

SUPREME COURT OF INDIA

State of U.P.

Vs.

Rashid

Crl.A.No.751 of 2002

(B. Sudershan Reddy and J.M. Panchal JJ.)

03.11.2009

JUDGEMENT

J.M. Panchal, J.

1. This appeal, by special leave, is directed against judgment dated February 17, 2000, rendered by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No. 2541 of 1980, by which judgment dated October 25, 1980, passed by the learned IV Additional Sessions Judge, Meerut in Sessions Trial No. 253 of 1980 convicting the respondents under Section 302 read with Section 34 2 *IPC* and sentencing each of them to life imprisonment, has been set aside.

2. The facts emerging from the record of the case are as under:

“Deceased Ishwar Singh belonged to village Khalidpur, P.S. Mawana. The two respondents are real brothers and they also belong to the same village. The incident in question took place on March 22, 1980. In the morning of the date of incident, Ishwar Singh was returning home at about 6.15 A.M., after easing himself in the fields situated on the east of the Rajbaha (canal drainage), which runs from north to south and which is located at a distance of about 200 yards from the Abadi of village Khalidpur. For going to home he was required to cross the Rajbaha which was then dry. When he was climbing up western patri of Rajbaha through the footpath, both the respondents were standing inside the Rajbaha along the western strip and quite near to the aforesaid footpath. The respondents had covered themselves with Chadars and on sighting Ishwar Singh, took out country made pistols, which they had wrapped 3 in Chadars and fired one shot each at Ishwar Singh. Rishipal, Brijpal Singh, Karan Singh, Dhara Singh and Jaghir Singh were also returning towards the Rajbaha from the fields located on the east and witnessed the incident. After having fired shots at Ishwar Singh, both the respondents ran away. The aforementioned persons chased the respondents but the respondents could not be apprehended. Therefore, they returned to the spot where Ishwar Singh was lying. They found him to be bleeding and making utterances. A cot was then brought from the village by Brijpal Singh and Ishwar

Singh was laid thereon. He was thereafter taken to the village. Subsequently, Ishwar Singh was placed in a trolley of a tractor belonging to one Harbir Singh and was brought to Mawana. On way to Mawana, near the crusher of Vijai Singh, Ishwar Singh succumbed to his injuries. The tractor, therefore, was stopped and eye witness Rishi Pal scribed a report of the occurrence.

Rishi Pal along with others carried the dead body of Ishwar Singh in the same tractor to P.S. Mawana and lodged FIR.”

3. In view of the contents of FIR offences were registered and investigation started. On completion of investigation both the respondents were charge-sheeted in the court of learned Magistrate. As the offence punishable under Section 302 IPC is exclusively triable by a court of Sessions, the case was committed to the Sessions Court, Meerut for trial. The learned Judge, to whom the trial was made over, framed necessary charge against the respondents. The charge was read over and explained to them. However, they pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined several witnesses including eye witnesses and produced documents in support of its case against the respondents. After completion of recording of evidence of prosecution witnesses was over, the learned Judge explained to the respondents the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code. In further statements, the case of the respondents was that of total denial.

4. On appreciation of evidence adduced by the prosecution the learned Judge held that it was proved by the prosecution that deceased Ishwar Singh died a homicidal death. After appreciating the evidence of eye witnesses, the learned Judge concluded that their evidence was trust worthy and should be acted upon. All the three eye witnesses had deposed that the deceased was fired at by the respondents. Therefore, after accepting their evidence, the learned Judge of the trial court convicted the respondents under Section 302 read with Section 34 IPC and sentenced each of them to life imprisonment.

5. Feeling aggrieved the respondents preferred Criminal Appeal No. 2541 of 1980 in the High Court of Judicature at Allahabad. The Division Bench of the High Court has set aside the 6 conviction recorded by the trial court giving rise to the instant appeal.

6. This Court had heard the learned counsel for the parties at length and considered the documents forming part of the appeal.

7. A bare glance at the impugned judgment with reference to the evidence on record makes it abundantly clear that the Division Bench of the High Court has decided the appeal on inferences and probabilities, ignoring the evidence on record. After noticing injuries found on the body of the deceased at the time of conducting autopsy, the High Court has concluded on surmises and inferences that the intestines of the deceased were not found either perforated or lacerated and sufficient time must have elapsed before deceased succumbed to his injuries. The High Court, after scrutiny of evidence of Medical officer, who performed

