SUPREME COURT OF INDIA

Champaben Govindbhai

Vs.

Popatbhai Manilal

Crl.A.No.429 of 2002

(D.K. Jain and Asok Kumar Ganguly JJ.)

31.07.2009

JUDGMENT

A.K.Ganguly, J.

1. This is an appeal by the complainant against the judgment and order of acquittal by the High Court of Gujarat in Criminal Appeal No. 933/2000 which upheld the order of acquittal of all the accused by the Principal Judge, City Civil Court, Ahmedabad in Sessions Case No. 274/99.

2. The deceased, Arunbhai and Popatbhai Manilal, Jayantibhai Manilal and Ishwarbhai Manilal were residents of Bapalal Ghanchi's Chawl, Chamanpura, Ahmedabad. Champaben Govindbhai Patni, the complainant, the mother of the deceased, was married to Govindbhai, who was at the material time working in Mumbai. They have three sons and three daughters, the deceased Arunbhai, being the eldest of the sons. The deceased, a rickshaw- puller by profession, was married 10 years back to Madhuben. She is the daughter of Chamanbhai Popatbhai, the uncle of the accused persons. But at the time of the incident Madhuben was not staying in the family of the deceased.

3. The case of the prosecution is that on 18.6.1999, around 9.00 p.m., the deceased Arun was sleeping on a cot on the Otla (extended balcony) of the house after his supper. Accused No. 1, Popat was walking past by him when the leg of the deceased, which was dangling from the cot, touched him. At that the Accused no. 1 started abusing the deceased to which he protested and a scuffle ensued and in the process they reached the entrance of the chawl. The complainant, who was inside the house heard the noise and came out to see that the two were quarrelling. So she told her son not to quarrel and took him aside. Accused No. 1 Popat went to his house. After sometime, all the three accused came to the place of occurrence, armed with weapons. Accused No. 1 had a gupti (a long double edged knife) in his hand; Accused No. 2 Jayanti was armed with a pipe while the Accused No. 3 Ishwar was holding a Dhoka (a wooden log, used for cleaning clothes). At that time, the deceased Arun was standing along with his sister Meghna (PW 4) and the Accused No. 1 caught hold of her. The deceased told him to let his sister go as the quarrel was between the two of them. At that point of time, the

Accused No.1 hit the deceased with the gupti, first on the chest and then on the stomach. The Accused No. 2 hit the deceased on the chest with the pipe and Accused No. 3 hit him with the dhoka. The deceased thus received several blows all over the body. Vijay Patni (PW 5), the nephew of the complainant who had been living with them at the point of time, came to the scene and tried to intervene but was hit on the head by Accused No. 2. The deceased fell on the ground in front of his house thereupon all the three accused ran away from the place. The deceased was taken to the hospital by Champaben, her husband's sister Dadamben and her nephew, Vijay where he was examined and declared dead. A post-mortem examination was conducted, after which the complainant brought the dead body home. The police came to her house and her complaint was recorded.

4. The said complaint was recorded by P.I. Shri Pratapsinh Udhesinh Ravol (PW12) of Meghaninagar Police Station on 19.6.99. The complaint (Ex. 50) and the Report (Ex. 51) were sent to the police station to register the offence. PW 12 also recorded the statements of PW 4 and PW 5 on the same date. He also recorded statements of the relatives of the deceased and the other people present at the scene of incident. He made panchnama of the place of incident and also seized some pieces of bricks from there. PW 12 then went to the civil hospital where the deceased had been taken and made inquest panchnama of the dead body. The blood stained clothes and a sample bottle of blood of the deceased was brought to the police station by P.C. Maheshbhai Maganbhai and was seized under a panchnama (Ex.25).

5. On 19.6.99, the accused persons were brought to the police station at 1.00 a.m. and their panchnama was made. The blood stained clothes of the Accused No. 2 was also seized and a panchnama was made. Since the police felt that there was enough evidence against them, the three accused were arrested at 2.30 a.m. on 20.6.1999 and were interrogated.

