in coming to the conclusion that the reasons on the face of it are unsustainable in law and there is no justification to discard the testimony of the aforesaid two eye-witnesses PWs 6 and 7. We ourselves having scrutinized the evidence of the two eye-witnesses PWs 6 and 7, which had been placed before us at great length, entirely agree with the appreciation made by the High Court in the impugned Judgment and come to the conclusion that the two eye-witnesses must be held to be trustworthy and full reliance can be placed on their testimony. These two witnesses having not only seen the occurrence but also they have seen the accused persons with their respective weapons in their hands and mercilessly assaulting the deceased, which is fully corroborated by the medical . evidence and presence of large number of injuries on the dead body of the deceased on different parts. In this view of the matter, we see no infirmity with the conclusions arrived at by the High Court in the impugned . judgment and in relying upon the testimony of the two trustworthy witnesses PWs 6 and 7, one of whom happens to be the wife of the deceased and as such is the most natural witness to be present and having witnessed the occurrence.

5. In the aforesaid premises we do not find any merits in this appeal, which accordingly stands dismissed.