

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Naresh @ Ram Naresh

Crl.A.No.837 of 2002

(Dalveer Bhandari and Dr. Mukundakam Sharma JJ.)

26.08.2009

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. This criminal appeal is filed by the State of Rajasthan being aggrieved by the judgment and order passed by the Rajasthan High Court on 18.07.2001 acquitting the respondent - accused from the charges under Sections 302 and 394 of the Indian Penal Code (hereinafter referred to as the IPC). The High Court acquitted the respondent of all the charges by setting aside the judgment and order of conviction passed against the accused by the trial court.

2. Before discussing rival contentions of the parties, it would be necessary to set out certain facts leading to the filing of the first information report against the respondent under Sections 302 and 394 of the IPC. On 12.08.1993, Khushal Singh (PW-21), who was the then S.H.O. of the police station, Bassi received an information on wireless that someone by killing and also amputating the feet of a lady has taken away her silver anklets and that her dead body was lying near village, Kuthada. On receiving the aforesaid information, the SHO alongwith the police party rushed to the village, Kuthada where Sita Ram S/o Bhagwan Sahai submitted a written report, Exhibit P-7, on which he made an endorsement. On the basis of the aforesaid written report the police registered a case under FIR No. 302 of 1993 under Sections 302 and 394 of the IPC. On 13.08.2001 after registration of the said case, police started investigation.

3. During investigation, PW-21 prepared an inquest report of deceased Guli Devi, which is exhibited as Exhibit P-8. Sumer Singh (PW-19), Circle Officer inspected the site on 13.08.1993 and

prepared the site plan. He also took into possession the blood smeared clothes of the deceased, blood smeared soil, a cement piece of floor of kheli having bloodstains, one strap of wrist watch - Exhibit P-5, one lathi and one pair of shoe - Exhibit P-6. He also recorded the statements of Smt. Mulli Devi, Ram Dayal, Gopal, Sanjay, Sita Ram, Mathura, Babu Lal, Smt. Chotta, Ramrai, Rameshwar and Ganesh under Section 161 of the Criminal Procedure Code (for short the Cr.P.C).

4. The police thereafter went to Uttar Pradesh in search of accused Naresh and apprehended him in the village Pahadi, District Banda (U.P.) and brought and produced him before the SHO, Bassi, who in turn arrested him. It is alleged that Naresh on 20.01.1994 gave information, Exhibit P-17, under Section 27 of the Indian Evidence Act for the recovery of ornaments of deceased Guli Devi. It is also alleged that on the basis of the aforesaid information, PW-17, recovered a pair of silver anklets of feet, one pair of silver bracelets of hands, one pair of silver ear-rings and one golden nose- ring (nath) from Ramcharan and prepared memo, Exhibit P-14. Again on 27.01.1994 accused Naresh gave information, Exhibit P-18, to PW-21 for the recovery of Khurpi the alleged weapon of offence and pursuant to which PW-21 recovered Khurpi at the instance of accused Naresh under Exhibit P-10.

5. Dr. Kailash Narain (PW-1) conducted the postmortem report of Smt. Guli Devi, which is exhibited in trial as Exhibit P-1. According to the doctor all the injuries were ante-mortem in nature and the cause of death was hemorrhagic shock associated with Asphyxia due to compression of neck. Sukan Chand, Tehsildar, Bassi, examined as (PW-13), conducted the identification of ornaments and it is alleged that Rameshwar (PW-14), husband of deceased Guli Devi correctly identified ornaments of deceased - Guli Devi. After completion of the investigation, the police submitted charge sheet against the respondent herein under Sections 302 and 394 of the IPC in the Court of Judicial Magistrate, Bassi, who in turn, committed the case to the Court of Sessions. The learned Sessions Judge framed charges against the accused under Sections 302 and 394 of the IPC to which the accused pleaded not guilty and claimed to be tried.

6. During trial, the prosecution in support of its case examined as many as 21 witnesses and exhibited some documents. Thereafter, the accused was examined under Section 313 Cr.P.C. for the purposes of enabling him to explain the circumstances existing against him. The accused, however, did not examine any witness in his defence.

