SUPREME COURT OF INDIA

State of Punjab

Vs.

Kulwant Singh @ Kanta

Crl.A.No.493 of 2001

(Dr. Arijit Pasayat, P. Sathasivam and Dr. Mukundakam Sharma JJ.)

16.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge by the State of Punjab in this appeal is to the acquittal of the respondent from the charge of commission of offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC'). The learned Sessions Judge, Faridkot, had convicted the respondent for the said offence and awarded death sentence. In view of the award of the death sentence, reference was made to the High Court under Section 366 of the Code of Criminal Procedure, 1973 (in short the `Code').

2. Prosecution version as unfolded during trial is as follows: Law was set on motion on the basis of the statement made by Parminder Singh (PW4) who stated that he is running a marriage palace known as Chahal Marriage Palace on Malout Road, at Muktsar. Ashok Kumar Lalji Tiwari and Sham Sunder sons of Sager Ram, residents of Gangoli Khurd, Distt. Gaunda [U.P.] and Kulwant Singh alias Kanta son of Mohinder Singh were employed by him as servants in that marriage palace. Gurpal Singh son of Mukhtiar Singh, was employed as Chowkidar in the said marriage palace. There was a function in the marriage palace on the evening of 26.8.1996. Manjit Singh Mistri, resident of Malout alongwith other labourers was constructing sheds in that marriage palace for the last many days. After the conclusion of the function he went to his house and told his servants to look after the property of the marriage palace. On 27.8.1996 at about 7.00 A.M. Manjit Singh Mistri came to his house and told him that smell was coming- out of the rooms of the marriage palace. Hearing this he alongwith his brother Parminder Singh and Mistri Manjit Singh went to the marriage palace and saw that smoke was coming out of the marriage palace. He alongwith Raminder Singh and Manjit Singh Mistri saw from the back side door of the marriage palace that the dead bodies of Ashok Tiwari and Sham Sunder (hereinafter referred to as deceased by name) were burning there. They also saw that pieces of glass were scattered in the lobby of the marriage palace and Lalji Tiwari (hereinafter referred to as deceased by name) was lying dead in the adjoining room and there were mark of injuries on his head and the blood was coming out of the injuries. When they came out, they saw that Gurpal Singh Chowkidar was lying

unconscious in the grassy ground of the marriage palace and his head was stained with blood. A vehicle was arranged and Gurpal Singh was sent to the Civil Hospital, Muktsar, with Manjit Singh. He along with his brother Raminder Singh went inside and when Kulwant Singh moved a little, thinking that he was alive, they picked him up and got him admitted in the Civil Hospital. He left his brother Raminder Singh with the dead bodies. He suspected that the offence was committed by respondent-Kulwant Singh alias Kanta due to some grievance. There was no injury on the body of Kulwant Singh and three persons had been murdered and the fourth was lying in serious condition, as such it appeared that it was an act of Kulwant Singh. After the registration of the case S.I. Beant Singh, who was posted as S.H.O. in Police Station City Muktsar, at that time, alongwith ASI Ravel Singh, ASI Gurmel Singh and other officials and Parminder Singh went to the place of occurrence. Raminder Singh (PW5) was found present near the dead bodies. Inquest reports of Lalji Tiwari, Ashok Kumar and Sham Sunder were prepared. There were hairs in the right hand of the dead body and piece of cloth in the left hand of Lalji Tiwari. The dead bodies along with the requests were sent for post mortem examination through ASI Gurmel Singh. S.I. Beant Singh inspected the place of occurrence. One bed sheet stained with blood, blood stained earth were picked up from the bed room where the dead body of Lalji Tiwari was lying. These were made into parcels and sealed with the seal bearing mark 'BS' and the parcels were taken into possession. Pieces of glass were picked up from the lobby and they were made into parcel and were taken into possession. Ashes were picked up from the room where the dead bodies of Sham Sunder and Ashok Kumar were lying. These were made into parcel and sealed with the seal bearing impression 'BS' and were taken into possession. Burnt mat was picked up and made into parcel and taken into possession. Blood stained earth was picked up from the place where the Chowkidar was lying. The same was made into parcel and sealed with the seal bearing mark `BS' and taken into possession. Blood stained ashes were also picked up and made into parcel and sealed with the seal bearing mark 'BS'. Rough site plan of the place of occurrence was prepared. Statements of the PWs were recorded. Then Beant Singh S.I. went to the Hospital. Accused Kulwant Singh, who was admitted in the hospital was interrogated and on interrogation he disclosed that he had kept concealed one iron rod, his shirt and pant stained with blood underneath the empty cement bagslying in the store of marriage palace and he could get the same recovered. The disclosure statement of the accused was recorded. Then the accused was got discharged from the Hospital. After that the accused in accordance with his disclosure statement got recovered an iron rod, pant and shirt stained with blood. A separate parcel of the iron rod and another parcel of the pant and shirt were prepared and the same were taken into possession. Before making the parcel of the shirt a piece was taken out of the same and was taken into possession. After the post mortem examination ASI Gurmel Singh produced the belongings of the deceased and these were taken into possession after making into parcel. On return to the Police Station the case property was deposited with the M.H.C. On 30.8.1996 the accused was taken to the Hospital where a sample of his hairs was taken by Dr. Meena Jagga, made into a parcel and sealed by the doctor and the said parcel was taken into possession. On return to the Police Station the case property was deposited with the M.H.C. The parcels of the hair, pant, shirt of the accused, chadar, blood which were picked up from near the bed, burnt pieces of cloth and the soil picked up from near the place where Gurpal Singh was lying and pieces of cloth of the shirt and the parcel of iron rod were sent to the Forensic Science Laboratory and the reports