6. The day after their arrest, at the behest of Accused No. 2, the police found the weapons of offence which were hidden in the mailia (loft). The police as well as Accused No. 2 went to their house, broke the lock and recovered a wooden dhoka, an iron pipe and a gupti which were seized and panchnamas prepared. The seized weapons and clothes were sent to the FSL on 22.6.99.

7. The accused were charged for offences under Section 302 read with Section 34 of the *Indian Penal Code* (referred to as IPC herein after) and in the alternative, under Sections 302 read with Section 114 of the IPC. In addition, Accused No. 2 Vijaybhai was also tried for an offence punishable under Section 324 of the IPC while the rest were tried for the said offence punishable under Section 114 of the IPC. Charges were also brought against each of them for offences punishable under Section 135 (1) of the *Bombay Police Act 1951*. After trial, the accused were acquitted by the Court of the Learned City Sessions Judge, Ahmedabad vide judgment dated 7.8.2000. It may be mentioned that a cross- complaint was filed by the accused persons registered at 1:25 a.m on 19.6./20.6.1999 alleging that the accused No.1 was injured during the incident.

8. The State preferred an appeal against the acquittal before the High Court of Gujarat at Ahmedabad. The contention of the State was that there was enough evidence for conviction of the accused persons and the Trial Court ought to have believed the case of the prosecution on the basis of the evidence of the star witness Champaben which was supported by other two eye-witnesses, namely Vijay (PW 5) and Meghnaben (PW 4). The High Court however dismissed the appeal by the impugned judgment dated 18.7.2001.

9. Hence this SLP by the complainant Champaben Govindbhai, the mother of the deceased. The State supports the complainant's appeal.

10. It is well settled that in an appeal against acquittal the Appellate Court does not reverse the finding of acquittal if the Court while granting acquittal has taken a reasonable or a possible view on the evidence and materials on record. Law is equally well settled that if the view taken by the Court granting acquittal is perverse or shocks the conscience of the higher Court, the finding of acquittal can be reversed. In the instant case, the High Court as the First Appellate Court has a duty to consider in detail the material on record and also should appreciate the evidence very carefully before affirming the order of acquittal given by the trial Court.

11. The counsel for the respondents referred to the decision of this Court in *Chandrappa and others Vs. State of Karnataka*[1], to put forward the argument that an appellate court must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having been acquitted, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. In this connection we may refer to the principles summarized in paragraph 42 at page 432 of the judgment and they are extracted:-

> "42. ....(1) An appellate court has full power to review, reappreciate 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 emphasise the reluctance 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 is available to him under the fundamental principle of criminal jurisprudence that every person shall 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 is further reinforced, reaffirmed and strengthened by the trial court.

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

12. Also, if two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial court it ought not to be disturbed by the appellate court (Para 44). Reference was also made to the case of *Bhagwan Singh and others Vs. State of M.P.*[2] where this Court had held that in an appeal against acquittal, the High Court is competent to reappreciate the evidence to find out whether the trial judge has misappreciated any part of the evidence or not. If the evidence has been properly appreciated and conclusions drawn from them are reasonable in that case reversal of the finding of acquittal is not warranted (Para 35).

13. The counsel for the petitioners on the other hand cited the case of *Mahtab Singh Anr. Vs. State of U.P.*[3] [at Page. 437, Para. 16-18] which reiterated the following view of the SC laid down in *Kalyan Singh Vs. State of M.P.*[4], wherein it has been held It is now well known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on record by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible. (Para 16, page 437)

14. In dealing with the question of appeal against acquittal, a very balanced view has been struck by a three-Judge Bench of this court in *Shivaji Sahabrao Bobade and another Vs. State of Maharashtra*[5]. In paragraph 6, page 799 of the report, Justice Krishna Iyer, speaking for the Bench, observed:-

"6. .... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down

> and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted `persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent .... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."

15. This Court finds that unfortunately the High Court in this case acted in a very casual manner and has reached certain findings which are perverse. The High Court has held medical evidence does not disclose that injuries caused on the person of Arun (deceased) were sufficient in ordinary course of nature to cause death. The aforesaid finding is totally contrary to the record, if one looks at the evidence of Dr. Yogeshbhai Jadav, Medical Officer, Civil Hospital, Ahmedabad, who did the post-mortem examination on deceased Arun. Dr. Jadav found the following injuries on the external part of the body:- (1) 2.5 x 1 cm vertical stab wound on left side of chest to midline end. 2 cm inferior to nipple plane margins of wound are out sharply and inverted.

