

A

MAIN PAL AND ANR.  
v.  
STATE OF HARYANA AND ORS.

APRIL 5, 2004

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

C

*Penal Code, 1860/ Arms Act, 1959—Section 302/Sections 25 and 27—Murder—Prosecution—Eye-witnesses—Recovery of fire arms at the behest of accused—FIR promptly lodged—Presence of motive— Acquittal by Trial Court—Conviction by High Court after re-appreciation of evidence—On appeal, held: Conviction was justified—Acquittal granted by Trial Court was unreasoned and without critically and objectively analyzing the evidence.*

*Criminal Trial:*

D

*Related witness—Reliability on—Held: such witness can be relied upon, if found to be truthful and credible after deep scrutiny.*

E

*Opinionative Evidence of Doctor—Effect of—On evidence of eyewitnesses—Opinionative evidence does not have binding force and hence cannot wipe out the effect of evidence of eye-witnesses—Such evidence is liable to be sifted, analysed and tested like any other witness.*

F

*Code of Criminal Procedure, 1973—Section 378—Criminal appeal—Against order of acquittal—Review of evidence by Appellate Court—Scope of—Held: There is no embargo on appellate court to review the evidence—In review paramount consideration is to prevent miscarriage of justice—Where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence.*

G

**Appellants-accused were alleged to have killed the person to whom earlier their sister had got married. The enmity of the accused with the deceased was because sometime after the marriage their sister had committed suicide. The incident was seen by PW-1 whose sister was later married to the deceased and PW-2, father of the deceased. After the accused attacked the deceased, PW-2 ran away from the spot. A shortwhile later PW-1 narrated the incident to PW-3, the Sarpanch. FIR was lodged by PW-1. At the behest of the appellant-accused pistols and cartridges**

H

were recovered. One of the cartridges matched the weapon recovered from one of the accused. A

Trial Court acquitted the accused holding that prosecution was not able to establish any plausible motive; that conduct of PW-2 was unnatural; that FIR, though was lodged promptly, and evidence of PW-1 were liable to be discarded because false plea relating to presence of PW-2 was introduced. B

High Court convicted the accused and held that the motive was established; evidence of PWs 1 and 2 could not be doubted in view of the evidence of PW3; that fire arms were recovered at the behest of the accused; and that trial Court did not take notice of the evidence of PW-2 that threats were given to him by the accused persons. C

In appeal to this Court appellants contended that High Court had merely substituted its view in place of that expressed by trial Court, which is not permissible while considering the appeal against acquittal; that there was no evidence regarding motive; that the witnesses were related; that the pellets and wads recovered were not sent to the Forensic Laboratory and no fire arms experts were examined; that identification of accused persons was incredible and that doctor's evidence did not support the version of PWs 1 and 2 as the same shows that the firing was done from a higher level. D E

Dismissing the appeals, the Court

HELD: 1.1. Since the judgment of the trial Court was practically unreasoned without any attempt to critically and objectively analyse the evidence, High Court was justified in undertaking a re-appreciation of the evidence and High Court in the case on hand has taken into account all the relevant aspects of the case to hold the accused persons guilty. Therefore, there is no scope for interference at the instance of the appellants. [776-F-G] F

1.2. Merely because the evidence of PW-2 shows that he acted in an unnatural manner, that per se would not be a determinative factor to throw out the otherwise cogent prosecution evidence. High Court has come to a positive finding that PW-1 was in a position to identify the accused persons. Plea regarding non-examination of the pellets/wads by the Forensic Science Laboratory was not taken up before the Courts below. G

[775-B-C] H

A 1.3. Though PWs 1 and 2 were related to the deceased that does not in any manner affect the credibility of their evidence. When a person is shown to be the relative of an accused, it is open to the Courts to critically analyse his evidence with caution and then come to a conclusion whether the same is credible and cogent. Though the conduct of PW-2 may appear to some to be somewhat unusual, every person cannot act or react in a particular or very same way and it would depend upon the mental set up of the person concerned and the extent and nature of fear generated and consequently on the spot his reaction in a particular way has to be viewed on the totality of all such circumstances. The hypothetical discrepancy regarding the height from which the gun was shot is rejected.