regarding the same were received. Statements of the PWs were recorded and after the completion of the investigation the accused was sent up for trial.

> "The charge against the accused was for the alleged commission of offence punishable under Section 302 I.P.C. for having committed the murders of Sham Sunder, Lalji Tiwari and Ashok Kumar and under Section 307 I.P.C. for causing injuries to Gurpal Singh was framed on 16.1.1997. The accused pleaded innocence and claimed trial.
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> The prosecution to prove its case against the accused examined Dr. P.N. Girdhar (PW1), Dr. Meena Jagga (PW2), Dr. Madan Gopal Sharma (PW3), Parminder Singh (PW4), Raminder Singh (PW5), Gurpal Singh (PW6), Baljit 'Singh (PW7), Beant Singh S.I. (PW8), Kulwant Chand M.H.C. (PW9), Constable Harbans Lal as (PW10), Constable Balwindar Singh (PW11) and ASI Gurmel Singh (PW12). The reports of the Forensic Science Laboratory Ex.P.GG, Ex.P.HH, Ex.P.JJ and Ex.P.KK have also been tendered in evidence.
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> The trial Court found that the evidence on record which was substantial in nature clearly established the guilt of the accused as there were three persons who had lost their lives and, therefore, the death sentence was awarded. In appeal, the High Court upset the conviction and directed acquittal."

3. Learned counsel for the appellate-State submitted that this was a case where the accusations were established against the accused and, therefore, the High Court was not justified in interfering with the well-reasoned and elaborate judgment of the trial Court.

4. In response, learned counsel for the accused-respondent supported the judgment of the High Court.

5. It is to be noted that the pivotal witness was PW-6. He claimed to be an eye-witness. In that sense, this was not a case where prosecution relied on circumstantial evidence. The High Court found that this witness was examined after about a month of the incident. The only explanation offered was that the witness was hospitalized and was lying in unconscious state for about one week. Even if that be so, no explanation was offered as to why after PW-6 was released from the hospital he was not examined for about three weeks. The investigating officer who could have thrown light on this aspect was not examined. No reason was indicted for such non-examination. The other relevant factor is that the alleged incident took place around 12 midnight. The information was lodged at about 8.30 a.m. PW-4 stated that he learnt about the incident from Manjit Singh Mistri at about 7.00 a.m. and when he went to the place of occurrence he found dead bodies of two persons. From the back side of the hall he found that dead bodies of the two deceased persons were burnt. He noticed this aspect alongwith his brother Raminder Singh and Manjit Singh Mistri. The respondent-accused was lying on scattered pieces of gross in the lobby in front of the adjoining bed room. Blood was oozing from his injured head. On coming out he found Gurpal Singh (PW-6) lying unconscious on the grassy ground. He made arrangements for sending Gurpal Singh to the

Civil Hospital, Muktsar alongwith Majjit Singh Mistri. He went inside and when he saw that the accused- respondent was alive, he was also sent to the Civil Hospital, Muktsar. After that he claimed to have gone to the Police Station to lodge the report. The High Court found that there was abnormal delay in lodging the FIR. Learned counsel for the appellate-State submitted that the informant Parminder Singh (PW4) was told by Manjit Singh around 7.00 a.m. and some time was spent for taking the injured person to the hospital and thereafter the FIR was lodged and, therefore, there was in fact no delay. It is to be noted that the High Court found that the aforesaid Manjit Singh was not examined as a witness. His evidence would have thrown considerable light as to whether and when he informed the informant as claimed. He is supposed to have taken Gurpal Singh to the hospital. His non-examination has been rightly taken note of to be a vulnerable factor by the High Court. There are certain other aspects which need to be noted. PW-6 was taken to the hospital. The doctor attending to him sent information to the SHO of the concerned Police Station at 7.15 a.m. According to the evidence of the doctor, he was taken to the hospital at 7.15 a.m. and immediately thereafter the information was sent to the Police Station. Interestingly, the respondent was taken to the hospital at 8.30 a.m. It has not been explained by the prosecution as to why there was delay in sending the respondent-accused to the hospital. Here again, doctor attending to him sent information to the Police Station. It was accepted before the High Court that before lodging of the FIR by the informant, the intimations given by the police had reached the police station. The effect of these informations was not considered by the trial Court. Whether they constituted FIR or not is another question. The third factor which has weighed with the High Court to direct acquittal was the non-explanation of the injuries on the accused. Though, non-explanation of the minor injuries could not be a factor to make the prosecution version vulnerable in all cases, but if the injuries were of serious nature the prosecution has to explain that aspect.

