SUPREME COURT OF INDIA

Pooranlal

Vs.

The State of Madhya Pradesh

Crl.A.No.1008 of 2008

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

25.10.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed by the two accused persons against the Judgment/order of the High Court of Madhya Pradesh at Jabalpur dated 08.12.2006 in Criminal Appeal No.934 of 1991 whereby the High Court partly allowed the appeal filed by the State against the acquittal order dated 07.05.1991 of the Additional Sessions Judge, Khurai, Dist. Sagar in Sessions Trial No.340 of 1990. The High Court while upholding the acquittal of other three accused set aside the acquittal of the appellants herein and convicted them for an offence punishable under Section 304 Part II read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and awarded each of them to undergo rigorous imprisonment for a term of five years and to pay a fine of Rs.2000/- each and, in default of payment of fine, to further undergo simple imprisonment for a period of three months.

2. In order to appreciate the issues arising in the appeal, relevant facts need mention infra.

3. In short, the case of the prosecution on which the trial against the appellants and other three accused proceeded was as follows:

4. One Hariya (deceased) was the resident of Village Kublai. He was a railway employee. On 30.08.1990, at around 5.00 a.m., he left for nearby Village-Khurai on a cycle to catch a Train to join his duty at a nearby place. At that time, it was heavily raining. When Hariya was passing through a Mahua tree in village - Nirtala, one person suddenly got down from the tree and hit him with the Lathi (stick). Thereafter four more persons armed with Lathis came there and took him away from the road. All the five persons then assaulted him with Lathies saying in Hindi " maro sale ko, bada panch bana firta hai" (beat him bastard - what does he think of him by becoming Panch-Head).

5. At that time, two sons of Hariya, namely, Ramesh (PW-1) and Banshi (PW-2) were also reached there on their cycle as they were also going to earn their livelihood in nearby village. One Daryao Singh(PW-3)-a villager, who was going on his tractor to fill diesel in his tractor, also reached there.

6. These persons witnessed the incident of beating and, therefore, ran towards Hariya to save him from the assailants. The assailants, on noticing that a group of persons is fastly approaching at the scene of occurrence, ran away from there leaving injured Hariya lying on the roadside.

7. Ramesh (PW-1), Banshi (PW-2), Daryao Singh (PW-3) and some other persons took Hariya to Police Station, Khurai in a tractor where he lodged the FIR (Ex. P-33). Hariya was then taken to the Civil Hospital, Khurai for medical treatment. Dr. Rakesh Saxena (PW-11) found 11 injuries on the body of Hariya. In the meantime, the SHO Police Station, Khurai brought Naib Tahsildar, B.P. Shukla (PW-9) in the Hospital for recording dying declaration of Hariya.

It was accordingly recorded (Ex.P-20).

8. Hariya struggled for survival but eventually succumbed to the injuries on 13.09.1990 almost after 14 days of the incident. Dr. Prabhat Bharadwaj (PW-14) performed the post mortem of his dead body.

9. According to the prosecution, the assailants and Hariya belonged to the same caste. There was previous enmity between one assailant-Gaya Prasad and Hariya due to some verbal utterances, which were exchanged between both of them in a marriage wherein the Samaj Panchayat of which Hariya was the head, had imposed some fine on Gaya Prasad. It is due to this reason, this incident took place.

10. The Police Authorities then undertook the investigation, which included collecting of material evidence, preparation of site map, blood stained earth from the place of occurrence, apprehending five accused persons, namely, (1) Pooranlal (2) Gaya Prasad (3) Mahendra (4) Shyamlal and (5) Ramlal, their custodial interrogation, recording of statement of several witnesses, recovery of sticks etc.

11. The five accused persons were accordingly charged with the offences punishable under Sections 148, 302/149 and 342 IPC. All the accused persons abjured their guilt and took a stand that they have been falsely implicated in the case. So far as Pooranlal, Shyamlal and Ramlal are concerned, they took a plea that they never had any enmity with the deceased because they reside in some other village.

12. To prove its case, the prosecution examined 17 witnesses. The learned Trial Judge, in his order dated 07.05.1991, recorded a finding that the prosecution has failed to prove the charges against all the accused persons beyond the shadow of doubt and accordingly

proceeded to record the finding of "not guilty" against all of them. In other words, the Trial Court acquitted all the five accused persons from the charges.

13. Challenging the order of acquittal, the State filed appeal before the High Court. By impugned judgment, the High Court partly allowed the appeal filed by the State. The High Court upheld the acquittal of three accused, namely, Mahindra, Shaymalal and Ramlal but reversed the order of acquittal against two accused persons, namely, Pooranlal and Gaya Prasad and convicted both the accused under Section 304 Part II read with Section 34 IPC and sentenced each of them to undergo rigorous imprisonment for five years' and a fine of Rs.2000/- each and, in default of payment of fine, to further undergo three months' simple imprisonment.

14. Felt aggrieved, accused Pooranlal and Gaya Prasad have filed this appeal by way of special leave against the judgment of the High Court challenging their conviction. So far as the State is concerned, they accepted the order of the High Court by which three accused, namely, Mahendra, Shyamal and Ramlal were acquitted. In this view of the matter, the order of acquittal of three accused named above has become final.

15. Therefore, the only question, which arises for consideration in this appeal, is whether the High Court was justified in setting aside the order of acquittal of Pooranlal and Gaya Prasad (appellants herein) and was also justified in convicting both of them for an offence punishable under Section 304 Part II read with Section 34 IPC?

