SUPREME COURT OF INDIA

Surinder Singh

Vs.

State of U.P.

Crl.A.No.896 of 1996

(Doraiswamy Raju and A. Pasayat, JJ.)

05.09.2003

JUDGEMENT

ARIJIT PASAYAT, J.:-

1. The appellants were found guilty of offence punishable under S. 302 read with S. 34 of the Indian Penal Code, 1860 (in short the 'IPC') by the Allahabad High Court, upsetting the judgment of acquittal passed by the Sessions Judge, Rampur.

2. Prosecution version as presented during trial is essentially as follows:

On 23-1-1975 at about 2.00 p.m. Harnam Singh (hereinafter referred to as the 'deceased') was murdered in broad day light in the heart of Bilaspur town of district Rampur. An Information was lodged by Natha Singh (PW-1) to the effect that he and his brother (the deceased) were in inimical terms with family members of accused-Surinder Singh and Gurmez Singh. The dispute initially

related to a way through the fields of the deceased, made by Gurmez Singh and his brother Gurumukh Singh (father of accused Surinder Singh). The strained relationship was so acute that the police had to take action twice under S. 107/117 of the Code of Criminal Procedure, 1973 (for short the 'Code'). There was however compromise later on. One Hardeo Singh was murdered. He was related to Doolah, the elder brother of accused-Surinder Singh. Report of that murder was lodged by Gurmukh Singh. Deceased, Natha Singh (PW-1) and others were arrayed as accused persons in the said case. The murder took place about two years prior to the incident and the matter was pending adjudication. Swarna Singh, father of accused Pinder Singh was witness for the prosecution in the said case. Accused Surinder Singh is a relative of other co-accused persons. Due to this strained relationship, there was enough bad blood flowing. When the deceased and PW-1 were going from their village Gadaiya towards the town of Bilaspur for making purchases and reached the main crossing near the culvert of the canal, Nirmal Singh (PW-4) sister's son of the deceased met them there. When PW-1 stopped to have a talk with Nirmal Singh, he asked the deceased to proceed further. The deceased had proceeded a few paces when suddenly the three accused persons who were standing nearby attacked and assaulted with their swords. This sudden attack attracted the attention of PW-1 and he raised an alarm which attracted notice of number of other persons including Shiv Prasad (PW-2), the police constable who was on duty at that time and Siya Ram (PW-3). Natha Singh (PW-1) and Shiv Prasad (PW-2) managed to capture two of the accused persons, namely, Surinder Singh and Pinder Singh along with blood stained swords. The other assailant succeeded in running away and could not be apprehended immediately. Harnam Singh breathed his last due to the injuries sustained by him. PW-1 and PW-2 and others went to the police station which is situated at a distance of two furlongs. Two blood stained swords which were the weapons of assaults were also taken. At the police station PW-1 dictated an oral report which was taken down by Mahavir Prasad, Clerk Constable (PW-8) in the register and FIR (Ex. Ka. 4) has been prepared at 2.15 p. m. Accused-Surinder Singh and two swords were handed over to the police. PW-8 took the swords into custody and sealed them. Sub-Inspector, Om Pal Singh (PW-11) was present at the police station. He took up the investigation and sent two constables to the place of occurrence to guard the dead body. He then interrogated PW-1 and captured accused persons. Then he reached the place of occurrence at about 4.00 p. p. to prepare inquest report and the dead body was sent for postmortem examination. The investigating officer also took shoes of the deceased which were lying at the spot of occurrence along with other articles. The Circle Officer, Balbir Singh reached at the spot around 7.00 p.m. The investigation was entrusted to Narpat Singh, Station Officer of Police Station, Milak Khanak (PW-12). Dr. A. N. Zutshi (PW-6) performed the post-mortem examination on 29-1-1975 at about 11.00 a.m. He noticed 9 injuries. On internal examination he found that the occipital bone under injury Nos. 1 and 3 was cut and broken to different pieces. The back position of parietal bone was also broken. The diameter of the brain was cut at two places and the brain was congested. On completion of investigation, charge sheet was placed and charges were framed under S. 302 read with S. 34 IPC. The accused persons pleaded innocence. In order to substantiate its plea, 12 witnesses were examined by prosecution. One witness was examined by the accused persons claiming that two of the accused persons were arrested from his Motor repair shop and they were not taken from the place of occurrence.

3. During trial, prosecution version primarily rested on the evidence of PWs 1, 2, 3 and 4 who were claimed to be eye-witnesses. The trial Court found that there were serious infirmities in the prosecution version and following were held to be the vulnerable factors :-

1. there was no immediate motive to provoke the accused persons to commit a daring murder in the heart of the town of Bilaspur;

2. none of the witnesses produced from the side of the prosecution could be said to be independent witness and no shopkeeper was produced to support the prosecution version though they were admittedly present at the time of incident;

3. all the witnesses were chance witnesses;

4. presence of constable Shiv Prasad has been held to be doubtful on the ground that the place from where he witnesses the incident has not been shown in the site plan and it appeared that till the site plan was prepared it was not decided to make him an eye witness;

5. the ocular testimony of the witnesses was not in consonance with the medical evidence;

6. the FIR appeared to have been prepared afterwards;

7. it was not probable to believe that Gurmez Singh, if he had taken part in the incident, would have been sleeping at his house from where he was arrested;

8. it was not expected that accused Surinder Singh and Pinder Singh would have meekly surrendered without putting any resistance.

