SUPREME COURT OF INDIA

Shamim

Vs.

State (GNCT of Delhi)

Crl.A.No.56 of 2018

(Ranjan Gogoi,J., Navin Sinha and K.M.Joseph,JJ.,)

19.09.2018

JUDGMENT

Navin Sinha,J.,

1. The appellant has been convicted by the High Court under Sections 302/307/34, I.P.C. and sentenced to life imprisonment, after reversing her acquittal ordered by the trial court. The appellant has further been denied the benefit of any remission in sentence, till she completes twenty-five years of custody.

2. The Trial Court convicted four of the seven accused and acquitted the appellant and two others. The High Court dismissed the appeals against convictions, declined to interfere with the acquittals, with the exception of the appellant.

3. On 27.03.2006 at night, Pappu and Anisha (hereinafter referred to as 'the deceased') were shot dead on the first floor of their house. PW-2, Heena suffered multiple injuries on her neck with a razor. The deceased and PW-2 are the brother/mother/sister respectively of PW-1, Ishrat Ali. PW-4, Shabnam is the daughter of the appellant, who married PW- 1, against the wishes of the appellant. PW-3, Md. Imran is the brother of PW-1. The parties resided in houses across each other with common topography, divided by a lane 5 to 6 feet wide. PW-1 and PW-4 after their marriage had shifted to a separate residence. PW-3 upon returning home saw the appellant standing outside his house, followed by the other accused coming out of the house with blood stained clothes. The witness entered the house to find the corpses and PW-2 in an injured condition unable to speak, and informed PW-1 and PW-4 who then came to the spot. Earlier, in the evening, PW-2 had noticed the appellant standing on the verandah of her own house looking towards the house of the witness. PW-4 stepped out on the verandah when the appellant told her that the incident was the consequence of the witness not listening to her, and that she had got the deceased killed and her husband will meet the same fate.

4. The Trial Court convicted four accused under Sections 449/302/307/34 and awarded life imprisonment. The appellant was acquitted on benefit of doubt with regard to her presence,

failure to recover her blood stained 'chunni' and lack of any evidence with regard to conspiracy.

5. The High Court in appeal against her acquittal, after reappreciation of evidence ascribed motive to the appellant, being perturbed and strongly opposed to the marriage between PW-4 and PW-1. The evidence of PW-2, the injured witness was considered credible and reliable coupled with the recovery the next day of blood-stained lock and key and the appellant's 'chunni' with blood stains on it pursuant to the disclosure made by the appellant. The appellant was thus convicted in like manner under Sections 302/307/34, I.P.C.

6. Learned counsel for the appellant referring to the evidence of the prosecution witnesses contended that none of them has spoken having seen blood on the clothes of the appellant. There was no material to conclude a common intention on part of the appellant as it had not been conclusively established that she was present during the assault. Considering that the houses were located opposite each other across the lane, the presence of the appellant on her own verandah before and after the occurrence was but natural and cannot lead to any inference of guilt. The appellant could not have been simultaneously present at the place of occurrence and her own house. Merely standing outside the house of the deceased cannot be sufficient to infer common intention. PW-2 is unreliable as her statement was recorded late and she has made many additions and alterations to her original statement including contradictions. If on appreciation of the same evidence the trial court had arrived at a possible view to acquit the appellant, the High Court on a reappreciation of the same evidence ought not to have convicted the appellant. Reliance was placed on *Chandrappa & Ors. vs. State of Karnataka*[1]. The test of rarest of rare cases should have been applied and the appellant ought not to have been denied the benefit of remission before twenty-five years.

7. Learned senior counsel appearing for the State submitted that the order of the High Court is well considered and reasoned based on reappreciation of the evidence. PW-4, the daughter of the appellant had deposed against her own mother. PW-2 was an injured witness whose credibility had to be high. The presence of the appellant has been established by the evidence of PW-2 and PW-3. The disclosure made by the appellant has led to recovery of the blood stained lock and key, as also her 'chunni' with blood stains on it. The conclusion of the trial court to the contrary has been found to be perverse.

