**SUPREME COURT OF INDIA**

Dharamveer

Vs.

State of U.P.

Crl.A.No.1348 of 2004

(Harjit Singh Bedi and C.K. Prasad JJ.)

09.03.2010

**JUDGEMENT**

**C.K.Prasad, J.**

1. This appeal by way of special leave filed under Article 136 of the Constitution of India is against the judgment dated Ist July, 2003, of the Allahabad High Court in Criminal Appeal No. 3083 of 2001 whereby it had affirmed the judgment and order of conviction and sentence of the appellants passed by the Special Judge, Bullandshahar in Sessions Trial No.154 of 1998.

2. The appellants Dharamveer, Sanjay, Vedi and Vinod besides other accused persons were put on trial for offence under Sections 148, 302/149 and 307/149 of the Indian Penal Code. The Trial Court convicted all the appellants under Sections 148 and 302/149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for one year and life respectively. They were further convicted under Sections 307/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years. Sentences were directed to run concurrently. On an appeal the High Court dismissed the same.

3. Prosecution commenced on the basis of report given by PW.1 Jaipal Singh on 10/10/1997 to the In- charge out-post at Khurja junction within Khurja Police Station. According to the prosecution on 10th October, 1997 at 4 P.M. the informant PW.1, Jaipal Singh along with his nephew Sheodan (deceased) brother Jagdish(deceased) besides other persons including Shiv Charan (PW2) had gone from their village Ramgarhi to village Auranga to participate in a Panchayat convened to settle the dispute between Prakash and his son. According to the informant on way back, the two deceased and Ravi Kiran were 30 to 35 steps ahead of them and after they had crossed the grove of Ravi Kiran, appellants herein armed with country-made pistols came out of millet field of Shreepal and started firing on the two deceased and Ravi Kiran.

> "According to the prosecution Jagdish ran towards Ramgarhi and Sheodan towards Auranga and these appellants chased Jagdish and killed him whereas Sanjay, Sheesh Pal and Neetu (since acquitted) followed Sheodan and caused firearm injury causing his death in the field of Balwant."

4. On the basis of the aforesaid information Crime No.21/118/97 under Section 147, 148, 149, 307 and 302 Indian Penal Code was registered at 8.20 P.M. at Khurja Police Station. After usual investigation Police submitted charge-sheet against the appellants and ultimately they were committed to Court of Sessions where they were charged for commission of offence under Section 148, 302/149 and 307/149 of the Indian Penal Code. Appellants denied to have committed the offence and claimed to 4 be tried. In order to bring home the charge, prosecution, altogether examined seven witnesses, out of which PW.1 Jaipal Singh and PW.2 Shivcharan are the eye-witnesses to the occurrence. PW.3, Dr.P.P. Singh is a Medical Officer who had examined Ravi Kiran and found lacerated wound on his person caused by blunt object. PW.4, Dr.S.K. Sharma is another Medical Officer, who had conducted post mortem examination on the dead bodies of Jagdish and Sheodan and found ante-mortem gun shot injuries on their person. In his opinion both the deceased died of shock and haemorrhage as a result of gun shot injuries. PW.5, Ashok Kumar is a Constable who took the dead bodies to mortuary for post mortem examination. PW.6, Madan Mohan is Sub-Inspector of Police, who after investigation submitted the charge-sheet against the appellants. PW.7, Ram Naresh Yadav is Incharge Police outpost, who proved the check-reports.

5. Besides oral evidence several documents including first information report and post mortem reports were also brought on record.

6. Relying on the evidence of Medical Officer and the post mortem reports, the trial court came to the conclusion that the two deceased met homicidal deaths. Further, relying on the evidence of PW.1 and PW.2, the trial court held that the prosecution has been able to prove its case beyond all reasonable doubt and accordingly convicted and sentenced the appellants as above. This has been affirmed by the High Court in appeal.