C [775-E-F]

D 1.4. If the eye-witnesses' version, even though of the relatives, is found to be truthful and credible after deep scrutiny the opinionative evidence of the doctor cannot wipe out the effect of eye-witnesses' evidence. The opinion of the doctor cannot have any binding force and cannot be said to be the last word on what he deposes or meant for implicit acceptance. His evidence is liable to be sifted, analysed and tested, in the same manner as that of any other witness, keeping in view only the fact that he has, some experience and training in the nature of the functions discharged by him. [775-F-H]

E 2. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though has to act with great F circumspection and utmost care before ordering the reversal of an acquittal. 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 G 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 H 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. 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. [776-A-E]

*Bhagwan Singh and Ors. v. State of Madhya Pradesh*, [2002] 2 Supreme 567; *Joseph v. State of Kerala*, [2003] 1 SCC 465; *Devatha Venkataswamy @ Rangaiah v. Public Prosecutor, High Court of A.P.*, [2003] 10 SCC 700; *State of Punjab v. Phola Singh and Anr.*, [2003] 11 SCC 58; *State of Punjab v. Karnail Singh*, [2003] 11 SCC 271 and *State of U.P. v. Babu and Ors.*, [2003] 11 SCC 527, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1446-1448 of 2003.

From the Judgment and Order dated 29.7.2003 of the Punjab and Harayan High Court in Crl. A. Nos. 152, 153, 230 of 1995.

Rajiv Dutta, Mohar Singh, Beno Bencigar R. Nedumaran, Sanjay Jain, D.P. Singh, V.K. Garg, Rishi Malhotra and Prem Malhotra for the appearing parties.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** These appeals relate to a common judgment of Punjab and Haryana High Court and, therefore, are taken up together for disposal. The appellants who faced trial for alleged commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 25 and 27 of the Arms Act, 1959 (in short the 'Arms Act') were acquitted by the trial Court. By the impugned judgment, a Division Bench of the High Court reversed the judgment of acquittal and found the accused persons guilty of the charged offences and imposed life sentence for offence relatable to Section 302 read with Section 34 IPC. Accused Jas Rám and Main Pal were sentenced to undergo sentence of one year and six months respectively for offences under Section 27 and 25 of the Arms Act respectively.

A Prosecution version in a nutshell is as follows:

Giarsi, younger sister of Ram Sarup (PW-1) was earlier married to Hans Raj (hereinafter referred to as "deceased"), son of Devi Lal (PW-2) about two months before the date of incident. Deceased was earlier married to Rukmani of Village Munda (Rajasthan), the sister of the two accused, namely Jas Ram and Main Pal. But she had committed suicide some time earlier and on this account, the relationship between Hans Raj and the two accused had become strained. On 15.11.1993, Ram Sarup (PW-1) came to Sirsa from his village Kenia to purchase some household articles. At about 5 to 5.50 p.m., he was returning to his village on foot when he met deceased Hans Raj and Devi Lal (PW 2) on the way and they continued to walk towards village Kenia. A short while later, they saw a motor cycle coming from the behind with two persons riding on it. Deceased Hans Raj was then walking slightly ahead of Ram Sarup (PW 1) and Devi Lal (PW 2). The motor cycle stopped near the deceased and the person who was driving the same i.e. Main Pal, addressed the person sitting on the pillion i.e. Jas Ram asking him to avenge the killing of their sister. Jas Ram immediately got down from the motor cycle and fired a shot from his country made pistol at Hans Raj, which hit him on the right side of his chest, as a result of which he fell down on the ground. PW-1 Ram Sarup raised an alarm on which accused Jas Ram called upon the driver of the motorcycle to get away. Both the accused then drove away on the motor cycle. Ram Sarup (PW-1) on looking around noticed that Devi Lal had run away on account of fear and that Hans Raj had died almost immediately. A short while later, Siri Ram, Ex-Sarpanch (PW-3) and Prabhu Ram, Sarpanch happened to reach the place of occurrence and Ram Sarup told them about what had transpired. Ram Sarup thereafter left for the police station, Sirsa and lodged the FIR (Ex.PA) at 8.05 p.m. The special report was delivered to the illaqa magistrate at 9.30 p.m. the same evening. After recording the FIR, SI Ram Dhan (PW-9) and other police officials accompanied Ram Sarup to the spot. As it was dark, much progress in investigation could not be made, but was continued on the next morning, SI Ram Dhan inspected the dead body, recorded the inquest report and picked up blood stained earth, an attache-case and fired cartridge case from the spot. Accused Jas Ram surrendered in Court on 18.11.1993 and was interrogated by SI Ram Dhan in the presence of Balram (PW-6) and Devi Dutt. On a disclosure statement made by him, a country made, 12 bore pistol. (Ex.P-2) and two live cartridges were recovered. Accused Main Pal was arrested on 19.11.1993 and was interrogated and on his disclosure statement a country made, 12 bore pistol (Ex. P-3) and three live cartridges