8. We have considered the submissions on behalf of the parties and perused the materials and evidence on record. The High Court has elaborately discussed the cautions and limitations to be kept in mind by an appellate court while interfering with an order of acquittal, inter alia with reference to Chandrappa (supra). We therefore see no reason to burden our order by repetition with the said discussion.

9. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit. We see no reason why the same principle cannot be applied when such a witness deposes against a closely related accused. According to normal human behavior and conduct, a witness would tend to shield and protect a closely

related accused. It would require great courage of conviction and moral strength for a daughter to depose against her own mother who is an accused. There is no reason why the same reverse weightage shall not be given to the credibility of such a witness. PW-4 is the daughter of the appellant. She has deposed that two days prior to the occurrence the appellant had threatened the witness to leave PW-1 else she would get his family members killed. Soon after the occurrence having reached the house of her in-laws she stepped out on the verandah. The appellant who was standing on her own verandah told the witness that she had got the deceased killed because the witness did not listen to her and that her husband would be killed next. In cross- examination she reiterated the same. The statement, in our opinion, can be considered as a corroborative evidence being a voluntary extra judicial confession, considering the nature of relationship between the witness and the appellant.

10. PW-3 has deposed that while returning home at about 10.30 PM he had seen the appellant and the other accused coming out of his house with blood stained clothes and they proceeded towards the house of the appellant. A little later the other accused came out from the house of the appellant and went away towards the lane. The witness has reiterated the same in his cross examination and has also specifically denied the suggestion that the appellant was not seen coming out from the house of the witness. A blood stained lock and key has also been recovered on confession of the appellant.

11. PW-2 is an injured witness whose throat was slit in the occurrence causing loss of voice requiring hospitalization for two months. The evidence of an injured witness carries great weight as it is presumed that having been a victim of the same occurrence the witness was speaking the truth. She has deposed that the appellant came upstairs after the deceased persons had been shot dead by the other accused. On the exhortation of the appellant accused Naushad, brother of PW-4, again assaulted the witness on her throat with the razor. While the accused were leaving the appellant tripped over the witness. The blood stained 'Chunni' of the appellant discovered the next day on her confession, therefore stands explained.

12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the

former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

13. PW-2 was a minor student witness aged about thirteen years. She broke down during her evidence and cross examination recalling the occurrence. Her cross examination had to be deferred on more than one date. Notwithstanding the grueling nature of her cross examination which runs into approximately 14 pages she withstood the same tenaciously. Her presence at the place of occurrence and injury caused during the occurrence has stood unshaken. The appellant was the only woman present. The question for confusion of identity simply does not arise. The witness in her cross examination specifically denied having been tutored, and from her evidence we find no reason to disbelieve her. There may be some inconsistencies in her evidence, minor and trivial in nature. But that cannot erase her credibility as a reliable witness to the occurrence.

14. In *State of U.P. vs. Krishna Master & Ors*[2]., disagreeing with the High Court which had doubted the credibility of a child witness, it was observed:

> "36 This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal's understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father, mother, brothers, etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence.
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> 37. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the specious ground on which the reliable testimony of PW 2 Madan Lal came to be disbelieved can hardly be affirmed by this Court."

15. Each criminal trial is but a quest for search of the truth. The duty of a judge presiding over a criminal trial is not merely to see that no innocent person is punished, but also to see that a guilty person does not escape. One is as important as the other. Both are public duties which the Judge has to perform. The trail court had erred and misappreciated the evidence to arrive at an erroneous conclusion.

16. Sentencing has always been a vexed question as part of the principle of proportionality. The issue however need not detain us further as once the appellant has been convicted with the aid of Section 34 I.P.C. there appears no justification to single her out for differential treatment for sentencing. In any event the High Court has not ascribed any special reasons for the same. We are therefore unable to sustain the direction for denial of remission to the appellant for twenty- five years and set aside the judgement to that extent only.

17. Consequentially we find no merit in the appeal except to the extent indicated.

18. The appeal is allowed only to the extent indicated.

Judgment Referred.

[1]*(2007) 4 SCC 0415*
[2]*(2010) 12 SCC 0324*