SUPREME COURT OF INDIA

Ramesh Harijan

Vs.

State of U.P.

Crl.A.No.1340 of 2007

(Dr. B.S.Chauhan J.)

21.05.2012

JUDGEMENT

Dr. B.S. CHAUHAN, J.

l. This criminal appeal has been preferred against the judgment and order dated 23.3.2007 passed by the High Court of Allahabad in Government Appeal No. 1246 of 1999 by which the High Court has reversed the judgment of Additional District and Sessions Judge, Basti in Sessions Trial No. 312 of 1996 dated 2.2.1999 acquitting the appellant. Thus, the High Court has convicted the appellant for the offence punishable under Sections 302 and 376 of Indian Penal Code, 1860 (hereinafter called as `IPC) and awarded him the life imprisonment for both the offences. However, both the sentences have been directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are that:

A. One Smt. Batasi Devi (PW.2) lodged an FIR on 2.2.1996 in Haraiya Police Station alleging that her daughter Renu, aged 5-6 years, was found dead on her cot in Muradipur, the village of her maternal grandmother on 30.1.1996 at about 9.00 p.m. Initially, she had been told that her daughter died of paralysis and she was buried at the bank of Manorama river. Later on she got information from Shitla Prasad Verma (PW.8), Jata Shankar Singh (PW.7) and other persons of the same village that her daughter had been raped and killed by Ramesh, appellant. She also made a request that the dead body of the child be exhumed and sent for post-mortem.

B. On the order of the concerned Sub-Divisional Magistrate, the dead body of Renu was dug out from the grave and sent for post-mortem on 3.2.1996. The autopsy was conducted by Dr. Ajay Kumar Verma and Dr. S.S. Dwedi of District Hospital. In their opinion, death was due to shock and haemorrhage as a result of ante-mortem vaginal injuries.

C. On the basis of the post-mortem report, Case Crime No. 22 of 1996 was registered against the appellant under Sections 302 and 376 IPC. After having the investigation, the police filed the chargesheet against the appellant. During the trial prosecution examined 14 witnesses to prove its case including Kunwar Dhruv Narain Singh (PW.1), the scribe of the FIR, Batasi Devi (PW.2), mother of the deceased Renu, Jata Shankar Singh (PW.7), Shitla Prasad Verma (PW.8) and after conclusion of the trial and considering the evidence on record, the trial court vide its judgment and order dated 2.2.1999 acquitted the appellant of both the aforesaid charges.

D. Being aggrieved, the State preferred Criminal Appeal No. 1246 of 1999 which has been allowed by the High Court vide judgment and order dated 23.3.2007 and the appellant has been convicted and awarded the sentence of life imprisonment on both counts.

Hence, this appeal.

3. Shri Rajender Parsad Saxena, learned counsel appearing for the appellant, has submitted that High Court has committed an error by reversing the well-reasoned judgment of acquittal by the trial court.

There is no iota of evidence against the appellant on the basis of which the conviction can be sustained. The evidence relied upon by the High Court particularly that of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) cannot stand judicial scrutiny as these witnesses had been motivated; improvement in the depositions of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) had been to the extent that it is liable to be discarded as a whole. The other witnesses have turned hostile, therefore, there is nothing on record to show that the appellant was connected with the crime by any means. There is no evidence on record on the basis of which it can be established that Renu (deceased) used to sleep in the house of the appellant or the appellant had an opportunity to commit the offence. The findings recorded by the High Court

are perverse not being based on evidence on record. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri Manoj Kumar Dwivedi, learned counsel appearing for the State has vehemently opposed the appeal contending that the judgment of the trial court has rightly been reversed by the High Court being contrary to the evidence on record. The High Court has recorded the findings of fact on correct appreciation of evidence.

Thus, no interference is warranted. The appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the records.

6. Admittedly, Renu, aged 5-6 years of age, died of vaginal injuries. The post-mortem report disclosed the following ante-mortem injuries:

?(1) Contusion 4 cm x 2 cm over the right side face below the right ear lobules on upper part of the neck.

(2) Contusion 5 cm x 3 cm over the left side face in front and above tragus of the left ear.

(3) Abraded contusion 4 cm X 3 cm over the back of the right shoulder joint and scapular region.

(4) Contusion 3 cm x 2 cm over the upper part of the left scapula and back portion of the shoulder tip.

