BIHARI NATH GOSWAMI

v.

SHIV KUMAR SINGH AND ORS.

FEBRUARY 24, 2004

[P. VENKATARAMA REDDI AND ARIJIT PASAYAT, JJ.]

Criminal Trial—Appeal against acquittal—Interference with—Principles to be adopted—Two views possible—Held, view favourable to accused should be adopted—Exaggerations in prosecution's case—Acquittal on the basis of—Not interfered with—Penal Code—Section 302.

The case of the prosecution was that on the fateful day at 9 p.m. the deceased was with the informant and some other persons in front of the house of 'M'. The accused persons came variously armed and abducted the deceased saying that the deceased would be killed. When the informant and others tried to follow, they were threatened. The informant thereafter went to the house of 'M' with a havildar of a nearby police out-post. The house of 'M' was locked and 'M' asked them to go away. PWs 11 and 12, both police officers, subsequently arrived at 10.30 p.m. and entered the house of 'M' on which the accused persons fled away from the house. The police found the dead body of the deceased in the house of 'M'. F.I.R. was registered at 11.05 p.m.

The Trial Court convicted the accused persons under Section 302 read with Section 149, Indian Penal Code and under Section 364 read with Section 149, Indian Penal Code. On appeal, the High Court, by a majority judgment, acquitted the accused persons.

The father of the deceased filed an appeal by way of special leave petition before the Court. The appellant contended, inter alia, that there was evidence of PWs 4, 5 and 9 which was sufficient to establish abduction of the deceased by the accused persons. The body of the deceased was recovered from the house of accused 'M' soon after the abduction and therefore, natural inference would be that the accused persons had caused the death of the deceased. It was contended that the delay in registration of the F.I.R. is not material in view of the cogent evidence led by the prosecution. On the other hand, the accused persons contended that the evidence of the prosecution witnesses was full of exaggeration. Apart from the delay in registration of F.I.R., the presence

A of havildar was doubtful. The havildar was not examined as a witness. When PWs 11 and 12 reached the place of occurrence, they were not told about the assailants or the havildar. No report was lodged at the police out-post, which was only a stone's throw from the place of occurrence.

Dismissing the appeal, the Court

B

HELD: 1. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if C two views are possible on the evidence produced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from D the conviction of an innocent. In the case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [629-A-C]

Bhagwan Singh and Ors. v. *State of Madhya Pradesh,* [2002] 2 Supreme E 567, referred to.

2. The principle to be followed by appellate Court considering the appeal against the judgement of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgement is clearly unreasonable and relevant and convincing materials have been F unjustifiably eliminated in the process, it is a compelling reason for interference. [629-D]

Shivaji Sahebrao Bobade and Anr. v. *State of Maharashtra,* AIR (1973) SC 2622; *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 4 Supreme 167; G *Jaswant Singh* v. *State of Haryana,* (2000) 3 Supreme 320; *Raj Kishore Jha* v. *State of Bihar and Ors.,* (2003) 7 Supreme 152; *State of Punjab* v. *Karnail Singh,* (2003) 5 Supreme 508; *State of Punjab* v. *Pohla Singh and Anr.,* (2003) 7 Supreme 17 and *Suchand Pal* v. *Phani Pal and Anr.,* JT (2003) 9 SC 17, referred to.

H 3. Exaggerations *per se* do not render the evidence brittle. But it can be

one of the factors to test credibility of prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. The unusual conduct of PWs 4, 5 and 9, the unexplained delay in lodging the F. I. R., non-disclosure to the police officials about the assailants, or the scenario of the crime when they arrived at the spot cumulatively present a possible view of the case which has weighed with the High Court while directing acquittal. The judgement of the High Court does not warrant interference. The view taken to direct acquittal is a possible view. Merely because on the evidence a different view is available to be taken, that cannot be a ground to upset the acquittal. [629-F-H; 630-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1113 of 1997.

From the Judgment and Order dated 6.11.1996 of the Patna High Court in Crl. A. No. 202 of 1993.

Deba Prasad Mukherjee and Ms. Nandini Mukherjee for the Appellants.

Amarendra Sharan, Mrs. Madhu Sharan, Rajeev Singh, Ms. Sunita Singh, Ms. Abha R. Sharma and R.P. Singh for the Respondent Nos. 1-6.

Manish Mohan and Ashok Mathur for the State of Bihar.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. This appeal has been filed by father of one Anup Goswami (hereinafter referred to as the 'deceased') who allegedly lost his life on 14.4.1991. The respondents 1 to 6 and four others were stated to be responsible, first for his abduction and thereafter his murder. The 4th Additional Sessions Judge, Dhanbad in S.T. No. 37/1993 found the respondents guilty for the offence punishable under Section 364 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC') and under Section 302 read with Section 149 IPC.