7. On completion of the trial, the learned trial court passed an order of conviction holding the accused/respondent guilty for the offence under Sections 302 and 394 of the IPC. After passing the order of conviction the accused was heard on the question of sentence and thereafter the Sessions Judge passed an order sentencing him to undergo life imprisonment with fine.

8. Being aggrieved by the aforesaid judgment and order passed by the trial court, the respondent herein filed an appeal in the High Court of Rajasthan, which was registered as D.B. Crl. Jail Appeal No. 331 of 1996. The aforesaid appeal came up for hearing before the Division Bench of the Rajasthan High Court.

9. After screening the evidence on record, the High Court held that there was no eyewitness to the occurrence and the entire case of the prosecution rests on the circumstantial evidence. Each of the circumstance allegedly making a chain was examined by the High Court and on scrutiny thereof held that none of the said circumstances lead to the inference that the respondent had committed the aforesaid offence. The High Court held that the circumstances relied upon by the prosecution are

full of discrepancies and they do not inspire confidence so as to conclude that the accused had committed the offence. The High Court held that the statements of the prosecution witnesses relating to the accused last seen with the deceased do not inspire confidence for none of them specifically said that the accused followed the deceased to the field, where the occurrence had taken place. So far the second circumstance, that the accused was found running from the place of incident just after the incident, is concerned, the High Court has pointed out discrepancies in the evidence of PWs-4, 7, 8 and 9 and on analyzing the same held that on the basis of aforesaid evidence it cannot be safely concluded that the deceased was last seen in the company of accused or that he was found running from the place of occurrence having Lotah or Potli in his hands.

10. Other circumstance allegedly proved by the prosecution was the fact of recovery of ornaments belonging to the deceased on the basis of the information furnished by the accused. In that connection, the Division Bench held that the only evidence, which is relied upon in that regard is the evidence of PWs - 20 and 21 and on scrutiny of the same the High Court held that a glance at exhibit P-17 merely indicates that accused informed Khushal Singh (PW-21) that he has sold the ornaments to Ram Chandra Saraf, Fish Market, Banda, whereas, the ornaments were recovered from Ram Charan (PW-20). The High Court also found incongruity in the evidence of PW-20, who has stated that he did not purchase the ornaments. He could not give any satisfactory reply as to who had left the said ornaments in his custody and possession. The High Court also pointed out that according to the said witness the accused took away the ornaments on the same day, and therefore, there could be no case of recovering the ornaments shown by the accused from PW-20. Resultantly, it was concluded that it would not be safe to hold that recovery of ornaments was in consonance with the information furnished by the accused/Naresh, particularly, when neither the ornaments have been recovered from the same person about whom the accused had informed nor the shop is the same, about which the accused had indicated. In that view of the matter, it was held that the recovery of the ornaments and identification thereof is not conclusively proved.

11. The next circumstance given by the High Court relates to the recovery of weapon alleged to have been used in the commission of the offence. The High Court pointed out that Exhibit P-10, which is Khurpi, was recovered by the police did not have any bloodstains on it. Khushal Singh (PW-21) in his cross-examination has also categorically admitted that prima-facie no bloodstains were visible on Khurpi and for that reason he did not send it to the Forensic Science Laboratory. The High Court also pointed out that the place from where the Khurpi was recovered was an open place and was accessible to all and sundry. A perusal of Exhibit P-10 indicates that one Khurpi was recovered under the heap of stones and that Khurpi was found in a rusted condition. Another circumstance, which was heavily relied upon by the prosecution and also by the trial court was recovery of strap of wrist watch found on the dead body of Guli. The High Court held that two witnesses Kailash (PW-5) and Rameshwar (PW-14) have stated that they found the strap of wristwatch lying near the dead body before the police reached the spot and they handed over the same to the police. The High Court, however, on scrutiny of the evidence held that there is no evidence on record to prove and establish that the said strap of wristwatch relates to accused Naresh. The High Court also disbelieved the aforesaid circumstance, in view of the fact that no watch has been recovered from the possession of accused Naresh to prove that the recovered strap of wrist watch pertains to the watch of Naresh.

12. After discussing the entire circumstances in the light of evidence on record, the High Court held that the prosecution has utterly failed to prove any of the circumstances relied upon and consequently it was held that the prosecution has failed to prove the guilt of the accused and

accordingly the High Court acquitted the respondent of all the charges.