(5) Abraded contusion 4 cm x 1 cm on each side of office and labia majora.

(6) Abraded with tearing of labia majora of both side 2 cm x 1 cm.

(7) Hymen absent, lower part of vagina badly lacerated and pubic lower part upper abdomen, and vaginal tear up to upper part of Guel orifice.

The internal examination of the supra pubic region on opening the abdomen revealed that blood and gases were present and the lower part of the uterus had a bloodstained tear 1 cm x 1 cm. The cause of death was shock and haemorrhage. The death could have taken place on 30.1.1996 between 9.00

or 9.30 pm. If a hard object like a human penis was inserted in the vagina it could have caused the injuries Nos. 6 and 7.

7. The prosecution has examined Kunwar Dhruv Narain Singh (PW.1), the scribe of the FIR lodged by Batasi Devi (PW.2), mother of the deceased Renu. He deposed that Renu was living with her maternal grandmother Smt. Phulpatta Devi who was totally blind and a very poor woman. Her thatched house had fallen down so she used to sleep in the house of Ramesh, appellant which was adjacent to her house. Renu was found dead on 30.1.1996 in the night on her cot in the house of Ramesh, appellant. Ramesh, appellant made the extra-judicial confession before him in presence of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8). The father of Ramesh used to work in his house, however, at the relevant time, he was working in Sidharth Nagar. Batasi Devi (PW.2) had come to him and asked him to write the FIR so that she can lodge the same with the police station. However, he denied the suggestion that he had a grudge against Ramesh, appellant as it was because of the appellant and his father that other persons of the village were not working at his house.

8. Batasi Devi (PW.2), mother of Renu, deceased, deposed that her mother was very poor and her house was having a thatched roof which had fallen down so she used to sleep in the house of Ramesh, appellant which is in very close proximity of her house. In the fateful night, Renu slept with her maternal grandmother in the house of Ramesh, appellant. She had been informed that her daughter died of paralysis.

Renu had been buried at the bank of Manorama river. However, on the next day, the rumour broke out that Ramesh, appellant, had committed rape and she died of the same. Then, she lodged the FIR.

9. Jata Shankar Singh (PW.7) deposed that he was originally of another village but was living in the house of Kunwar Dhruv Narain Singh (PW.1), in the same village for 15-16 years. He told that on 30.1.1996 when he was returning alongwith Shitla Prasad Verma (PW.8), to his house after marketing at about 9.00 p.m., he heard some whispering near the house of appellant Ramesh. He was having a torch so he focussed it in the same direction and found that Ramesh, appellant was committing rape on a little girl of 6 years beneath a tree situated outside his house. His associate Shitla Prasad Verma (PW.8) raised a cry as a result of which some persons from the village gathered but appellant Ramesh ran out. The girl had died of rape.

10. Shitla Prasad Verma (PW.8). has supported the prosecution case narrating the similar facts as stated by Jata Shankar Singh (PW.7).

11. Doctor Ajay Kumar Verma (PW.11) who has conducted the autopsy on the body of Renu, deceased, supported the prosecution case to the extent that deceased was having the ante-mortem injuries as mentioned hereinabove on her body.

12. Sharafat Hussain, S.I., (PW.13), the Investigating Officer, deposed that he had recovered a part of Khatari (thin mattress) and white sheet with which Renu was covered. He tried to search the appellant/accused, however, the appellant could be arrested at 3.35 a.m. in the intervening night of 3/4.2.1996 from the junction of three roads at Mahulghat when he was waiting for some transport to leave the area.

13. The prosecution also examined Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6), Sona Devi (PW.9). However, they did not support the prosecution case and had been declared hostile. According to the aforesaid witnesses, they reached the place of occurrence after having the information of Renus death and they found her dead body lying at the house of her maternal grandmother Smt. Phulpatta Devi.

14. The learned trial court after appreciating the evidence on record acquitted the appellant on the following grounds:

> I) The prosecution could not produce any evidence to prove that in the night of the incidence, Renu, deceased, had been sleeping in the house of the appellant Ramesh or her dead body had been lying on the cot in his house.
>
> II) Smt. Phulpatta, maternal grandmother of Renu, deceased, was neither examined, nor any satisfactory explanation had been given for not examining her.
>
> III) The deposition of Kunwar Dhruv Narain Singh (PW.1) was not worthy of reliance as he has deposed that the appellant had made extra-judicial confession before him for committing the aforesaid crime in the presence of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8). Such statement had not been made by either of the said witnesses.
>
> IV) Kunwar Dhruv Narain Singh (PW.1) was a Jamindar and it was because of the appellants father that other poor persons were not rendering service to

him and Kunwar Dhruv Narain Singh (PW.1) had been inimical to the appellant.