4. He, therefore, directed acquittal of the accused person.

5. Aggrieved by the said judgment of acquittal, the State of Uttar Pradesh preferred a Government Appeal (Crl) No. 585 of 1976. During pendency of the appeal the accused Gurmez Singh was reported to be dead and, therefore, it was held that appeal abated so far as he is concerned. After analysing the evidence on record, the High Court came to hold that the approach of the trial Court was indefensible and was full of errors and great emphasis was laid on insignificant and unreasonable grounds. It was primarily held that there were no inconsistencies or discrepancies in the prosecution evidence to warrant an order of acquittal. Therefore, the judgment of the trial Court was set aside and the accused appellants were found guilty of offence punishable under S. 302 read

with S. 34 IPC and each of the accused was convicted and sentenced to imprisonment for life.

6. In the present appeal, learned counsel for the appellants at the threshold took exception to the trial on the ground that the accused persons were juveniles as defined under the Juvenile Justice Act, 1986 (in short the 'Juvenile Act') at the time of occurrence. There was no determination of their respective ages and if the trial Court doubted the correctness of their age, a proper enquiry to determine their age should have been undertaken. It was pointed out that one of the accused i.e. Surinder Singh claimed his age to be 16/17 years, while other accused Pinder Singh claimed his age to be 17/18 years. The trial Court noted that the age of Surinder Singh appeared to be 18/19 years. It was submitted that while the accused persons were in Jail, they were kept in a cell of the jail meant for juveniles. This itself, according to appellants is, indicative of the fact that they were juveniles. Coming to the merits of the case, it was submitted that conclusions of the High Court are full of holes and the judgment of acquittal should not have been so lightly interfered with. Though PWs. 2 and 3 were considered to be the independent witnesses by the High Court, they were known to the prosecution witnesses and the deceased and they cannot be the independent witnesses. PW. 3 was a chance witness. The presence of PWs. 2 and 3 at the spot of occurrence is highly improbable. If really they are eye-witnesses, in the site plan, the position from which P.W. 2 claimed to have seen the occurrence should have been indicated. On reading of the evidence tendered by the prosecution it is clear that many persons were also present and their non-examination assumes importance because most of the so-called witnesses are relatives of the deceased and the rest connot be treated as totally independent witnesses. There were number of shopkeepers nearby. It is strange that not even a single shopkeeper has been examined. Particularly, the non-examination of Ramdas who was claimed to have apprehended the accused at the spot is a vital omission on the part of the prosecution which has not been explained. PWs. 1 and 4 being relatives of the deceased, they are interested witnesses, no credence should have been attached to their evidence. Finally, it was submitted that if two views are possible, one which is in favour of the accused is to be preferred. The view taken by the trial Court cannot be treated to be so unreasonable as to warrant interference and order of acquittal should not have been altered to one of conviction.

7. Per contra, learned counsel for the State submitted that the High Court rightly interfered with the judgment of acquittal. The trial Court's judgment was based more on surmises and conjectures, rather than analysing the cogent and credible evidence on record. Minor details which in no way corrode or effect the credibility of prosecution version were highlighted to a great magnitude. The trial Court acted on surmises and conjectures. The judgment of acquittal which was perverse has been rightly set aside. The rival stands need careful consideration.

8. The jurisdictional issue based on purported ages of the accused needs consideration first. The question relating to age of the accused was never raised before the Courts below, necessitating a decision in this regard. In fact, the Juvenile Act on which the appellants have placed reliance was not in existence at the time of occurrence, and Uttar Pradesh Children Act, 1951 (in short the 'Children Act') which was repealed by Juvenile Act was operative. Clause (4) of Section 2 of the Children Act defines 'child' who is under the age of 16 years. Statement of the accused on which great reliance was placed by learned counsel for the appellants, itself shows that the accused

Surinder Singh and Pinder Singh stated their ages to be 16/17 and 18/19 years. Though the statement was recorded few months after the occurrence, that does not really show that the accused were less than the prescribed age on the date of occurrence. Further at no point of time during trial or before the High Court this question was raised. Further, the necessity of determining the age of accused arises when the accused raises a plea and the Court entertains a doubt. Here, no claim was made by the accused that he was a child and, therefore, the question of the Court entertaining a doubt does not arise. Further, the mere fact that the accused were put in a cell meant for juveniles as contended by learned counsel for the appellants is a plea which is just to be noted and rejected. There is no material to even substantiate this stand; nor any such treatment could be specifically said to have been meted out by any orders of Court/Authority. On the contrary, the order of bail passed by the Allahabad High Court by which bail was granted, does not even direct that they were to be kept in a cell meant for juveniles. The order dated 9-2-1987 was passed when after admitting the appeal, the present appellants were directed to be released on bail in the concerned Government appeal and at that time there was not even any adjudication of the question whether the accused were child/juvenile. In the aforesaid background, plea based on purported age raised by the appellants has no merit and is rejected.