7. Before we advert to the submissions advanced, it is expedient to examine the scope of the power under Article 136 of the Constitution, while hearing appeal against the judgment of conviction and sentence. Mr. J.C. Gupta, learned Senior Counsel appearing on behalf of the appellants submits that powers under Article 136 of the Constitution is very wide and nothing prevents this Court to upset the concurrent findings of guilt. In support of the submission reliance has been placed on a decision of this Court in the case of *Ganga Kumar Srivastava vs. State of Bihar*[1] wherein it has been held as follows:

> "10. From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge :

i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances.

ii) It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it. And

v)The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. (underlining is ours)"

8. Mr. Ratnakar Dass, learned Senior Counsel, appearing on behalf of the State, however, submits that this Court in exercise of the powers under Article 136 of the Constitution of India cannot act as a Court of Appeal and upset the concurrent findings of fact recorded by the Trial Court and the Appellate Court. Reliance has been placed on a decision of this Court in *Ramanbhai Naranbhai Patel and Ors. vs. State of Gujarat*[2] in which it has been held as follows:

"10.In view of the aforesaid settled legal position, therefore, we have to see whether the findings of fact reached by the High Court agreeing with the appreciation of evidence by the Sessions Court suffer from any patent error of law or have resulted in miscarriage of justice which can call for our interference in this appeal."

9. We do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that power under Article 136 of the Constitution is very wide and nothing prevents this Court to reappraise the evidence and set aside concurrent finding of fact holding the accused guilty. However, appreciation of evidence is resorted to, in exceptional circumstances when it comes to the conclusion that the finding of guilt recorded by the High Court is perverse, meaning thereby the High Court had recorded the finding without consideration of relevant material or consideration of irrelevant material, the consideration or non- consideration whereof shall have bearing on the finding recorded. The finding can also be considered perverse, if a person duly instructed in law will not come to that finding. This Court may also interfere with the finding of fact when it finds violation of established procedure going to the root of the case. Where the High Court has analysed the evidence in great detail and found the evidence reliable there is no scope for interference by this Court.

10. Bearing in mind the principles aforesaid we proceed to examine the submissions unfolded.

11. Mr. Gupta submits that there is inordinate delay in receipt of the Special Report by the Magistrate. He points out that the occurrence had taken place on 10th October, 1997 at 4 P.M.; and the First Information Report was registered at 8 P.M., the Special Report under Section 157 of the Code of Criminal Procedure was received on 17th October, 1997. This inordinate delay in receipt of the report, according to Mr. Gupta, is sufficient to reject the case of the prosecution. In support of the submission reliance has been placed on a judgment of this Court in the case of L/NK. *Meharaj Singh vs. State of Uttar Pradesh*[3] and our attention has been drawn to paragraph 12:

> "12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by PW.8."

12. Mr. Dass, submits that mere delay in despatch of the FIR itself is not fatal to the case of the prosecution. He points out that the First Information Report was lodged immediately and in fact the investigation started soon thereafter and even the dead body was sent for post-

mortem examination within a reasonable time. Hence in his submission mere delay in despatch of the FIR is of no consequence. Reliance has been placed on a decision of this Court in the case of *Pala Singh & Anr. vs. State of Punjab*[4] and our attention drawn to paragraph 8 of the judgment which reads as follows:

> "8. Shri Kohli strongly criticised the fact that the occurrence report contemplated by Section 157 Cr.P.C. was sent to the Magistrate concerned very late. Indeed, this challenge, like the argument of interpolation and belated despatch of the inquest report, was developed for the purpose of showing that the investigation was not just, fair and forthright and, therefore, the prosecution case must be looked at with great suspicion. This argument is also unacceptable. No doubt, the report reached the magistrate at about 6 p.m. Section 157 Cr.P.C. requires such report to be sent forthwith by the police officer concerned to a magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159. But when we find in this case that the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellant's case that they have been prejudiced by this delay."

13. Having given our thoughtful consideration to the submissions advanced, we do not find any substance in the submission of Mr.Gupta.

