

STATE OF MADHYA PRADESH
v.
BACCHUDAS @ BALARAM AND ORS.

JANUARY 10, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Criminal Procedure, 1973—Sections 378 and 386—Appeal against acquittal—Power of appellate court to review evidence—Scope of—Stated—On facts, on re-appreciation of evidence of witnesses, order of acquittal passed by High Court suffers from no infirmity to warrant interference—Penal Code, 1860—Section, 304 r/w 34.

Criminal law—Two views—Possibility—Effect of—Held : 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 favourable to the accused should be adopted—Criminal jurisprudence.

According to the prosecution case, on account of enmity between the parties, respondents-accused killed the deceased. On appreciation of evidence of PW 1-widow of the deceased, PW 2-son of the deceased and PW 11-child witness, trial Court convicted and sentenced the respondents for offence punishable under section 304 Part II IPC read with section 34 IPC. High Court held that the guilt of the respondents could not be established since the evidence of prosecution witnesses was unbelievable and thus, acquitted the respondents. Hence the present appeal.

Dismissing the appeal, the Court

HELD : 1.1. There is no embargo on the appellate court reviewing the evidence upon which an acquittal order is based. Generally, the acquittal order 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

A less than from the conviction of an innocent. In a case where admissible evidence is ignored, 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. [Para 9] [675-E-G]

B *Bhagwan Singh v. State of M.P.*, [2003] 3 SCC 21, relied on.

1.2. The principle to be followed by the 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. [Para 9] [675-G-H, 676-A]

D *Shivaji Sahabrao Bobade v. State of Maharashtra*, [1973] 2 SCC 793; *Ramesh Babulal Dashi v. State of Gujarat*, [1996] 9 SCC 225; *Jaswant Singh v. State of Haryana*, [2000] 4 SCC 484; *Raj Kishore Jha v. State of Bihar*, [2003] 11 SCC 519; *State of Punjab v. Karnail Singh*, [2003] 11 SCC 271; *State of Punjab v. Phola Singh*, [2003] 11 SCC 58; *Suchand Pal v. Phani Pal*, [2003] 11 SCC 527 and *Sachchey Lal Tiwari v. State of U.P.*, [2004] 11 SCC 410, relied on.

E 2.1 High Court noticed several inconsistencies in the prosecution version. Though silence of a witness *per se* may not render prosecution version suspect, what has been disclosed by PW-2 is not found credible, particularly when considered in the background of PW-1's evidence. It was at variance with what the mother PW-1 stated. Evidence of PW-1 has been rightly discarded by the High Court. The version given in the first information report varies from the evidence given in the Court.

[Paras 7, 8] [675-A-D]

G 2.2 When the conclusions of the High Court in the background of the evidence on record are tested on the touch stone of the principles set out, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to interference. [Para 10] [676-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 39 of 2007.

H From the Final Judgment and Order dated 13.12.2004 of the High Court

of Judicature of Madhya Pradesh at Jabalpur (Gwalior Bench) in CrI. A. No. 245/2003

Vibha Datta Makhija for the Appellant.

K. Sarada Devi, for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. : Leave granted.

1. Challenge in this appeal is by the State of Madhya Pradesh to the judgment rendered by a Division Bench of the Madhya Pradesh High Court, Jabalpur Bench at Gwalior, directing acquittal of the respondents. The trial court had found the respondents (hereinafter referred to as the 'accused') guilty of offence punishable under Section 304 (Part II) of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 34 IPC. Each of the accused persons was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2000 with default stipulation.

2. The respondents faced trial because of the following accusations:-

3. On 10.08.2002 at about 8 in the night Dropadi Bai (PW-1) lodged FIR at the Police out-post Bhatnavar. It was mentioned in the FIR that at about 7-8 A.M. complainant had gone to the agricultural field. Her husband-Munshi (hereinafter referred to as "deceased") had gone to work in the shop of Bacchanlal Bania. When she returned in the evening, she enquired about her husband from her son Banti (PW-2). Arun Das who informed her that when deceased was going to the shop at about 10 A.M. after having his meals, he was caught on way near the house of Dobalia by accused Bacchu. Satish, Avdhesh and Hariom and was beaten by them. Banti (PW-2) was told to run away from the spot, otherwise he will also be beaten. Out of fear he ran back home, but had not told anyone about the incident. Then complainant Dropadi went to the house of Bacchudas Bairagi and Ramsingh Kotwar and narrated the incident. She alongwith Bacchudas and Ramsingh went to the old house of Shankar Bairagi and Hariom. The house was used as cattle shed by Bacchu. It's doors were not locked from inside. They found the deceased dead and was tied by the rope. On enquiry from neighbours Subhran told them that Bacchu, Satish, Avdhesh and Hariom had beaten the deceased and thereafter he was dragged inside the room.