One Madan Singh who was stated to be the kingpin in the whole incident died during trial. Similar is the case with one Jitu Mandan who died during trial. Ram Narain Singh, son of accused Madan has absconded, so also one Ashok Goswami who jumped bail and therefore the trial court did not record any findings so far as he is concerned.

A The prosecution version in a nutshell is as follows:

One Ashok Kumar Giri gave his fardabeyan (Ext.8) to the police on 14.4.1991 at 11.05 p.m. near Agrasen Bhawan, Laxmaniya More in front of the house of accused Madan Singh alleging there that at about 9.00 p.m. the informant, Krishna Goswami (PW-5), Pradip Sharma and Bijay Giri (PW-4) B along with Anup Goswami reached Laxmaniya More. The informant was gossiping with the persons named above and suddenly accused Madan Singh (A-1), Ram Narain Singh (A-2), Om Prakash Singh (A-3), Sheo Kumar Singh (A-4), Jan Bijoy Singh (A-5) (A-2 to A-5 being all sons of Madan Singh), Pappu Mali (A-6), Dilip Mali (A-7), Jitu Mandal (A-8), Ashok Goswami (A-C 9) and Shrikant Singh (A-10) armed with Bhujali, sword, pistol and bomb came and menacingly asked the informant and others to escape. The informant and others panicked. In the meanwhile accused Madan Singh and his four sons caught hold of Anup Goswami while A-4 pointed out a pistol towards him, and asked Anup Goswami to accompany them. When Anup Goswami protested, Madan Singh and other accused persons caught hold of hands and D feet of Anup Goswami and dragged him to the lane by the side of Agrasen Bhawan. They were loudly telling that Anup Goswami shall be killed. The informant and other eyewitnesses tried to follow, but Jan Bijoy Singh (A-5) asked them not to follow, otherwise he would use his bomb. The informant, after some time went to the house of Madan Singh along with a Havildar of E Bajbari T.O.P. House of Madan Singh was locked. When the informant tried to open the door, Madan Singh told him to go away. After some time, police came and when they entered the house of Madan Singh, found Anup Goswami whose both hands were chopped. Right hand was completely separated and left hand was connected only by the aid of skin. The informant found that Anup Goswami was already dead. While the informant and others were F entering the house of Madan Singh at that very time, the accused persons fled away by the back door. Near the dead body of Anup Goswami, a country made pistol of 3.15 bore one sword, one broken hockey stick were lying. The motive behind alleged occurrence was that Anup Goswami was having enmity with Madan Singh and his sons. Investigation was undertaken. Charges were G explained to the accused persons and they pleaded innocence.

Placing reliance on the evidence of alleged eyewitnesses PWs 4, 5 and 9, the trial Court found the accused persons guilty and imposed imprisonment for life for the offence relatable to Section 302 read with Section 149 IPC, and 10 years RI for the offence relatable to Section 364 IPC read with H Section 149 IPC. The respondents preferred appeal before the Patna High

Court. The appeal was heard by two Hon'ble Judges. There was a difference of view between the two Hon'ble Judges. While Justice P.K. Deb held that prosecution has not established its accusations, a contrary view was taken by Justice R.N. Sahay. Sahay, J. upheld the conviction of appellant under Section 302 read with Section 149. However, the conviction under Section 364 read with Section 149 was held to be improper. The matter was, therefore, placed before a 3rd Hon'ble Judge (Justice S.K. Chattopadhyaya) who concurred with the views of Justice P.K. Deb and held that the accused persons were to be acquitted. By special leave the father of the deceased has preferred this appeal.