13. The State of Rajasthan being aggrieved by the said order of acquittal preferred a special leave petition on which notice was issued and leave granted. We have heard learned counsel appearing for the parties when the appeal was listed for final hearing, who have painstakingly taken us through the evidence on record.

14. Mr. Milind Kumar, counsel appearing for the appellant - State of Rajasthan submitted before us that there are number of circumstances which lead to and prove the guilt of the respondent. The first circumstance, which was relied upon was the last seen factor of the accused going after the deceased and thereafter coming out alone from the place of occurrence. The next circumstance on which the public prosecutor relied upon is the fact of smearing the body of the respondent with mud when he was coming from the field. The other circumstance heavily relied upon was the factor of recovery of jewellery belonging to the deceased at the instance of the accused from Ramcharan Shahu (PW-20). The other circumstances like recovery of the dagger and the strap of wristwatch near the dead body were pressed into service by the public prosecutor.

15. Mrs. K. Sarada Devi, the counsel appearing for the respondent, however, submitted that since the present appeal is an appeal against an order of acquittal, the same should not be set aside unless the Court comes to a definite conclusion on the basis of cogent and reliable evidence that it is the accused who had committed the crime. It was vehemently submitted by her that if two views are possible on the same evidence, the one in favour of the accused must be preferred.

16. With the help of learned counsel appearing for the parties, we have scrutinized the evidence on record. The trial court on the basis of the evidence on record held that the prosecution has produced following four types of circumstantial evidences:

(i) The accused was examining the palm by way of palmistry, of the deceased and there the deceased went towards the field. (ii) The accused also went towards the field.

(iii) The accused washed his hands after committing the offence and blood of the deceased was found at the field.

(iv) The accused returned from the field smeared with mud, alongwith a Potli in his hand, he was seen going away from the village, and upon the identification of the accused, the jewellery of the deceased, which had been removed and taken away by amputating feet from her body, the same were seized and that identification proceedings of these jewellery-items were carried out.

17. Each of the aforesaid circumstance was examined by the trial court in the light of the evidence on record and at the end it was held that the aforesaid circumstances prove and establish that it was accused who had committed the offence. The High Court, however, found that none of the aforesaid circumstances lead to a definite conclusion that it is the accused and accused alone who had committed the offence.

18. Before we discuss the evidence on record, we must bear in mind the scope of interference with an order of acquittal. An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases. The principle

deducible from the said Judgments regarding the scope of interference with an order of acquittal could be summarized and the same is as follows:

In *Anil Kumar v. State of U.P.*, (2004) 13 SCC 257, at page 261, this court observed as under:

12. 5. 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 reappreciate 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 v. State of M.P.*) The principle to be followed by the 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 v. State of Maharashtra*, *Ramesh Babulal Doshi v. State of Gujarat*, *Jaswant Singh v. State of Haryana*, *Raj Kishore Jha v. State of Bihar*, *State of Punjab v. Karnail Singh* and *State of Punjab v. Phola Singh*.

In *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415, at page 432, this court observed as under:

42. ... In our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge: (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(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.

(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. In *State of U.P. v. Gambhir Singh*, (2005) 11 SCC 271, at page 272, this court observed as under:

We do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.

19. When we examine the present case in the light of the background of the aforesaid legal principles, we find that none of the circumstances relied upon by the prosecution stands proved against the accused leading to a definite conclusion that it was the accused, who had committed the offence. It has come on evidence that deceased went towards the field on 12.08.1993 at about 3 o'clock and that accused Naresh also went to the field with a Lotah in his hand. However, such a statement appears not to have been made before the police and the same was found to be an improvement by the High Court and recorded so in the Judgment. Mathura (PW-4) has stated in her deposition that she had gone to the Kothi for feeding the cattle. She has also stated that when she was sitting at the field for drinking water to cattle, she saw accused Naresh was running towards the village and that accused was having a Gaddi with him and also one Gaon. In her cross-examination, she stated that she had seen the accused sitting at the Kheli and that she had turned her back towards accused/Naresh because accused was washing his hands. If that witness was present in the field near the place of occurrence, there was no occasion as to why she would not have seen the alleged actual occurrence. If the accused committed the offence he must have stayed at the place of occurrence for a very long time as it is alleged that the accused had amputated both feet of the deceased and a pair of silver anklets of feet, one pair of silver bracelets of hands, one pair of silver ear-rings and one golden nose-ring (nath) were allegedly taken away by him. When the allegation is that of amputation of both the feet by use of a Khurpi the same must have taken considerable time during the course of which the said witness (PW-4) would have seen the occurrence itself. There is also no explanation from PW4 as to why she turned her back when she saw accused washing him hands. She does not state that she had seen the deceased with the accused nor does she state that she had seen the accused smeared with mud.