> "Information in regard to the incident was given immediately after the occurrence and the First Information Report was lodged on the same day at 8.20 p.m. The occurrence had taken place at about 4.00 p.m. on 10/10/1997 and therefore there does not seem any delay in lodging the First Information Report. Not only this, after the First Information Report was lodged, investigation proceeded, the statement of the witnesses recorded, the inquest report prepared and the dead bodies sent for post-mortem examination without delay. It is also on record that the Special Report was sent by post. In the background of the aforesaid facts, mere delay in receipt of the Special Report, in no way causes doubt to the case of the prosecution. Furthermore, none of the witnesses including the investigating officer of the case have been cross-examined on this point. Therefore, we are not inclined to reject the case of the prosecution merely on the ground that there was delay in despatch of the First Information Report."

14. Mr. Gupta, then submits that the entire prosecution case is dependent upon the evidence of PW.1 Jaipal Singh and PW.2 Shiv Charan and they being inimical to the appellants, their evidence deserve to be rejected and once it is done so, there is no evidence on record to connect the appellants with the crime. He points out there is overwhelming evidence on

record to show old enmity between the prosecution witnesses and the appellants. Both the witnesses are not the residents of the village, where the occurrence had taken place and further the witnesses having no land near the place of occurrence their presence at the scene of occurrence is highly doubtful. Mr. Gupta emphasises that in order to show their presence at the place of occurrence, the story of Panchayat at village Auranga was cooked up. Non-examination of Ravi Kiran, as witness has also been highlighted. It has been contended that in order to conceal the truth this witness, who is the most competent witness, has been withheld by the prosecution.

15. All these submissions are in the realm of appreciation of evidence and the High Court has meticulously examined it. The evidence of an eye witness can not be rejected only on the ground that enmity exists between the parties. The High Court in this connection has observed as follows:

> "In view of extreme strained relations between the two sides, no independent witness could dare to depose in favour of the prosecution risking his own life. Two eyewitnesses P.W.1 Jaipal Singh and P.W.2 Shiv Charan cannot be disbelieved merely because of being related with the deceased, especially in the circumstances narrated above."

16. True it is that Ravi Kiran could have been an important witness to unfold the true story but his non-examination, in our opinion, itself is not sufficient to discard the case of the prosecution.

> "It has come in evidence of PW.1 Jaipal that later on prosecution suspected that he was accomplice in the crime. Hence his non-examination has been explained. Not only this, the evidence of the two eye-witnesses, with minor contradictions here and there has withstood the test of cross-examination and therefore the case of the prosecution is not fit to be thrown out on these grounds."

17. Mr. Gupta submits that the two eye-witnesses namely PW.1 Jaipal Singh and PW.2 Shiv Charan were highly inimical to the accused persons and according to the prosecution itself both had come at a hand-shaking distance, they would not have been left unharmed and hence their claim to be the eye-witnesses to the incident is highly doubtful.

18. We do not find any substance in this submission of Mr. Gupta. Why the appellants did not cause any injury to these witnesses can not be explained by the prosecution. It will require entering into their mind. Human behaviour are sometimes strange. Merely the fact that these witnesses did not suffer any injury, will not make their evidence untrustworthy. This aspect of the matter has been considered by the High Court in right perspective and it has held as follows:- "The statements of the witnesses show that Sheodan, Ravi Kiran and Jagdish were 30 or 35 steps ahead of other witnesses. On coming out of the crop the accused persons targeted Jagdish and Sheodan. Therefore, if injuries were not caused to other persons of the family of the victims i.e. two eyewitnesses, it does not mean that they were not present

on the spot. The entire group could not be targeted by the accused as it was likely to result in the failure of their mission."

19. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

20. The Appellants are on bail. Their bail bonds stand cancelled and they are directed to surrender and to serve out remainder of the sentence.

[1]*(2000) 1 SCC 358*
[2]*JT 1994 (3) SC 440*
[3]*1972 (2) SCC 640*