

# SUPREME COURT OF INDIA

Abdul Mannan

Vs.

State of Assam

Crl.A.No.946 of 2002

(Dalveer Bhandari and K. S. Radhakrishnan JJ.)

18.02.2010

## JUDGEMENT

### **Dalveer Bhandari, J.**

1. This appeal is directed against the judgment of the Gauhati High Court in Criminal Appeal No. 248 of 1998 dated 22nd June, 2001.

2. Abdul Mannan, Abdul Salam and Abdul Subhan have preferred an appeal against the impugned judgment. The appeal of Abdul Salam and Abdul Subhan was dismissed by this Court vide order dated 13th September, 2002, as they did not surrender. The present surviving appeal is only on behalf of the accused appellant - Abdul Mannan.

3. The brief facts, which are necessary to dispose of the appeal are recapitulated as under:

4. On 17th February, 1994, one Abdul Kuddus Khan lodged a written First Information Report [for short, 'F.I.R.'] before the Chaudhury Bazar Police Out Post stating inter alia that on that date at about 2.00 p.m. while his elder brother Abdul Hakim was returning home from Masjid, six accused persons named in the F.I.R., namely, Subhan, Abdul Mannan, Abdul Hanan, Abdul Sukur, Abdul Kurdish and Abdul Salam attacked and assaulted him. On hearing the screams and loud cries for the help of Abdul Hakim, another elder brother, the informant, namely, Abdul Karim and one of his neighbours, Abdul Kalam, rushed to the spot and intervened, whereupon those two persons were also assaulted and they sustained injuries. The injured persons were taken to the hospital and Abdul Karim succumbed to injuries after fourteen days.

5. The police after usual investigation submitted a charge sheet against all the six accused persons. The learned Additional Sessions Judge, Nagaon framed charges under Section 302/323/34 IPC. The Trial Court examined eight witnesses and on conclusion of the trial, the accused were acquitted by the Trial Court. Against acquittal, the State of Assam preferred an appeal before the High Court.

6. In the impugned judgment, the High Court carefully examined the entire evidence and relevant legal position, as settled by this Court in a number of cases. In the impugned judgment, the High Court has clearly observed that the view taken by the Trial Court was not a possible or a plausible view. The High Court termed the judgment of the Trial Court as perverse and wholly untenable.

7. In view of the conflicting judgments, we ourselves looked into the entire evidence and the relevant documents of the case. There are five eye witnesses. Ajijur Rahman, P.W.1 had known the accused persons, who lived in the same neighbourhood. He categorically stated that he saw the appellant and the other accused beating the deceased with lathis. Fearing that the accused might beat him, his sister took him away. He also stated that the deceased was taken to Nagaon because the injuries sustained by him were critical in nature.

8. Abdul Kalam, P.W.2 stated that the accused were known to him because they live in his neighbourhood. He also stated that the appellant and the other accused gave lathi blows to the deceased.

9. Abdul Malik was examined as P.W.3. He clearly stated that Abdul Mannan gave lathi blows to Abdul Karim along with the other accused. He asked them not to beat Abdul Karim, but they did not listen to him. The appellant and the other accused ran away after causing injuries.

10. Abdul Hakim P.W.4 also clearly stated that the appellant and other accused gave beating to Hafez Kalam and him as well with lathis. They gave lathi blows to Abdul Karim. Abdul Hakim stated that he also received injuries on his head and below the left eye.

11. Abdul Kuddus Khan, P.W.5 also corroborated the prosecution version and stated that the appellant and others had given beating to his brothers Abdul Hakim and Abdul Kalam. He also stated that his other brother Abdul Karim came on the spot from the western direction and shouted 'don't beat, don't beat' but that had no impact on them. The deceased Abdul Karim fell down on the ground because of the injuries.

12. The learned Additional Sessions Judge, Nagaon, Assam, did not carefully marshal the prosecution evidence on record and was swayed away by the fact that the injuries were caused by 'sharp edged weapon' and ultimately, those injuries caused by sharp edged weapon were not found by the doctor in his evidence. The entire prosecution evidence was discarded solely on this ground. According to the High Court, the words 'sharp edged' were added subsequently between the two lines in the report. We have checked the original record and we tend to concur with the findings of the High Court. The Court must examine the entire case comprehensively. Even if some inconsistency or discrepancy is discovered, then its impact on the total prosecution version must be carefully examined. In the instant case, how any court can legitimately ignore the testimony of five eye witnesses, including two injured eye witnesses, particularly when their version is wholly consistent and gets full corroboration

from the medical evidence? The statements of all eye witnesses including the injured eye witnesses are wholly consistent and are fully corroborated with the medical evidence.

13. Dr. Pradip Kumar Talukdar, P.W.7 who was posted at the Gauhati Medical College Hospital in the Forensic Medicine Department, performed the post-mortem examination on Abdul Karim and found the following injuries.

“(i) On larynx and trachea, tracheotomy was done.

Old abrasion on the back of the chest - 10 cm away from the root of neck and 5 cms away from the midline left side of the size 5 cm. x 3 cm.

(ii) Abrasions over left buttock.

