SUPREME COURT OF INDIA

State of U.P.

Vs.

Atar Singh

Crl.A.No.54 of 2001

(Dr. Arijit Pasayat and D.K. Jain JJ.)

12.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court which by the impugned judgment acquitted the respondents and set aside the conviction recorded by the learned Additional Sessions Judge in .Sessions Trial No.316 of 1979. Each of the accused had been convicted by the trial court and sentenced to life imprisonment under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 149 IPC, three months RI under Section 323 read with Section 149 IPC, six months RI under Section 324 IPC read with Section 149 IPC and two years RI under Section 452 IPC. Accused Jai Singh, Atar Singh, Mohan Singh, Beer Singh and Baburam were further convicted under Section 147 IPC and sentenced to nine months RI. Accused Ramesh and Lal Singh were however convicted under Section 148 IPC and sentenced to one year's RI. All the sentences were directed to run concurrently. The High Court reversed the judgment and directed acquittal in the appeal filed by the accused persons.

Prosecution version as unfolded during trial is as follows: One Ram Murti (hereinafter referred to as 'deceased') lost his life in the incident whereas three others namely, Shyam Pal (PW 1), Sohan Pal (PW 3) and Katori Devi sustained injuries. The incident took place on 4.5.1979 at about 6.30 P.M. in village Balli Nagla, Police Station Qadarchowk, District Budaun. The report of the incident was lodged by Shyam Pal (PW 1) on 5.5.1979 at 3.15 A.M. The distance of police station from the place of occurrence is 8 kms. The accused- respondents Lal Singh and Ramesh were allegedly armed with spears whereas rest had lathis. The accused-respondents Jai Singh, Atar Singh, Lal Singh, Mohar Singh and Beer Singh are the sons of Dallu who also allegedly participated in the incident but died after few days of the incident. About 6 months before this incident, Durgapal-brother-in-law of Shyam Pal (PW 1) had abducted Dhika daughter of Dallu. Accused-respondents began to bear ill will against him and his family members on this account. On 4-5-79 at about 6.30 P.M., exchange of hot words and abuses took place between Shyam Pal (PW 1) and Dallu at the Chaupal of Nek Ram in connection with abduction of Dhika. Some persons intervened in the matter and Shyam Pal went to his home. A little later, all the accused-respondents along with Dallu entered the house of Shyam Pal. As mentioned earlier, Lal Singh and Ramesh were armed with spears whereas rest had lathis. Dallu asked the other accused persons to teach a lesson to Shyam Pal and his family members for

defaming him. All the accused-respondents then started assaulting Shyam Pal (PW 1) and his brothers Sonpal and Ram Murti who were present there. When their mother Katori Devi came to their rescue, she was also beaten up. Nathu Singh (PW 2), Ulnfat Irfan, Prem Pal and others also arrived there. Shyam Pal (PW 1), Ram Murti, Sohan Pal (PW 3) and their mother Katori Devi sustained injuries. Shyam Pal (PW 2) with his nephew Prempal went to the police station and lodged a report by oral narration on 5.5.1979 at 3.15 A.M. which was taken down by head constable Baburam (PW 4). Investigation was undertaken and on completion thereof, charge sheet was filed. Accused persons pleaded innocence. In order to further accusations, prosecution examined eleven witnesses. Learned trial Judge recorded conviction primarily relying on the evidence of injured witnesses.

It was firstly noticed by the High Court that the motive assigned by the prosecution against the accused respondents did not stand the test of logic. The incident of kidnapping and abduction of Dhika daughter of Dallu by Durgapal-brother-in- law of Shyam Pal (PW-1) had taken place about six months before. Even no FIR had been lodged against Durgapal from the side of accused persons regarding that incident. It was admitted by PW-1 that even no Panchayat was convened. Further Shyam Pal (PW-1) had admitted that at the time of exchange of hot words with Dallu at the Chaupal of Nek Ram, two persons namely, Nek Ram and Urman Singh were there who had intervened. None of them was produced by the prosecution to indicate the origin of the incident. Dallu himself was a T.B. patient and the High Court found it hard to believe that after alleged exchange of hot words at the Chaupal of Nek Ram, he with all his sons, brother and nephew would have appeared in the house of PW-1 to assault him and his family members. Accordingly, it was held that even there was no immediate motive for the alleged occurrence.

It was also noted that there was no corroboration to the prosecution version by any independent witnesses. Nathu Singh (PW-2) was resident of another village who claimed to be present at the place of occurence. He stated that he had come to the village to meet his relative. According to him the house of Rajpal was situated at a distance of 15-16 paces from the place of incident. The High Court noted that the existence of Rajpal's house in the vicinity of place of occurrence had not been shown in the site plan. The High Court found that some parts of his statement could not be re-conciled with other parts eg. that he had reached the village of incident at 6.30 a.m. and was present at the time of incident which took place about 12 hours later. His statement was to the effect that he had gone to his son- in-law Rajpal as the latter was about to go to his father-in-law's house and he wanted to send some cows to his father-in-law. He wanted to send this information to his father-in-law but his cousin-in-law was not available. He also stated that after some time he had returned to his village. The High Court found his presence to be not established. The High Court also noted that Sohan Pal (PW-3) who claimed to be an eye witness was the brother of PW-1.