were recovered. The spent cartridge cases and the pistols were sent for comparison to the Forensic Science Laboratory, Madhuban. which opined vide its report Ex.PN that one of the cartridges matched the weapon recovered at the instance of accused Main Pal. A

In order to substantiate the accusations, prosecution examined 9 witnesses. Ram Sarup (PW-1) and Devi Lal (PW-2) were stated to be the eye-witnesses. Siri Ram (PW-3), the Ex-Sarpanch was examined to show that immediately after the occurrence he had reached the place of occurrence and Ram Sarup had disclosed the details of the incident to him. Balram (PW-6) and Ranjit Singh (PW-7) were witnesses to recovery of pistols at the instance of accused Jas Ram and Main Pal respectively. The accused persons pleaded innocence and took the stand that they have been falsely implicated at the instance of one Munshi Ram. B C

The trial Court on consideration of the evidence came to hold that the prosecution has not been able to establish any plausible motive. The conduct of Devi Lal (PW-2), father of the deceased was quite unnatural, and he appeared to have been introduced to substantiate the evidence of PW-1 whose presence on the spot was also doubtful. The conduct of PW-2 was held to be unnatural as no normal person would go away from the spot after seeing that his son is being attacked and would not return for a considerable long time, not caring to see as to what had happened to his son. Though the FIR was lodged promptly the same was discarded on the ground that a false plea relating to presence of Devi Lal was introduced. As Ram Sarup (PW-1) had stated about the presence of PW-2 his evidence was also discarded on the ground that it was a manipulated one. D E

Three appeals were filed by the State against the acquitted accused persons, while a Criminal revision was filed by the informant questioning correctness of judgment passed by the trial Court. The High Court noticed that the motive for the crime has been established. The veracity of the evidence tendered by PWs 1 and 2 cannot be doubted, more so, in view of the evidence of Siri Ram (PW-3). The fire arms used in the occurrence were recovered on the basis of information given by the accused persons. The manner of appraisal of evidence as done by the trial Court was not justifiable. The trial Court did not take note of the evidence tendered by PW-2, father of the deceased about the threat given to him by the accused persons which clearly established the motive. Accordingly, as noted above, the judgment of the trial Court was set aside. F G H

A In support of the appeals, Mr. Rajiv Dutta, learned senior counsel submitted that the High Court has merely substituted its view in place of that expressed by the trial Court. That is not permissible to be done while considering an appeal against acquittal. The parameters to be kept while dealing with an appeal against acquittal has been lost sight of by the High Court. Merely because the FIR was lodged promptly, as held by the High Court, it cannot be lost sight of that the police station was at a distance of 2 K.M. from the place of occurrence and the time taken was about two hours which provided ample opportunity for manipulation and false implication.

C There was practically no evidence about enmity for constituting the alleged motive. The trial Court had rightly found the conduct of PW-2 to be unnatural and since PW-1 had falsely stated about his presence, that was taken note of by the trial Court which directed acquittal. The investigation was tainted. Only relatives of persons who lived at far off places were made witnesses to the alleged recoveries. The pellets and wads allegedly recovered were not sent to the Forensic Science Laboratory and no fire arms expert was examined. The identification of the accused persons by Ram Sarup (PW-1) is incredible. He claimed to have seen the accused persons about 10 years back and same was certainly a very long time to wipe out a recognition of a person. The doctor's evidence shows that the firing was done from a higher level. Since both the deceased and the accused who allegedly fired the gun were almost of the same height, the version given by PWs 1 and 2 is clearly negated by the medical evidence.