6. In the instant case, the evidence of the doctor who examined the accused clearly stated that the injuries were on account of dragging him on surface littered with broken glasses. In that background the injuries on the accused had to be explained.

7. Considering the scope of Section 417 Cr.P.C. (old) (corresponding to Section 378 of present Cr.P.C.), the Privy Council in Sheo Swarup & others Vs. King Emperor AIR 1934 PC 227, held that the Court gives full power to the High Court to review at large the evidence upon which order of acquittal is founded and to reach the conclusion whether an order of acquittal needs to be reversed or not upon that evidence, hence no limitation should be placed on that power unless found expressly stated in the Code. However, the Privy Council put certain principles as a matter of caution to be observed by the appellate court stating that the High Court should and will always give proper weight and consideration to such matters before reaching its conclusion upon facts, namely- (1) the view of the trial court as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused and that presumption is 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 by a Judge who had the advantage of seeing the witnesses. To summarize the Privy Council observed:

> ".....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 recognized in the administration of justice."

8. The aforesaid view was reiterated by the Privy Council in *Nur Mohammad V. Emperor*[1] and affirmed by this Court also in *Prandas V. State*[2]. The judgment of this Court was rendered by a Bench of six- Hon'ble Judges of this Court. A three-Judge Bench of this Court in *Aher Raja Khima v. State of Saurashtra*[3] observed that it is not enough for the High Court to take a different view of the evidence; there must also be "substantial and compelling reasons" for holding that the trial Court was wrong. The words "substantial and compelling reasons" observed in Khima's case (supra) sought to be interpreted subsequently as if only in exceptional cases High Court can interfere. The matter came up before this Court in *Sanwat Singh Vs. State of Rajasthan*[4], where a three-Judge Bench of this Court noted that the words "substantial and compelling reasons" used in certain decisions have created some difficulty in understanding the scope of the said words. Explaining the same this Court held as under:

> "This Court obviously did not and could not add a condition to s.417 of the Criminal Procedure Code. 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. "

9. It concluded as under:

> "The foregoing discussion yields the following results (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) 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 questions 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. "

10. A Constitution Bench of this Court again reviewed all the aforesaid judgments in *M.G. Agarwal vs. State of Maharashtra*[5] and reiterating the principles laid down in Sheo Swarup (supra), it affirmed the view taken by the this Court in Sanwat Singh (supra) and held "it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterised the findings recorded therein as perverse."

11. In *Shivaji Sahabrao Bobade Vs. State of Maharashtra*[6] it was held that "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 scrutinize 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 higher court not to upset the holding without very convincing reasons and comprehensive considerations. "

12. In *K. Gopal Reddy Vs. State of Andhra Pradesh*[7] reiterating the principles as mentioned in Sheo Swarup (supra), the Court observed as under:

> "..... Occasionally phrases like manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more, as flourishes of language, to emphasise the reluctance of the Appellate Court to interfere with an order of acquittal than to curtail the power of the Appellate Court to review the entire evidence and to come to its own conclusion.....If. two reasonably probable and evenly balanced views of the evidence are possible; one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him...."

13. There has not been any change and in many subsequent decisions, i.e., *Ramesh Babu Lal Doshi Vs. State of Gujarat*[8], *George Vs. State of Kerala*[9], *Jaswant Singh Vs. State of Haryana*[10], *Bhagwan Singh and others Vs. State of M.P.*[11] *and Kallu Vs. State of M.P.*[12], the aforesaid views have been reiterated. This Court in *Chandrappa and Ors. v. State of Karnataka*[13], having a complete retrospect on all the earlier judgments, has culled down, in para 41, the following principles regarding the power of the appellate court while dealing with an appeal against an order of acquittal:

> "(1) An appellate Court has full power to review, appreciate and reconsider the evidence upon which the order of acquittal is founded
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> (2) The *Code of Criminal Procedure, 1973* puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion,, both on questions of fact and of law;
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> (3) Various expressions, such as, 'substantial and compelling- reasons; 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctant of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence it further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. In our considered view the acquittal as directed by the High Court cannot be faulted. Even though it may be possible hypothetically to take a different view on the evidence, we are not inclined to interfere with the view of the High Court. The appeal is, therefore, dismissed.

[1]AIR 1954 PC 151 *[2]AIR 1954 SC 36* *[3](1955 (2) SCR 1285)* *[4](1961 (3) SCR 120)*
[5](1963 (2) SCR 405) *[6](1973) 2 SCC 793* *[7]1979 (2) SCR 363* *[8]JT 1996(6) SC 79*
[9]AIR 1998 SC 1376 *[10](2000) 4 SCC 484* *[11]J7 2002(3) SC 387* *[12]JT 2006(12) SC 586*
[13](2007 (4) SCC 415)