A Rope was tied in his neck and neck was throttled, which resulted in his death. Thereafter they hanged the dead body and ran away. When complainant saw the dead body, she found injury below left shoulder and both toes were bleeding. On account of previous enmity on account of purchase of Rundh of Charnu Kirar, Bacchu claimed that he has paid Rs.1000/- to Charnu Kirar and he was demanding the same from Dropadi or

B in alternative he was asking Dropadi Bai to live as his wife. On the date of incident in the morning when she had gone to fetch water at the public tap, Hariom and Bacchu met her. Both the accused asked her to accompany them and it was objected by her husband Munshi. At this Hariom and Bacchu threatened Munshi with dire consequences and went back. It is mentioned

C in the FIR that only on account of this incident Bacchu, Hariom, Avdhes and Satish had killed the deceased. After the investigation, challan was filed in the Court and committal of the case to the Sessions Court, charges under Section 302 read with Section 34 IPC were framed. On appreciation of evidence, trial Court convicted the accused persons.

D 4. The evidence of three witnesses, i.e. Dropadi Bai-PW1 (widow of the deceased), Arun Das, PW-2 (son of the deceased) and Vinod (PW-11), another child witness, were found to be of consequence by the trial court. The trial court found that the circumstances highlighted presented a complete chain and therefore, guilt of the accused persons was established.

E Accordingly, they were convicted and sentenced as aforesaid. In appeal, the High Court found that the evidence of Vinod (PW-11), the child witness was unbelievable. Similar was the evidence of Arun Das (PW-2). It was noted that the silence of PW-2 for about six hours was unusual. Further the evidence of Dropadi (PW-1) was at variance with that of PW-2. A different version of the incident was indicated in the first information report.

F Therefore, the High Court concluded that prosecution has not established the accusations.

G 5. In support of the appeal, learned counsel for the appellant-State submitted that the evidence of PW-2 was natural. Merely because he had not disclosed about having seen the incident for a considerable length of time, that is not sufficient to discard the prosecution version. Additionally, PW-11, the child witness has given a believable version and his evidence should not have been discarded.

H 6. In response, learned counsel appearing for the respondents submitted that the evidence of the witnesses has been rightly discarded.

7. Though silence of a witness *per se* may not render prosecution version suspect, in the present case what has been disclosed by PW-2, the so called child witness is also not found credible, particularly when considered in the background of PW-1's evidence.

8. The High Court has noticed several inconsistencies in the prosecution version. Apart from the fact that PW-2's conduct was unusual, the version he had supposedly stated to his mother is at variance with what the mother PW-1 states. Evidence of PW-1 has been rightly discarded by the High Court. It is noted that the version given in the first information report varies from the evidence given in the Court. Dropadi Bai was the informant. She has stated in her evidence that her son told her that her husband was hanged by the accused persons. Arun Das (PW-2) gives an entirely different version. Dropadi Bai had deposed that she went to the police station, and lodged the report and then she returned alongwith police and found dead body of her husband. This is at variance with the evidence of Kashidas (PW-12) and Ram Singh (PW-13) who had deposed that Dropadi Bai (PW-1) told them that accused had murdered her husband after seeing the dead body and then they went to the police station to lodge the report along with Dropadi Bai. Ram Singh (PW-13) had further deposed that when police returned along with Dropadi her son Banti (PW-2) had shown the hanged dead body to the police.

9. 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 v. State of M.P.*, [2003] 3 SCC 21). The principle to be followed by the appellate court considering the appeal against the

- A 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 Sahabrao Bobade v. State of Maharashtra*, [1973] 2 SCC 793, *Ramesh Babulal Doshi v. State of Gujarat*, [1996] 9 SCC 225, *Jaswant Singh v. State of Haryana*, [2000] 4 SCC 484, *Raj Kishore Jha v. State of Bihar*, [2003] 11 SCC 519, *State of Punjab v. Karnail Singh*, [2003] 11 SCC 271, *State of Punjab v. Phola Singh*, [2003] 11 SCC 58, *Suchand Pal v. Phani Pal*, [2003] 11 SCC 527 and *Sachchey Lal Tiwari v. State of U.P.*, [2004] 11 SCC 410.

C 10. When the conclusions of the High Court in the background of the evidence on record are tested on the touch-stone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference.

D The appeal is dismissed.

N.J.

Appeal dismissed.