

SUPREME COURT OF INDIA

Mohd.Akhtar @ Kari

Vs.

State of Bihar

Crl.A.No.407- 408 of 2009

(L.Nageswara Rao and R.Subhash Reddy,JJ.,)

04.12.2018

JUDGMENT

L. Nageswara Rao,J.,

1. In these Appeals, we are concerned with the correctness of the judgment of the High Court of Judicature at Patna by which the judgment of the trial court was set aside and the acquittal of the Appellants was reversed. The High Court convicted the Appellants under Section 302 read with Sections 34 and 148 of the Indian Penal Code, 1860 ("the IPC") and sentenced them to undergo life imprisonment.

2. We are informed that the Appellant Nos. 1, 2 and 4 died during the pendency of these Appeals and so, the Appeals filed by them abate. On the statement of the informant Md. Abu Daud (PW-6), the fardbeyan was recorded by the Officer Incharge of Matihani Police Station at 9.00 p.m. on 05.01.1984. He stated that along with his brother Md. Nadir Sah @ Jumma (deceased), he had gone to the house of Md. Mobin (PW-4) for collecting irrigation dues. They were basking by the ghura (fire place) at Md. Mobin's darwaza. A mob of 10-11 persons armed with pistols, rifles and gun came there at that time. The informant identified seven out of eleven persons. Md. Chamru @ Sahadat was armed with gun, Noor Alam with rifle, Md. Jam Alam (Appellant No.4) with gun and Md. Kari @ Akhtar (Appellant No.1), Md. Samad and Md. Sanjat (Appellant No.3) also had fire arms. Immediately after the mob reached, the accused Md. Chamru@ Sahadat warned that nobody should try to escape and then Md. Sanjat (Appellant No.3) fired one shot which did not hit anybody. The informant, Md. Nadir Sah @ Jumma (deceased) and Md. Mobin (PW-4) started running and all the accused chased them. The informant hid himself by the side of a Simal tree from where he saw his brother Md. Nadir Sah @ Jumma (deceased) being surrounded by the accused near the southern wall of the house of one Samshul. After being surrounded, the deceased Md. Nadir Sah @Jumma was shot dead by Md. Chamru @ Sahadat, Md. Jan Alam and Noor Alam. The accused fled towards the village and soon after the informant and Md. Mobin rushed to where the deceased was lying and found that he was hit by the bullets. They started shouting for help. Md. Adil, Md. Ataul Rehman and several others came. They were informed about the incident by the informant.

3. On completion of the investigation, a charge sheet was filed under Sections 148 and 302 read with Section 149 IPC against seven persons out of whom one of the accused Md. Samad died and Md. Chamru @ Sahadat and Noor Alam absconded. The remaining accused i.e. the Appellants- herein faced trial for the charges framed under Sections 148 and 302 read with Section 149 IPC. According to PW-9 Bishram Das, who was the investigating officer, the information was received at 7.45 p.m. on 05.01.1984 that 2-3 shots were hurled and one person killed in Saidpur village. After recording S.D. Entry No.65, he proceeded to the Saidpur village along with other policemen. After reaching the place of the incident, he recorded the statement of Md. Abu Daud and prepared an inquest report. He also seized the blood soaked soil, ash of ghura and a lantern.

4. Post-mortem examination of deceased Jumma was conducted by PW-5 at 8.00 a.m. on 06.01.1984 who found the following injuries on the person of the deceased Md. Nadir Sah @ Jumma:

"(i) Deep wound with irregular burnt margin, size x 2" x 2" over the right cheek with surrounding areas with black stained with comminuted fracture on the right side mandible and maxilla and there was laceration of the surrounding tissues of the tongue. Multiple pellets and cork were recovered which were preserved and sealed.