V) The deposition of Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6) and Sona Devi (PW.9) was not in support of the prosecution case and all the aforesaid four witnesses had been cross-examined but they could not be held to be hostile witnesses.

VI) Sharafat Hussain, S.I., (PW.13), the Investigating Officer, had recovered a part of the bed sheet and it had been sent for CFSL report and to the said recovery Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10) did not support the recovery and, therefore, recovery of the aforesaid incriminating material is to be disbelieved.

VII) The evidence of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) could not be relied upon as they had made knowingly improvements in the case of having last seen Renu, deceased, with the appellant rather distorted the whole case of the prosecution totally as both of them had deposed that they had seen the appellant committing rape on Renu, deceased.

15. In the appeal, the High Court has reversed the findings recorded by the trial court on the following grounds:

I) There was sufficient evidence on record to show that Smt.

> Phulpatta Devi, maternal grandmother of Renu, deceased, was totally blind and a very poor woman and the roof of her thatched house had fallen and she used to sleep in the house of the appellant Ramesh in her neighbourhood with Renu, deceased.

II) It was no ones case that Kunwar Dhruv Narain Singh (PW.1) was inimical to the appellant for any reason whatsoever as none of the witnesses had deposed that after the appellants father joined the service, he had supported the other villagers financially and, therefore, they stopped working at the house of Kunwar Dhruv Narain Singh (PW.1).

III) The witnesses Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6) and Sona Devi (PW.9), once had been cross-examined by the prosecution as they had not supported the case of the prosecution, the trial

court was wrong that they were not hostile witnesses. Similarly remained the position of the witnesses of the recovery of sheet cover and bichona i.e. of Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10).

IV) The evidence of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) could be relied upon at least to the extent that deceased was last seen in the company of the appellant.

V) The trial court had given undue importance to the minor contradictions in the depositions of the witnesses. In fact, there was evidence that after committing the crime outside, the appellant brought the corpus of the child and placed it on the cot.

16. The law of interfering with the judgment of acquittal is well- settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial courts acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: State of Rajasthan v. Talevar & Anr., AIR 2011 SC 2271; State of U.P. v. Mohd. Iqram & Anr., AIR 2011 SC 2296; Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr., (2012) 4 SCC 722; and State of Haryana v. Shakuntla & Ors., (2012) 4 SCALE 526).

17. In the aforesaid fact-situation, we have to weigh as to whether the High Court is justified in reversing the judgment and order of acquittal recorded by the trial court.

We have been taken through the entire evidence on record and after re-appreciating the same we can unhesitatingly record that:

(i) Undoubtedly, the trial court has not made any reference to the depositions of Batasi Devi (PW.2) and also of Kunwar Dhruv Narain Singh (PW.1) in respect to the fact that the thatched house of roof of Smt. Phulpatta Devi, maternal grandmother of Renu, deceased had fallen and she as well as Renu used to sleep in the house of Ramesh, appellant which was in very close vicinity of Smt. Phulpattas house. Ganga Ram (DW.1) has stated that on the day of occurrence, Smt. Phulpatta Devi and Renu did not sleep in the house of Ramesh, however, as he was living permanently in the city and did not

say that he was present on that day in the village, his evidence cannot be taken into consideration so far as this issue is concerned. The defence did not cross-examine Kunwar Dhruv Narain Singh (PW.1) and Batasi Devi (PW.2) on this issue. Thus, the trial court committed an error recording such finding of fact.

(ii) It has come on record that Smt. Phulpatta Devi was an old, infirm and totally blind woman and it was for this reason that Renu, deceased was left for her assistance. The trial court ought not to have drawn adverse inference for not examining Smt. Phulpatta Devi by the prosecution. Thus, the adverse inference drawn by the trial court on this count is unwarranted and uncalled for.