20. There is not even a single statement coming from any of the witnesses that they had seen any water being smeared with blood of the deceased or any soil of the field being smeared with human blood. Some of the witnesses have stated that accused was smeared with mud when he was returning from the field whereas Mathura (PW-4) does not say so. She only states that she saw him running from the fields. It is also not known why the said witness had turned her back towards the accused only because the accused was washing his hands. If accused was washing his hands as stated by Mathura (PW-4) there is no likelihood of body of the accused being smeared with mud as alleged by some of the prosecution witnesses (PWs 7 & 8).

21. The learned trial court also held accused guilty because the strap of wristwatch was found near the dead body of the deceased, which allegedly belong to the accused. On scrutiny of the evidence, we do not find any such direct evidence that the said strap of wristwatch belongs to the watch of the accused. None of the witnesses stated that such strap of wristwatch belongs to the accused nor any wristwatch has been recovered from the accused. So far the time of occurrence is concerned there is also no unanimity and the evidence is scanty regarding the time of occurrence. In our considered opinion, the evidence regarding commission of offence by the accused in the field and also

amputation of legs of the deceased is neither cogent nor reliable, and therefore, those circumstances cannot be relied upon for basing conviction of the respondent.

22. So far the circumstance about the recovery of ornaments is concerned, the star witness in that regard is PW-20. The said ornaments were recovered at the instance of accused from the custody and possession of PW-20. We have very carefully analysed the evidence of PW-20 so as to find out the credibility of the said witness. He had stated in his examination-in-chief that the accused came to him saying that he wanted to sell the jewellery of his house. The said witness, however, stated that they did not purchase such jewellery, which was, however, seized later on from him. He stated in his cross-examination that they do the business for making new ornaments from the old ornaments. He also stated that the said jewellery was not for their use and hence they refused to purchase. He also stated that Naresh/accused himself is a gold smith hence he used to come to him earlier also. He also stated that Naresh asked him to keep the jewellery and told that he would come back soon, and therefore, he kept the said jewellery and that on the same day accused took away his ornaments. If the accused has taken away the jewellery on the same day then how could the police recover the same jewellery from the custody and possession of PW-20. Besides, since he had stated that he would not purchase the jewellery there was no occasion for Naresh to keep that jewellery with PW-20. In the disclosure statements the accused stated that he sold the jewellery to Ram Chandra Saraf whereas the same was recovered from PW-20. On scrutinizing the evidence, we find that the aforesaid recovery of jewellery is shrouded in a total mystery as it was not recovered from the place and person to whom allegedly accused sold.

23. So far recovery of Khurpi is concerned the same admittedly did not contain any bloodstains on it and it was recovered from an open place. Since there was no bloodstain on it, the police also did not send it for chemical examination. Therefore, it cannot be said that the said weapon was used for committing murder of the deceased. There could be some suspicion regarding the conduct of the accused at the time of occurrence but the same cannot in any manner conclusively prove and establish that the accused has committed the murder of the deceased. Unless and until we are satisfied that the evidence adduced clearly and pointedly establish the guilt of the accused we cannot pass an order of conviction by setting aside the order of acquittal.

24. The view that is taken by the High Court is found to be a plausible view, and therefore, the benefit must always go to the accused and not to the prosecution. If the prosecution wants to prove the fact, the same must be proved by leading evidence, which is reliable and trustworthy, which pinpoints and conclusively proves the guilt of the accused. This is not a case where we can safely hold that the evidence led was trustworthy and conclusively establishes that it is the accused only, who had committed the offence. Considering the entire facts and circumstances of the case we are not inclined to interfere with the order of acquittal.

25. We, accordingly, dismiss this appeal and uphold the order of acquittal passed by the Division Bench of the High Court.