The High Court noted that even though in the FIR names of some other persons have been noted as witnesses, none of them had been examined. The High Court was of the view that statement of the deceased recorded by the investigating officer under Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') cannot be treated to be the dying declaration. The investigating officer (PW-11) noted that when he reached the spot in the morning of 5.5.1979 subsequent to the lodging of the FIR at about 3.15 a.m. he had found the deceased, Sohan Pal and Katori to be lying there in injured condition. He recorded the statement of the deceased (Exh.Ka. 20). The High Court referred to the bed head ticket of the deceased in which it was stated that his general condition was noted low when he was admitted in the hospital on 5.5.1979. The High Court also noted the admitted position that the investigating officer did not follow the instructions

contained in Rule 115 of the U.P. Police Regulations relating to recording of dying declaration. Reference was made to a decision of this Court in Palak Ram v. State of U.P. (AIR 1974 SC 2165) wherein it was noted that it would not be prudent to base conviction on a dying declaration made to the investigating officer which is not signed by the persons making it and has not been taken in the presence of two witnesses. The High Court also noted that there was no explanation offered as to why the dying declaration was not recorded in the presence of the Magistrate which is the usual course, though he died on 7.5.1979 at about 4.00 p.m. Therefore, the High Court treated the same to be a statement recorded in terms of Section 161 of Cr.P.C. which cannot be treated to be a dying declaration.

The High Court also noted another factor which according to it was significant, i.e. the presence of large number of injuries on accused Mohar Singh for which no explanation was offered. This according to the High Court cast a genuine doubt about the actual time, place, number of assailants and weapons for the injuries. The High Court noted that injuries on accused Mohar Singh were not superficial and some of them were even incised wounds. The investigating officer had admitted that Mohar Singh was arrested on 6.5.1979. The High Court found it rather unusual that he was produced for medical examination before a Doctor Shiv Kumar Saxena (PW-5) on 5.5.1979 at 5.20 p.m. by a constable of the Police Station. Therefore, the High Court noted that if there was no explanation offered as to why he was not arrested on 5.5.1979, the FIR was claimed to have been lodged at 3.15 a.m. on that day. The High Court noted that though PW-1 and PW-3 were stated to be injured witnesses in the background facts the prosecution version was highly improbabilised. The evidence of PW-2 was found to be not truthful. As a cumulative result of the discussions the High Court found that the prosecution has not been able to substantiate its version.

As noted above, the State has questioned correctness of the conclusions recorded by the High Court. With reference to the evidence of injured witnesses, PW-1 and PW-3 it is stated that they are injured witnesses and their version was to be taken as credible and cogent. There was no reason as to why the injured person would falsely implicate the innocent person.

None appeared for the respondents when the matter was called.

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (2002 (2) Supreme 567)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra (AIR 1973 SC 2622), Ramesh Babulal Doshi v. State of Gujarat (1996 (4)

Supreme 167), Jaswant Singh v. State of Haryana (2000 (3) Supreme 320), Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152), State of Punjab v. Karnail Singh (2003 (5) Supreme 508 and State of Punjab v. Pohla Singh and Anr. (2003 (7) Supreme 17) and V.N. Ratheesh v. State of Kerala (2006(10) SCC 617).

As is rightly contended by learned counsel for the appellate-State in isolation the circumstances highlighted by the High Court may not be sufficient to direct acquittal. Two important factors which have been noted by the High Court are (i) non explanation of injuries on accused Mohar Singh and (ii) the reason for his non arrest on 5.5.1979 when he had appeared before the police officers and had been sent for medical examination.

We shall first deal with the question regarding non- explanation of injuries on the accused. Issue is if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In Mohar Rai and Bharath Rai v. The State of Bihar (1968 (3) SCR 525), it was observed:

"...In our judgment, the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

In another important case Lakshmi Singh and Ors. v. State of Bihar (1976 (4) SCC 394), after referring to the ratio laid down in Mohar Rai's case (supra), this Court observed:

"Where the prosecution fails to explain the injuries on the accused, two results follow:

(1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants."

It was further observed that:

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

In Mohar Rai's case (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not

true or at any rate not wholly true. Likewise in Lakshmi Singh's case (supra) it is observed that any non- explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijayee Singh and Ors. v. State of U.P. (AIR 1990 SC 1459).

Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in Ramlagan Singh v. State of Bihar (AIR 1972 SC 2593) prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare krishna Singh and Ors. v. State of Bihar (AIR 1988 SC 863), it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case. (See Surendra Paswan v. State of Jharkhand (2003) 8 Supreme 476).

Considering the cumulative effect of circumstances which have weighed with the High Court to direct acquittal, it cannot be said that the view taken by the High Court is not a plausible view. That being so, we are not inclined to interfere with the order of acquittal. The appeal deserves to be dismissed which we direct.