E To probalilise the identification the highly improbable story that the accused persons called each other by name was introduced, as their names were not known to PW-1.

F In response, learned counsel for the State submitted that the presence of PWs 1 and 2 has been established by cogent evidence and the trial Court had erred in discarding it. As rightly noted by the High Court, the evidence of Siri Ram (PW-3) was not considered in its proper perspective. The reason indicated by the trial Court to completely rule out the presence of the witnesses has no basis. Though PW-2 may have, conceding for the sake of arguments, acted in an unusual manner that really is not determinative because different persons react differently even in similar situations.

H On a bare perusal of the trial Court's judgment one thing is patently noticeable. The trial Court has merely referred to the arguments advanced and has then come to abrupt conclusions without even indicating any plausible

or relevant reasons, therefor. Merely coming to a conclusion without any objective analysis relating to acceptability or otherwise of the rival stands does not serve any useful purpose in adjudicating a case. The trial Court was required to analyse the evidence, consider the submissions and then come to an independent decision after analysing the evidence, the submissions and the materials on record. Since the trial Court had not pragmatically analysed the evidence, and had given abrupt conclusions, that itself made the judgment vulnerable. Further, several aspects which the trial Court found to be significant were really arrived at hypothetically and on surmises. Merely because the evidence of PW-2 shows that he acted in an unnatural manner, that per se would not be a determinative factor to throw out the otherwise cogent prosecution evidence. The High Court on the other hand has considered in great detail the evidence of the witnesses. It has come to a positive finding that PW-1 was in a position to identify the accused persons. Some of the pleas now advanced were also not taken up before the courts below, for example non examination of the pellets/wads by the Forensic Science Laboratory. On considering the evidence of record, pragmatically one thing is clear that the High Court after analysing the evidence in great detail, was justified in treating the trial Court's judgment to be practically un-reasoned.

Though PWs 1 and 2 were related to the deceased, that does not in any manner affect the credibility of their evidence. When a person is shown to be the relative of an accused, it is open to the Courts to critically analyse his evidence with caution and then come to a conclusion whether the same is credible and cogent. Though the conduct of PW-2 may appear to some to be somewhat unusual, as rightly noted by the High Court, every person cannot act or react in a particular or very same way and it would depend upon the mental set up of the person concerned and the extent and nature of fear generated and consequently on the spot his reaction in a particular way has to be viewed on the totality of all such circumstances. The hypothetical discrepancy regarding the height from which the gun was shot is one aspect which needs to be noted, only to be rejected. If the eye-witnesses' version, even though of the relatives, is found to be truthful and credible after deep scrutiny the opinionative evidence of the doctor cannot wipe out the effect of eye-witnesses' evidence. The opinion of the doctor cannot have any binding force and cannot be said to be the last word on what he deposes or meant for implicit acceptance. On the other hand, his evidence is liable to be sifted, analysed and tested, in the same manner as that of any other witness, keeping in view only the fact that he has, some experience and training in the nature of the functions discharged by him.

A There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the

B 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

C 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

D 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

E is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. This position has been recently re-iterated in *Joseph v. State of Kerala*, [2003] 1 SCC 465, *Devatha Venkataswamy (a) Rangaiah v. Public Prosecutor, High Court of A.P.*, [2003] 10 SCC 700, *State of Punjab v. Phola Singh and Anr.*, [2003] 11 SCC 58, *State of Punjab v. Karnail Singh*, [2003] 11 SCC 271, *State of U.P. v. Babu and Ors.*, [2003] 11 SCC 280 and *Suchand Pal v. Phani Pal and Anr.*, [2003] 11 SCC 527.

F

G Since the judgment of the trial Court was practically unreasoned without any attempt to critically and objectively analyse the evidence, the High Court was justified in undertaking a re-appreciation of the evidence and the High Court in the case on hand has taken into account all the relevant aspects of the case to hold the accused persons guilty, we consequently find no scope for interference at the instance of the appellants in these appeals. The appeals are accordingly dismissed.

H K.K.T.

Appeals dismissed.