(ii) Penetrating wound W diameter with burnt and inverted margin over the right coastal cartilage middle of the right nipple caused fracture of the cartilage. On further deep dissection the right lunge was found penetrated. There was also blood in the left side of chest cavity. There was also penetration of lower lobe of the left lung. There was hole in the heart. There was fracture of the ninth rib. There was wound on the back size 1" in diameter with inverted margine."

5. Hemorrhage due to the above injuries was the cause of death according to PW-5 and the death had occurred 24 hours prior to the post-mortem examination. Out of the 11 witnesses who were examined by the Prosecution, PWs-3,4 and 6 were the eye witnesses. PW-3 deposed that he heard the sound of firing near the house of Samshul when he was returning from Ghasarpur Tola and saw seven accused who were chasing the deceased Md. Nadir Sah @ Jumma, Md. Abu Daud (PW-6) and Md. Mobin (PW-4). Accused- Md. Jam Alam, Md. Sahadat and Noor Alam had fired at the deceased near the house of Samshul. He stated that he identified the accused by flashing his torch light. According to him, the police arrived at the place of the incident at 9.00 p.m. He testified that he did not tell anybody about the incident till the police reached there. PW-4 stated in his evidence that he arranged a ghura (fireplace) with leaves at 6.00 p.m. on 05.01.1984. Md. Abu Daud (PW-6) and Md. Nadir Sah @ Jumma (deceased) who came to demand the remaining irrigation dues from him also sat near the ghura. At that time a mob of 11 persons suddenly came there. He could identify seven out of eleven persons in mob in the light of ghura and of lantern which was hanging in the oriyani (veranda). He further deposed that he, the deceased, and PW-6 started running away from the mob. The deceased was surrounded by the accused near the southern wall of Samshul's house. He was shot dead by the accused Sahadat, Md. Jam Alam and Noor Alam. He stated that Md. Jam Alam and Sahadat had guns, Noor Alam had a rifle and rest of the

accused had lathis. PW-6 who is the informant deposed that there was sufficient light cast because of the ghura (fire place), the lantern and the torch which he was carrying. He witnessed the incident from behind the Simal tree which was 15 yards from the place of occurrence.

6. The oral testimonies of PWs- 3,4 and 6 were examined thoroughly and the trial court was of the opinion that it is not safe to rely on their statements. The trial court held that the evidence relating to identification of the accused in the available light was not convincing. There is reference to the evidence regarding the lantern in the varanda which was behind the place where the mob was standing and the improbability of their being identified in the light emitted by the lantern. The evidence of PW-6 that he flashed a torch light for identifying the accused persons was disbelieved as no torch was seized by the police. For the aforesaid reasons, the trial court was of the opinion that the eye witnesses could not have identified the accused. Previous enmity between the accused on one hand and the informant's family on the other was proved. The trial court further found that there was a delay in lodging the FIR which provided an opportunity to the informant and other PWs to implicate their enemies. Thus, false implication could not be ruled out. Further, the fardbeyan was recorded in the village at 9.0 p.m. on 05.01.1984. A dead body challan which was prepared by J.N. Singh, Sub-Inspector of Police (S.I.) which shows that the body was sent for post-mortem at 11.00 p.m. There was also an entry in the station diary that J.N. Singh (S.I.) returned to the police station at 9.00 p.m. If the fardbeyan was prepared at 9.0 p.m. at the place of incident which is six kilometers away from the police station, J.N. Singh (S.I.) could not have arrived at the police station at 9.00 p.m. The record shows that he prepared the inquest report at 10.0 p.m. and the dead body challan at 11.00 p.m. at the place of occurrence. J.N. Singh (S.I.) who is an important witness was not examined by the prosecution. Referring to the above circumstances, the trial court held that it was clear that the inquest report and the dead body challan were prepared later at the police station. An adverse inference was drawn against the Prosecution. The trial court also took note of the presence of the Mangal Tanti, the Chowkidar of the village, who reached the place of the incident in 30 minutes after the incident took place. He was not examined as a witness. None of the witnesses deposed that they informed the Chowkidar about the incident. No independent witness was examined though the village was hardly 200 metres from the place of the incident. No pellet or traces of bullets were recovered from the place of the incident. On the basis of the above findings along with other contradictions in the evidence of the witnesses, the trial court acquitted the Appellants of all the charges against them.