9. Coming to the merits, though the evidence of PWs. 2 and 3 attacked on the ground that they are not independent witnesses being known to the prosecution witnesses is too hollow to carry any weight. P.W. 2 was a constable of police, and he has no reason to falsely implicate accused persons. There is not even any suggestion given to him at any stage that he had any animosity with accused or any familiarity with the deceased and the witnesses. Even if it would have been so suggested, his evidence could not have been rendered vulnerable, merely because he knows names of the prosecution witnesses and the deceased, this is but natural because he was performing patrolling duty in the area where the deceased and the prosecution witnesses lived. Similar is the case of P.W. 3. He has given the reasons as to why he was present at the spot of occurrence. The High Court has found the reason given for his presence to be quite credible. On the evidence of these two witnesses, the prosecution version was firmly established. Merely because name of P.W. 2 did not appear at the site plan that does not render his presence at the place of occurrence improbable. As was held in Girish Yadav v. State of Madhya Pradesh, 1996 (3) JT (SC) 615, the site plan is prepared on hearsay and is not to be read as evidence. Even otherwise, explanation has been given as to why the position from where P.W. 2 claimed to have seen the occurrence was not noted in the site plan. The High Court has noticed this factor and in our view rightly. Further the pleas as to why no shopkeeper has been examined, is also explained by the prosecution. It was stated that those witnesses appeared to be terrified at the ghastly attacks and did not come forward to say anything about the assaults. Their examination in the background could not have been done just for formality. As is noticed in Girish Yadav's case (supra) non-examination of such witnesses when other eye-witnesses have been examined does not make the prosecution version AIR 1996 SC 3098 : 1996 AIR SCW 1557 : 1996 Cri LJ 2159 suspect and the position is not changed when the witnesses examined are relatives.

10. Next comes the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

11. In Dalip Singh and others v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under :- 1953 Cri LJ 1465 (Para 26)

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

12. The above decision has since been followed in Guli Chand and others v. State of Rajasthan, (1974 (3) SCC 698) in which Vadively Thevar v. State of Madras, (AIR 1957 SC 614) was also relied upon. AIR 1974 SC 276 : 1974 Cri LJ 331

1957 Cri LJ 1000

13. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed : AIR 1953 SC 364 : 1953 Cri LJ 1465

Para 25

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan', (AIR 1952 SC 54 at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel." 1952 Cri LJ 547 at p. 552

14. Again in Masalti and others v. State of U. P., (AIR 1965 SC 202) this Court observed (Pp. 209-210 para 14) : 1965 (1) Cri LJ 226

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses....... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

15. To the same effect is the decision in State of Punjab v. Jagir Singh, (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). 1973 Cri LJ 1589

16. Looked at from the aforesaid angle, the trial Court had erroneously discarded the prosecution evidence and the High Court was right in accepting their evidence.

17. One of the pleas raised by learned counsel for the appellants was that the injuries as noticed by the doctor are at variance with the ocular evidence. On a close reading of the evidence of eye-witnesses and the doctor's report there is no noticeable variance. The mere fact that doctor said that injuries appeared to be on one side of the body and the witnesses said that attacks were from different sides, is too trifle an aspect. When three persons are attacking a person, the witnesses naturally get shocked. This is normal human conduct and the immediate reaction is to save the victim and to stop the assailants from further attacks. That is precisely what has been done by the eye-witnesses. It is only when the medical evidence totally improbabilises the ocular evidence, that the Court starts suspecting the veracity of the evidence and not otherwise.

18. In view of the fact that the order of acquittal was set aside by the High Court, we have gone through the evidence carefully and minutely in the background of submissions made by the learned counsel for the appellants. We find that, as rightly observed by the High Court, minor irrelevant factors were highlighted to discard credible, cogent and trustworthy evidence. It is true that an order of acquittal should not be lightly interfered with. This Court in a number of cases has held that though the appellate Court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate Court should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Courts below in support of its order of acquittal. It must express its reasons in the judgment which led it to hold that the acquittal is not justified.

19. It is obligatory on the High Court while reversing an order of acquittal to consider and discuss

each of the reasons given by the trial Court to acquit the accused and then to dislodge those reasons. (See Chandu v. State of Maharashtra (2001) 4 Scale 590) and Kashiram v. State of M. P. (2002) 1 SCC 71. AIR 2001 SC 2902 : 2001 AIR SCW 4350

20. In the instant case, the High Court has discharged the aforesaid obligation as required and by careful analysis demolished each one of the fundamentally weak reasonings given by the trial Court

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21. The inevitable result of this appeal is dismissal which we direct. The accused-appellants who are on bail are directed to surrender to custody to serve the remainder sentence.

Appeal dismissed.