> "(2) 2 x 1 x 1 cm incised wound on medical and superior of Rt. Elbow directed downward positively. (3) 4 x m 11 near incised wound limited to skin on Rt. lower chest lateral aspect directed downward. (4) 2.5 c.m. transverse linear incised wound limited to skin on lateral end lower abdomen. (5) 1 x 1 cm contusion abrasion on lateral and upper part of left lip 4 cm inferior to injury no.4. (6)... x 1 cm transverse contusion abrasion posterial to injury no5. Other injury which were found because of investigation of touch, if any. Fracture of left 4th and 5th sternochondral area of ribs."

16. On internal examination, the doctor opined on the chest injury goes deeply posterior upwards and laterally in a way. It cuts skin, tissue, sterno, chondral area of left 4th and 5th ribs along with fractures, inter costal muscles, pericardium, medical border of it. Verticle, it measures 2 cm then pieres through and through on posterial wall it measures 1 cm then ultimately ends at lower lobe upper part of left lung it measures 0.5 x 05 cm and causing - Hemo Pericardium and Hemotharax in left Thoaraic cavity. Blood and clots found about 1800 ml. The doctor clearly opined that the cause of death is shock and hemorrhage due to stab injury on the chest. By characterizing these injuries as not sufficient in the ordinary course to cause death, the High Court, with respect, fell into a grave error and its appreciation of evidence borders on perversity.

17. In our view this is a glaring infirmity in the judgment of the High Court. The other reason given by High Court in affirming the order of acquittal is that only interested persons are the witnesses and no independent witness has been examined. The other reason given by the

High Court to support the judgment of acquittal of the Trial Court is that much time has elapsed between the occurrence and filing of a complaint. The High Court has also come to the finding that the blood stained clothes, weapons were not examined and this has created a doubt about the veracity of the prosecution case.

18. It has been repeatedly pointed out by this Court that just as the witnesses are related to the deceased that is no ground to discard their evidence. In the instant case, there are three eye-witnesses and one of them is an injured witness. Their evidence cannot be discarded just on the ground that they are related to the deceased. It is settled law if the evidence of the witnesses, who are related, is credible and cogent, the fact that they are related is not a ground for discarding such evidence. This Court has held that related witness do not normally spare the guilty and implicate innocent persons.

19. About the delay of lodging the FIR, this Court finds that immediately after the occurrence the deceased was taken to the hospital by the complainant and other relations where the deceased was declared dead. One G.D was entered by 11:05 on the same night which was just after a gap of about 2 hours. Therefore considering normal human conduct, this delay of about 2 hours between the occurrence and lodging of the complaint is not a factor for discrediting the prosecution case. A finding of acquittal on the ground of this delay is not a reasonable exercise of jurisdiction by an Appellate Court.

20. It also appears from the record that the weapons of offence were examined to find out that they had stains of human blood, in group `B'.

21. Therefore considering all these facts and circumstances of this case, this Court is constrained to hold that the High Court did not exercise its jurisdiction properly under Section 378 of the Criminal Procedure Code in appreciating the material on record while approving the order of acquittal of the trial court.

22. Therefore, the High Court's judgment of acquittal cannot be sustained and is set-aside.

23. The High Court will now hear the State's appeal afresh.

24. We expect, having regard to the passage of time, High Court will try its best to dispose of the State's appeal as expeditiously as possible.

25. The High Court will not feel bound by any observation made in the judgment. The observations which have been made here are for the purpose of disposing of the present appeal. The High Court is at liberty to apply its mind to the evidence and materials available on record and come to its independent finding. The appeal is, thus, allowed.

[1](2007) 4 SCC 415 [2](2003) 3 SCC 21 [3]JT 2009 (5) SC 431 [4](2006) 13 SCC 303 [5](1973) 2 SCC 793