7. The Appeals filed by the State and the revision filed by the complainant, were taken altogether. The High Court appreciated the evidence and found fault with the judgment of the trial court. The High Court felt that apart from minor inconsistencies, the evidence of the eye witnesses was reliable and there was sufficient light to identify the accused. The accused shared a common intention of killing the deceased according to the High Court. The delay in registering the FIR was found to be not fatal to the case of the Prosecution. The evidence of interested witnesses was also held reliable by the High Court. The minor errors in recording the time in the police station and the non-examination of J.N. Singh (S.I.) did not prejudice the prosecution's case. By differing with the view taken by the trial court on the above points,

the High Court found that the judgment of the trial court is perverse and that there is only one view possible which leads to the guilt of the accused. On the aforesaid findings, the High Court convicted the Appellants under Section 302 read with Sections 34 and 148 IPC and sentenced them to life imprisonment.

8. The question that falls for determination in this case is whether the High Court was right in setting aside the acquittal of the Appellants and convicting them for an offence of murder. While holding that there is no limitation placed on the power to review the evidence in an appeal against acquittal, Lord Russell in *Sheo Swarup v. King-Emperor* held¹:

"9 the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

9. The approach of the High Court in an appeal against acquittals was explained by this Court in *Surajpal Singh & Ors. v. The State*² as follows:

"it is well-established that in an appeal under section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well- settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

10. This Court in *Muralidhar @ Gidda & A nr. v. State of Karnataka*³ referred to several earlier judgments dealing with appeals against acquittals and observed that the appellate court must bear in mind the following :

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court, it is so because the trial court had an advantage of seeing the demeanour of the witnesses, if the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified.

Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

11. It is relevant to refer to another judgment of this Court in *Ghurey Lal v. State of Uttar Pradesh*³ in which the principles to be followed by the appellate courts to overrule or otherwise disturb the trial court's acquittal were crystallised as under:

"70. . . .

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illogical;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

12. Interference with the judgment of the trial court in this case by the High Court is on a re-appreciation of evidence which is undoubtedly permissible. Though the High Court was aware of the well-settled principles of law in matters relating to appeals against acquittals, it failed to apply the same in their proper perspective. Interference with an order of acquittal is not permissible on the ground that a different view is possible. If the acquittal is justified on a probable view taken by the trial court, it should not be interfered with. The reasons given by the trial court for acquittal mainly pertain to the delay in lodging the FIR, untrustworthy eye witnesses, improbability of identification of the accused, non-examination of independent witnesses, previous enmity between the accused and the witnesses, non-production of important prosecution witnesses and improper investigation of the case. On a thorough examination of the entire evidence on record and the judgment of the trial court, we are of the considered view that the judgment of acquittal by the trial court is justified which ought not to have been interfered with by the High Court. The High Court could not have reversed a judgment of acquittal merely because another view is possible. The High Court brushed aside the findings recorded by the trial court relating to certain omissions as being minor and held the omissions should not have been the basis on which the Appellants have been acquitted. The High Court ignored the fact that the presumption of innocence in favour of the Appellants is further strengthened by an order of acquittal. No perversity in the judgment of the trial court in acquitting the Appellants has been demonstrated by the High Court for interfering with the judgment of the trial court.

13. For the aforementioned reasons, the Appeals are allowed. The judgment of the High Court is set aside and the judgment of the trial court is restored. The Appellant No.3 was released on bail on 30.01.2017. His bail bonds are discharged.

Judgment Referred.

¹AIR 1952 SC 0052

²(2014) 5 SCC 0730

³(2009) 10 SCC 0450