(iii) The trial court has held that Kunwar Dhruv Narain Singh (PW.1) had been inimical to Ramesh and his family for the reason that appellants father had been working in the agricultural field at the said witness and after joining the service appellants father had rendered financial help to other poor persons of the village and thus those poor persons were not available for work to the said witness. In this regard, the defence has examined Ganga Ram (DW.1) who had deposed that the appellants father had been looking after the agricultural work of that witness, however, joined the service in court 14 years prior to the date of incident and Ganga Rams family was also looking after the agricultural work of the said witness but 8 years prior to the date of incident. He had also left the village and opened a beetle shop in the city after getting financial aid from appellants father.

> Such an evidence is required to be examined in the light of attending circumstances and particularly taking into consideration the proximity of time. Time is the greatest heeler. In case the appellants father had left working in the field of the witness 14 years prior to the date of incident and Ganga Rams (DW.1) family has left 8 years prior to the said date, the time gap itself falsifies the testimony for the reason that the time gap is a factor of paramount importance in this regard. More so, it is not the defence case that any other family or labour was available in the village to look after the agricultural work of the said witness.

(iv) The recovery of part of the sheet and white clothes having blood and semen as per the FSL report has been dis-believed by the trial court in view of the fact that Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10) did

not support the prosecution case like other witnesses who did not support the last seen theory. The trial court failed to appreciate that both the said witnesses, Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10) had admitted their signature/thumb impression on the recovery The factum of taking the material exhibits and preparing of the recovery memo with regard to the same and sending the cut out portions to the Serologist who found the blood and semen on them vide report dated 21.3.1996 (Ext. Ka 21) is not disputed. The serological report also revealed that the vaginal swab which was taken by the doctor was also human blood and semen stained.

18. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.

(Vide: Bhagwan Singh v. The State of Haryana, [1975] INSC 307; AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, [1976] INSC 205; AIR 1977 SC 170; Syad Akbar v. State of Karnataka, [1979] INSC 125; AIR 1979 SC 1848; and Khujji @ Surendra Tiwari v. State of Madhya Pradesh, [1991] INSC 154; AIR 1991 SC 1853).

19. In State of U.P. v. Ramesh Prasad Misra & Anr., AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543; Gagan Kanojia & Anr. v. State of Punjab,(2006) 13 SCC 516; Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P., AIR 2006 SC 951;

Sarvesh Narain Shukla v. Daroga Singh & Ors., AIR 2008 SC 320; and Subbu Singh v. State by Public Prosecutor, (2009) 6 SCC 462.

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. (See also: C. Muniappan & Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; and Himanshu @ Chintu v. State (NCT of Delhi), (2011) 2 SCC 36)

20. Undoubtedly, there may be some exaggeration in the evidence of the prosecution witnesses, particularly, that of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8).

> However, it is the duty of the court to unravel the truth under all circumstances.

21. IN BALKA SINGH & ORS. V. STATE OF PUNJAB, [1975] INSC 97; AIR 1975 SC 1962, THIS COURT CONSIDERED A SIMILAR ISSUE, PLACING RELIANCE UPON ITS

> SC 15 AND HELD AS UNDER:
>
> The Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the true is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

22. In Sukhdev Yadav & Ors. v. State of Bihar, AIR 2001 SC 3678, this Court held as under:

> It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness-box details out an exaggerated account.

23. A similar view has been re-iterated in Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696, wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not dis-believe the evidence of such witnesses altogether if they are otherwise trustworthy.

24. In Sucha Singh v. State of Punjab, AIR 2003 SC 3617, this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

25. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1973] INSC 151; AIR 1973 SC 2622, this Court held :

> 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. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below.
>
> Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant (See also: Bhagwan Singh & Ors. v. State of M.P., AIR 2002 SC 1621;
>
> Gangadhar Behera & Ors. v. State of Orissa, AIR 2002 SC 3633; Sucha Singh (supra); and S. Ganesan v. Rama Raghuraman & Ors., (2011) 2 SCC 83).

26. Therefore, in such a case the paramount importance of the court is to ensure that miscarriage of justice is avoided. The benefit of doubt particularly in every

case may not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense.

27. In view of the above, we are of the considered opinion that the acquittal in the instant case by the trial court was totally illegal, unwarranted and based on mis-appreciation of evidence for the reason that the court had given undue weightage to unimportant discrepancies and inconsistencies which resulted in miscarriage of justice. Thus, the High Court was fully justified in reversing the order of acquittal.

In view of the above, the appeal lacks merit and is accordingly dismissed.