16. Heard Mr. Vijay Pratap Singh, learned counsel for the appellants and Mr. Sunny Choudhary, learned counsel for the respondent.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal. In other words, in our opinion, the High Court was justified in setting aside the acquittal order in respect of the appellants and convicting them under Section 304 Part II read with Section 34 IPC.

18. This is how the High Court dealt with the case of the appellants while separating their case from other three accused in Paras 22 to 26 and found them guilty for commission of offence in question:

> "22. Thus, even after ignoring the eye-witness account available on record, the conviction of R-1 Pooran and R-2 Gayaprasad could be founded on the First Information Report (Ex.P-33), lodged by the deceased, and his dying-declaration (Ex.P-20). In the aforesaid two documents, there isconsistency with regard to the motive prevailing in their minds and overt act of accused Pooranlal, who had caused injury on the head of the deceased even though no bony fracture was found and subsequent assault by other including Gayaprasad. However, it is also to be noticed that no opinion has been expressed by Autopsy Surgeon PW-14 Dr. Prabhat

Bharadwaj that injury was sufficient in the ordinary course of nature to have caused death. Further, admittedly, the deceased had survived for 14 days after the incident.

23. Keeping all these factors in mind, we are of the opinion that as far as finding of 'not guilty' recorded against Mahendra, Shyamlal and Ramlal is concerned, it calls for no interference, as the same is based on proper appreciation of evidence. Nothing could be pointed out to us that finding against them is also perverse, but as regards the finding in favour of R-1 Pooranlal and R-2 Gayaprasad, it is not only contrary to the evidence on record, but is also perverse and unreasonable.

24. However, as noted already, R-2 Gayaprasad only intended to settle score with Hariya for insulting him by requiring to pay the amount of fine for participating in the marriage of Hariya's son. In other words, while striking the lathi blows, none of them had any intention to kill Hariya. In this view of the matter, R-1 Pooranlal and R-2 Gayaprasad deserved to be convicted for commission of offence of culpable homicide not amounting to murder and punishable under Secton 304 Part II of the IPC: See *(State of Orissa vs. Bhagwan Barik[1]) and (Camila Vaz vs. State of Goa[2].)*

25. The incident had occurred nearly 16 years before and the R-1 Pooranlal and R-2 Gayaprasad were released on bail during pendency of this appeal. In these circumstances, sentence of rigorous imprisonment for a term of 5 years with fine of Rs.2000/- would be sufficient to meet the ends of justice.

26. Accordingly, the appeal against acquittal of Mahendra, Shyamlal and Ramlal is hereby dismissed, but stands allowed in part against Pooranlal and Gayaprasad. While affirming their acquittal in respect of the offences punishable under Sections 148, 302, 302 read with 149 and 342 of the IPC, we convict R-1 Pooranlal and R-2 Gayaprasad for having committed an offence punishable under Section 304 Part II read with Section 34 of the IPC. Each one of them is sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 3 months."

19. We find no good ground to interfere with the aforementioned findings of the High Court. In our opinion, the findings of the High Court are based on proper appreciation of evidence which the High Court was entitled to record in an appeal arising out of the order of acquittal once the leave to file the appeal to challenge the order of acquittal was granted to the State by the High Court.

20. In other words, the High Court was entitled to appreciate the evidence with a view to find out as to whether the finding of acquittal recorded by the Trial Court was legal or/and proper and was, therefore, entitled to record its own finding of either affirmance or reversal.

21. The evidence available on record, in our opinion, did establish beyond reasonable doubt that the appellants' case was capable of being separated from other three accused with a view to find out their role in the incident as against the other three accused.

22. This we say for the reasons that, first, there was no motive on the part of the accused persons (appellants) to kill Hariya. Second, the intention was to teach a lesson to Hariya because he had insulted Gaya Prasad in Panchayat on an incident which had occurred in marriage in their community in recent past. Third, Dr. Bharadwaj (PW-14) who performed post mortem did not say in his evidence that injuries caused to Hariya were sufficient in the ordinary course of nature to have caused death, and lastly, Hariya survived for 14 days from the date of incident.

23. In the facts and circumstances of the case as taken note of supra, we are of the considered opinion that these factors were rightly taken into consideration for holding the appellants guilty for committing offence falling under Section 304 Part II of IPC.

24. Learned counsel for the appellants, no doubt, vehemently argued that the appellants should also have been acquitted like the other three accused named above. It was also his submission that there was no evidence much less sufficient evidence against the appellants for holding them guilty for an offence falling under Section 304 Part II IPC.

25. However, in the light of what we have discussed above wherein we have given our reasoning, it is not possible to accept the submission of learned counsel for the appellants. Moreover, we cannot again de novo re-appreciate the evidence. It is not permissible unless the findings of the High Court are wholly perverse or against the evidence. Such is not the case here.

26. In the light of foregoing discussion, we find no merit in the appeal. The appeal thus fails and is accordingly dismissed resulting in upholding of the order of the High Court.

27. As a result thereof, the bail granted to Gaya Prasad (appellant No.2) by this Court's order dated 13.04.2009 stands cancelled. He is directed to surrender and undergo the remaining jail sentence awarded by the High Court in case, he has not so far undergone awarded sentence.

28. So far as Pooranlal (appellant No.1) is concerned, since he had not applied for bail, it may be that during this period he may have completed his full period of jail sentence. Since learned counsel for the appellants is unable to make any statement on this issue, we are of the view that the Trial Court will verify this fact from jail records and other relevant material and after ascertaining as to how much jail sentence Pooranlal had already undergone out of five years, will accordingly pass necessary orders.

Judgment Referred.

[1] *AIR 1987 SC 1265*

[2]*AIR 2000 SC 1374*