(iii) Old abrasion over right leg.

(iv) Lacerated wound over medial aspect of right wrist joint above the elbow joint. The wound is stitched.

(v) Lacerated wound over the scalp in the parieto- occipital region on both sides. Left side wound of size 6 cm x 2 cm x bone deep. Right side wound is of size 5 cm x 1.5 cm x bone deep. Both the wounds are stitched. Injury over the skull.”

14. Depressed comminuted fracture over both right and left parieto-occipital region is present.

“Membranes of the brain. - Membranes lacerated at place and sizes vary from 2 x 1.5 cm to 2 cm x 2cm.

Brain. (i) Lacerated injury over right parietal region of size 4 cm x 4 cm x 2 cm.

(ii) Lacerated injury over left parietal region of size 4 cm x 2 cm x 1.5 cm.

(iii) Frontal lobe contusion of size 6 cm x 3 cm of size.”

15. In the opinion of Dr. Talukdar, the death was a result of head injury sustained by the deceased. According to him, all the injuries were ante-mortem in nature caused by blunt force impact, homicidal in nature. The medical evidence corroborates the evidence of five eye witnesses including the statements of the injured eye witnesses. The Trial Court gravely erred in ignoring the most important and material aspect of the prosecution version.

16. In our considered view, in the impugned judgment, the High Court carefully marshalled the entire prosecution evidence and also considered the relevant judgments of this Court,

both on the aspect of interference by the High Court in cases where there is acquittal by the Trial Court and on the aspect of common intention.

17. It is well settled that in a case where the Trial Court has recorded acquittal, the Appellate Court should be slow in interfering with the judgment of acquittal. On evaluation of the evidence, if the two views are possible, the Appellate Court should not substitute its own view and discard the judgment of the Trial Court. But, in the instant case, the High Court clearly came to the conclusion that the entire approach of the Trial Court cannot be sustained both on the law and the facts. According to the High Court, there is non-reading and mis-reading of the evidence and the law, as it stands, is also not appreciated in proper perspective.

18. According to the High Court, the conclusion arrived at by the Trial Court can only be termed as perverse because no Court acting reasonably and judiciously can ever take such a view.

19. In the impugned judgment, the High Court observed that this was not a case where two views were possible and the court below has taken the one view. According to the High Court, on careful scrutiny of the evidence, no other view point is possible. The High Court was left with no option but to set aside the judgment of the Trial Court. In our view, the High Court was fully justified in setting aside the acquittal so far as the appellant herein and Abdul Salam and Abdul Subhan are concerned.

20. The High Court has also examined that this was a clear case of common intention in committing the crime. The Court observed that common intention can develop during the course of an occurrence.

21. The High Court placed reliance on *Sheoram Singh v. State of U.P.*<sup>1</sup>, in which this Court observed as under:

“It is undeniable that common intention can develop during the course of an occurrence but there has to be cogent material on the basis of which the court can arrive at that finding and hold an accused vicariously liable for the act of the other accused by invoking Section 34 of the Indian Penal Code.”

22. Reliance was also placed on *Joginder Singh v. State of Haryana*<sup>2</sup>, in which this Court has observed:

“It is one of the settled principles of law that the common intention must be anterior in time to the commission of the crime. It is also equally settled law that the intention of the individual has to be inferred from the overt act or conduct or from other relevant circumstances. Therefore, the totality of the circumstances must be taken into consideration in order to arrive at a conclusion whether the accused had a common intention to commit the offence under which they could be convicted. The pre-

arranged plan may develop on the spot. In other words, during the course of commission of the offence, all that is necessary in law is the said plan must proceed to act constituting the offence.”

23. The appellant has been named in the F.I.R. All the eye witnesses including the injured eye witnesses have categorically named the appellant and attributed specific role to him. In this view of the matter, the Trial Court was not justified in acquitting the accused when there was overwhelming evidence against the appellant and other accused. It was not a case that the view taken by the Trial Court was a plausible or a possible view. The judgment of the Trial Court was wholly unsustainable. The High Court in the impugned judgment was justified in setting aside the judgment of the Trial Court.

24. On close scrutiny and examination of the impugned judgment, we are clearly of the view that, in the impugned judgment, the High Court has taken into consideration all relevant factors in dealing with the appeal from the order of acquittal. The impugned order of the High Court is unexceptionable.

25. The High Court in the impugned judgment convicted the appellant as also the accused Abdul Subhan and Abdul Salam under Section 304 Part II I.P.C. and awarded imprisonment for a period of four years and to pay a fine of Rupees one thousand each; in default, to undergo further imprisonment for a period of one month each. The sentence awarded by the High Court is just appropriate in the facts and circumstances of the case.

26. The appeal, being devoid of any merit, is accordingly dismissed. The bail bonds of the appellant, who is on bail, are cancelled and he shall surrender to the court. In case the appellant does not surrender within four weeks, the respondent-State would take all necessary steps to arrest the appellant and lodge him in jail to serve out the remaining period of sentence.

<sup>1</sup>*AIR 1972 SC 2555*

<sup>2</sup>*AIR 1994 SC 461*