

SUPREME COURT OF INDIA

Habib

Vs.

State of U.P.

Crl.A.No.911 of 2007

(K.S. Radhakrishnan and Dipak Misra JJ.)

01.05.2013

JUDGMENT

K. S. RADHAKRISHNAN, J

1. The appellants herein were charge-sheeted for the offences punishable under Section 302 of the Indian Penal Code. The accused Habib was charge-sheeted under Section 302 IPC and the remaining two accused persons including Manuwa were charge-sheeted under Section 302 read with 34 IPC, however, Manuwa was also charge-sheeted under Section 307 IPC as well.

2. The trial court after appreciating the oral as well as documentary evidence acquitted all the accused persons vide its judgment dated 3.10.2008. Aggrieved by the said order the State preferred G.A. No.114 of 1982 before the High Court of judicature at Allahabad. The High Court, vide its judgment dated 23.3.2007 confirmed the acquittal of the accused Bhappa but acquittal of Habib and Manuwa was set aside. Habib was found guilty and convicted for the offences punishable under Section 302 IPC and accused Manuwa was convicted under Section 302 read with Section 34 IPC. Aggrieved by the said order Habib has filed Criminal Appeal No.911 of 2007 and Manuwa has filed Criminal Appeal No.915 of 2007.

3. The prosecution story is that Sammo, daughter of deceased Fakira and sister of Hamid (PW 1) - complainant was married to Habib, one of the accused. Sammo left the matrimonial home due to demand of dowry. Later PW 1 settled her marriage with another person but the nikah was not performed since no divorce was obtained from her husband—accused Habib. The prosecution version is that on

13.1.1981 at about 6.30 PM PW 1 Hamid accompanied by his father Fakira (deceased), his brother Rafique, servant Ashraf and other person namely Kailash Chandra were proceeding to a place Goverdhan along with cattle through a canal road. The accused Manuwa, his son Habib, appellants herein, and his brother Bhappa met PW 1 and others on the way and enquired about their destination. PW 1 informed that they are going to Goverdhan for cattle business. On seeing them, accused Manuwa instigated his sons Habib and Bhappa to challenge PW 1 and others. Manuwa himself opened fire with a view to kill Fakira, but it did not hit Fakira, Habib also opened fire and shot Fakira at his neck and he fell down and died on the spot. PW1 Hamid lodged a report to the police station Goverdhan, Mathura on 13.1.1981 at about 8.45 PM. Thereafter a case Crime No.13 under Section 302 IPC was registered. The case was tried by the Sessions Judge, Mathura. Prosecution, in order to bring home the charge, examined PW 1 Hamid, the informant, PW 2 Rafique, brother of the deceased, PW 3 Kailash Chandra, eye-witness to the murder, PW 4 Radhey Shayam, head constable, PW 5 Ram Kheladi, constable, PW 6 Dr. K.K. Khanna, CMO of Mathura to prove the post-mortem report, prepared by Dr. K.K. Seth. PW 7 Brijpal Singh – Investigating Officer and PW 8 Bankey Lal, constable. On the side of the defence, accused examined Abdul as DW1 and Rajendra Prasad Pandey as DW2.

4. Sessions Court after appreciating the oral and documentary evidence acquitted all the accused persons and on appeal preferred by the State, the High Court reversed the judgment of the trial court and, as already stated, convicted the accused persons and sentenced them to undergo imprisonment for life.

5. Mr. M.Z. Chaudhary, learned counsel appearing for the appellants submitted that the High Court has committed a serious error in reversing the order acquittal which was passed by the trial court after appreciating the oral and documentary evidence adduced by the prosecution as well as by the defence. He submitted that eHeHevarious circumstances pointed out by the trial court in disbelieving the evidence of the prosecution witnesses should not have been disturbed by the High court and no reason exist to do so. Learned counsel also pointed out that the eye-witnesses are closely related and there are possibilities of false implication due to some grudge entertained by the deceased and the complainant against the accused persons since PW 1's sister was married to Habib.

6. Sammo, sister of Hamid, as already stated, was married to accused - Habib, son of Manuwa and the third accused Bhappa is real brother of Manuwa and uncle of Habib. Sammo left the matrimonial home due to strained relationship with Habib,

the accused. Prior to the incident the deceased and PW 1 had settled the marriage of Sammo with somebody before getting divorce from Habib. The motive for the murder was the strained relationship between the accused persons and PW 1 and the deceased. It is settled legal position that if there is direct trustworthy evidence of witnesses as to the commission of offence, motive part loses its significance. Therefore, if the genesis of the occurrence is proved, the ocular testimony of the witnesses could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. This legal position has been settled by this Court in its Judgment in Sheo Shankar Singh v. State of Jharkhand (2011) 3 SCC 654 and Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91.

7. We are of the view that the mere fact that PW 1 Hamid, PW 2 Rafique are son and brother of the deceased, that itself is not a ground to disbelieve their evidence. Both, PW 1 and PW 2 have, categorically stated that the first shot was fired by Manuwa but missed his aim and it was Habib who fired the fateful shot at the neck of the deceased and thereafter three culprits ran away from the spot. Prosecution also placed reliance on the testimony of PW 3, Kailash Chandra who is a co-villager of the informant and he fully corroborated the testimony of other witnesses regarding the part played by the three accused persons in the commission of crime. We have gone through the depositions of PW1, PW2, PW3 and nothing could be brought out in the corss-examination to discredit their statement.

8. We are of the view, the mere fact that PW1 and PW2 are interested witnesses being relatives is not a reason to discard their evidence, if the evidence is trustworthy. This Court in Brathi v. State of Punjab (1991) 1 SCC 519 held that the mechanical rejection of the evidence on the sole ground that it is interested would invariably lead to the failure of justice. In State of Jammu and Kashmir v. S. Mohan Singh and another (2006) 9 SCC 272 this Court held that in a murder trial, merely because a witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be trustworthy. In Shyamal Ghosh v. State of West Bengal (2012) 7 SCC 646 this Court held that merely because three witnesses were related to the deceased, the other witnesses, not similarly paced would not attract any suspicion of the court on the credibility and worthiness of their statements.

9. The medical evidence of PW6, Dr. K.K. Khan, who was examined to prove the port-mortem report by Dr. K.K. Seth, would indicate that Fakira was done to death as a result of gunshot injury on his neck. The doctor, who conducted the autopsy found that death had taken place about one day prior to the examination which was

done at 5.30 PM on 14.1.1981. Doctor also found one gun short wound of entry trachea deep on the front of neck and there were fractures of third and fourth cervical vertebrae and laceration at the level of third and fourth cervical vertebrae.

10. We are of the view that the High Court has correctly appreciated the oral and documentary evidence, including the evidence of PW6, the Chief Medical Officer and rightly came to the conclusion that the trial court had committed an error in discarding their evidence. This Court in *State of Punjab v. Ajaib Singh and others* (2005) 9 SCC 94, also recorded that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or perverse. 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 the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented as noted in the Judgment of this Court in *V.N. Ratheesh v. State of Kerala* (2006) 10 SCC 617.

11. We are of the considered view that the High Court has rightly found that the finding recorded by the trial court was unreasonable and perverse and reversed the order of acquittal passed by the trial Court. The appeals, therefore, lack merits and the same are dismissed.