In support of the appeal, learned counsel for the appellant submitted that the majority view cannot be maintained, because credible and cogent evidence of the prosecution witnesses has been discarded on mere surmises and conjectures. Even if it is accepted for the sake of arguments that the direct evidence is scanty so far as the murder of deceased is concerned, the abduction has been established by the evidence of PWs 4, 5 and 9. In any event, the dead body of the deceased was found in the house of Madan Singh and in view of the time proximity, natural inference would be that the accused persons were responsible for the killing of the deceased. The plea of enmity which has weighed with the two Hon'ble Judges of the High Court goes to provide the motive for the killing. There was no material brought on record to substantiate the plea of the accused persons that PWs 4, 5 and 9 were in inimical terms with them. The enmity, if any, was between the deceased and the accused persons, and merely because PWs 4, 5 and 9 were friendly with the deceased that cannot be a ground to discard their evidence. Their evidence clearly shows that when they tried to save the deceased, threat was given. Specific overt act had been attributed to the accused Jan Bijoy Singh in that regard. Merely because there was some delay in lodging the first information report, that cannot be a ground to discard the otherwise cogent evidence of the eyewitnesses. The delay has been properly explained. A Havildar was told about the incident. Unfortunately, he could not be traced out and his evidence could not be tendered. His evidence could have bridged the time gap on which much emphasis has been laid for directing acquittal. It is of relevance that the High Court while directing three persons to be examined as court-witnesses had restricted the scope of their evidence to the location of the place of the occurrence where the dead body was found. The evidence went much beyond that, and the Hon'ble Judges took them as additional factors. All these render the judgment of the two Hon'ble Judges who directed acquittal vulnerable.

A In response, learned counsel for the respondents-accused submitted that several suspicious circumstances have been noticed to find the prosecution version vulnerable. The incident was claimed to have taken place at 21.00 p.m. The first information report was lodged at 23.05 p.m. Though two police officers (PWs 11 and 12) reached the place after 10.30 p.m. they were not even told about the assailants and the alleged scenario of the crime. No B report was lodged at the out-post which was just at a stone's throw. There have been exaggerations and a deliberate attempt to rope Madan Singh and his family members. The story of Havildar a being present was introduced with the obvious object of explaining the time gap. But strangely, PW-11 the first police officer who reached the spot of occurrence was never told about C him. Similar is the position so far as PW-12 is concerned, and reading of evidence of these two police officials clearly proves this aspect. Though the so-called presence of the Havildar was introduced, he seems to be a totally imaginary person, because the investigating agency found no such person. While dealing with an appeal against acquittal, it has to be seen whether the view taken by the Court directing acquittal is a possible view. When two D Hon'ble Judges have taken a view holding the accused persons to be not guilty, this is not a fit case for interference. Learned counsel for the State supported the stand taken by the appellant.

It is fairly well settled that merely because the witnesses were friendly E with the deceased that would not be sufficient to term them as interested witnesses. Whenever any plea is taken by the accused persons about the interestedness of witnesses, materials have to be placed in that regard. In the instant case, the two Hon'ble Judges who have held the accused persons not guilty have kept this salutary principle in view. They have analysed the evidence of PWs 4, 5 and 9 with care and caution. It has been found that they F were not truthful witnesses and their presence at the alleged spot of occurrence was doubtful. Their evidence has been considered along with the evidence of PWs 11 and 12, the two police officials who reached the house of Madan Singh almost simultaneously. Their evidence does not show that PWs 4, 5 and 9 were present or that they disclosed to them about the ghastly occurrence. G For the first time, at 23.05 p.m. the first information report was purportedly registered at the scene of occurrence. The evidence regarding adduction as stated by PWs 4, 5 and 9 does not inspire confidence as noticed by the two Hon'ble Judges directing acquittal. They have found it unnatural that with the scanty light which was stated to be available at the spot of occurrence, the witnesses could even notice the weapons held by the accused persons H individually. The source of light for identification was also differently described

by the witnesses.

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. 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 his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors.* v. *State of Madhya Pradesh,* (2002) 2 Supreme 567]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahebrao Bobade and Anr.* v. *State of Maharashtra,* AIR (1973) SC 2622, *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 4 Supreme 167, *Jaswant Singh* v. *State of Haryana,* (2000) 3 Supreme 320, *Raj Kishore Jha* v. *State of Bihar and Ors.,* (2003) 7 Supreme 152, *State of Punjab* v. *Karnail Singh,* (2003) 5 Supreme 508 and *State of Punjab* v. *Pohla Singh and Anr.,* (2003) 7 Supreme 17 and *Suchand Pal* v. *Phani Pal and Anr.,* JT (2003) 9 SC 17.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. The unusual conduct of PWs 4, 5 and 9, the unexplained delay in lodging the FIR, non-disclosure to the police officials about the assailants, or the scenario of the crime when they arrived at the spot cumulatively present a possible view of the case which has weighed with the two Hon'ble Judges directing acquittal. Though some of the reasons given by the Hon'ble Judges do not have our approval, yet keeping them out also, do not in our view warrant

A interference. As noted above, the view taken to direct acquittal is a possible view. Merely because on the evidence a different view is available to be taken, that cannot be a ground to upset the acquittal.

Above being the position, the impugned judgment does not warrant any interference and the appeal consequentially stands dismissed.

B

B.K.M. Appeal dismissed.