Autopsy on the dead body of the deceased, has concluded that "The Medical 7 officer was of the opinion that these injuries were caused after the deceased had fired himself after defection". This Court has minutely and carefully gone through the evidence adduced by Doctor P.S. Khanna, who had performed autopsy on the dead body of the deceased. This Court, after perusal of his testimony, finds that the said witness has nowhere stated or suggested that the deceased had committed suicide. It was not the case of the respondents at any stage of the trial that the deceased had committed suicide. Thus, the High Court has made out a totally new case for the respondents, which is not permissible in law. After observing that "no doubt the defence has not suggested to the Medical Officer", the High Court has, after considering the submission made and evidence, proceeded to record a finding that "it is apparent that in all probability, while deceased was in the process of easing, he had sustained, in the sitting posture, these injuries on his person. This is the reason why right side 8 of peritoneum, right side of chest and right thigh were involved. It is a case of single shot and the entire prosecution version is belied by this medical discrepancy." The above conclusion is reached by the High Court, ignoring categorical statement made by Dr. Khanna that "the said two injuries caused to the deceased before death are possible by two times firing even if the same have been caused by one fire arm or by two separate fire arms". The knowledge of medical and human body is a matter of science. A court of law, who has not acquired special knowledge and skill in medical science, would not be justified in brushing aside opinion of a medical officer, who has performed post mortem of a dead body, without any evidence on record to the contrary supported by the opinion of learned authors of standard text-books. The cursory manner in which the medical evidence is appreciated by the High Court can hardly be approved by this Court.

“After making use of their medical knowledge, 9 what is asserted by the learned Judges of the High Court in the impugned judgment is that if a person is sitting and is in the process of easing, any shot fired upon such person from his right side would injure entire body, i.e., the chest, the thigh and abdomen because those organs would be in the close proximity of each other. Further, the High Court has observed that "In the facts and circumstances of the case, despite no cross-examination of the Medical Officer, the above said situation and its probability cannot be denied.

The submission made on behalf of the appellants, therefore, has sufficient force." Having held that the deceased sustained injuries while he was in the sitting posture, the High Court proceeded to record another finding that there would be serious discrepancy so far as testimonies of the eye witnesses about the manner of incident and place of occurrence is concerned and their presence at the time and place of incident would become suspicious. In the light of this finding 10 the High Court assessed the evidence of eye witnesses and came to the conclusion that they had not witnessed the incident at all. Though it was never pleaded by the defence that place of incident was shifted by the prosecution the High Court, by queer reasoning, has come to the conclusion that the place of the incident was changed and that the eye witnesses were not stating the truth. The High Court has considered other factors, namely, that the witnesses had touched Ishwar Singh only after a cot was brought at the scene of occurrence and none of them had made any attempt to stop the flow of blood nor any

attempt was made at the house of the deceased to stop the bleeding and held that this shows that none of the eye witnesses was present at the scene of offence. To say the least the judgment impugned in the appeal is based on surmises and inferences not warranted from the proved facts of the case. The grievance made by the learned counsel for the appellant State that 11 while appreciating the evidence adduced by the parties, the High Court has reconstructed the evidence and decided the appeal on surmises, deserves serious consideration. The appreciation of the evidence is not only faulty but is based on misconception of the facts. In fact contentions of fact and law have been left undecided and conclusions arrived at are erroneous. Non- consideration by the High Court, of the statements made by the eye witnesses in their sworn testimony recorded before the Trial Court and drawing conclusions by considering irrelevant factors, amounts to exercising jurisdiction under Section 378 of the Code of Criminal Procedure with material irregularity and illegally. The High Court has acquitted the respondents by ignoring the probative value of FIR and reliable testimony of eye witnesses and without considering material on record. The judgment impugned is full of inconsistencies and consists of faulty reasoning. Therefore, this 12 Court is of the firm opinion that the impugned judgment will have to be set aside.”

8. When the higher forum decides to set aside the judgment it has two courses open. One is to first consider the evidence adduced by the prosecution as was done in the instant case by the trial court and to render a finding in the appeal arising from special leave scope of which is not the same as envisaged under Section 378 of the Code. The second option available to the higher forum is to remit the matter to the first appellate court to rehear the appeal on merits. As the scope of proceedings under Article 136 of the Constitution is limited, re-appreciation of evidence and recording findings by this Court, as if it were exercising powers under Section 378 of the Code, would deprive one of the parties to prefer statutory appeal before the first appellate court.

“Such a course is not warranted in the facts of the case. Therefore, this Court is of the opinion that interest of justice would be served if the appeal is 13 remitted to the High Court for decision on merits after hearing the learned counsel for the parties.”

9. For the foregoing reasons, the judgment dated February 17, 2000, rendered by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No. 2541 of 1980 acquitting the respondents, is hereby set aside.

The appeal is remitted to the High Court for deciding the same afresh after taking into consideration evidence on record and hearing the parties. As the appeal is old one, this Court requests the High Court to dispose of the appeal as early as possible and preferably within three months from the date of receipt of writ from this Court. The appeal accordingly stands disposed of.