

A

STATE OF U.P.

v.

MUNI RAM & ORS.

(Criminal Appeal Nos. 909-910 of 2002)

B

OCTOBER 26, 2010

**[B. SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]**

*Penal Code, 1860– ss.147,323,308/304, 308/149 –
C Cattle Trespass Act, 1871 – s. 24 – Prosecution under –
Cross-version of incident given by the complainant and the
victim parties – Conviction by trial court – Acquitted by High
Court – On appeal, held: Order of acquittal affirmed –
D Supreme Court in its jurisdiction under Article 136, against
an order of acquittal, normally, would not interfere with finding
of fact unless there has been miscarriage of justice – In the
instant case High Court merely corrected the omissions
committed by trial court in convicting the accused – Order of
High Court has not led to miscarriage of justice – High Court
E has taken a possible view which could legitimately be taken
on the inconsistencies in the prosecution evidence –
Constitution of India 1950 – Article 136.*

**The respondent-accused were prosecuted for
having caused death of two persons and for causing
F injuries to others. The prosecution case was that PW-2
noticed that cattle of accused-respondent Nos. 3 and 4
had trespassed his field, and he drove them away and
was taking them to the cattle pound. At this accused-
respondent Nos. 1-5, armed with 'lathis', attacked PW-2.
G Hearing the hue and cry raised by PW-2, his sister-in-law
'S', his son 'R' and his brother reached the spot. They
were also assaulted by the accused. Other witnesses
were also assaulted. All the five witnesses were medically**

H

examined. Two of the injured eye-witnesses succumbed to the injuries. A

The defence gave a cross-version of the incident. They alleged that the complainant party was the aggressor. Both sides suffered injuries. They had also got their injuries examined and when they went to lodge the report to police station, they were arrested. They produced four defence witnesses to support their version. DW-1 produced the application sent to the police containing defence version. B C

Trial court convicted all the accused of offences punishable u/ss. 147 and 323 IPC and u/s. 24 of Cattle Trespass Act, 1871. Accused 1-4 were also convicted of offence punishable u/s 304/34. Accused 'B' was acquitted of the offence punishable u/s. 308/304 IPC and the other accused were also acquitted u/ss. 308 and 149 IPC. The accused appealed against their conviction whereas the complainants challenged acquittal of respondent No. 5. The High Court, acquitted all the accused, and dismissed the criminal revision filed by the complainants. The instant appeals were filed by the State. D E

Dismissing the appeals, the Court

HELD: 1. In an appeal by special leave under Article 136 of the Constitution of India against an order of acquittal passed by the High Court, the Court would not normally interfere with a finding of the fact based on appreciation of evidence, unless the approach of the High Court is clearly erroneous, perverse or improper and there has been a grave miscarriage of justice. In the instance case, the High Court has merely corrected the omissions in the appreciation of evidence committed by the trial court in convicting the respondents. The High Court has taken a view which is plausible as well as possible. [Paras 19 and 20] [131-G-H; 132-A-B] F G H

A 2. The High Court upon a very careful appraisal of
the entire evidence notices that this being a case of
cross-versions, it was the duty of the court to ascertain
which of the two versions were genuine and probable.
Taking up the evidence of PW-1, the High Court
B concluded that the very presence of this witness is
dubious. In coming to the aforesaid conclusion, the High
Court has taken into consideration, the inconsistent
versions of PW-2 and PW-3. It is also noticed that the
name of PW-1 is not even mentioned in the FIR as a
C witness. In view of the very presence of PW-1 being
shaky, the High Court concluded that in these
circumstances, no authenticity can be attached to the
version given by him in the FIR. The High Court further
noticed that PW-1 had tried to cover up the lacunae in the
D FIR. Subsequently, he admitted in cross-examination that
some portion of the FIR was narrated on the information
given by PW-2 and PW-3. He was also unable to give any
cogent description of the sequence of assault on injured.
The High Court concluded that his presence on the spot,
E in the circumstances, was rendered doubtful. His
evidence was that of an interested witness who had deep
affinity with PW-2 and the son of village Pradhan, who
was instrumental in the arrest of the respondents. [Paras
14 and 15] [129-F-H; 130-A-D]

F 3. Upon a complete analysis of the entire evidence,
the High Court concluded that the story about PW-2
leaving the kerosene shop for answering the call of
nature is a made up story and does not bear scrutiny. He
even feigned to have defended himself with the vessel
G (lota) which got damaged during the process. The High
Court took due notice of the fact that neither any blood-
stained cloth nor the damaged vessel (lota) were taken
into custody by the investigating authorities. The High
Court concluded that this witness had deliberately

H

introduced PW1 in the case. The story about driving the buffaloes to the cattle pound was disbelieved as the animals were found going towards the house of PW-2. The evidence given by PW-3 has also been discarded for similar reasons. [Para 16] [130-E-H]

4. The High Court noticed that the defence version cannot be discarded. The injuries suffered by the respondents were not superficial in nature. Three of the respondents suffered one injury each on their head. The High Court further noticed that the three of the respondents had actually gone to the police station to make a complaint about the assault on them by the complainants. Therefore, it cannot be said that the defence version is not probable. The High Court also concluded that merely because the prosecution witnesses had suffered more injuries than the respondents, would not be sufficient to hold that the respondents were the aggressor party. The High Court concluded that the prosecution version is so mixed up with falsehood that any truth or semi-truth is not possible to be distinguished therein. The High Court also noticed that the evidence of the prosecution witnesses was not corroborated by any other independent witness. [Para 17] [131-A-D]

5. The conclusions reached by the High Court cannot be said to be such which led to a miscarriage of justice. The High Court has taken a possible view which could legitimately be taken on the basis of the inconsistencies in the evidence of the prosecution. The High Court has acted in accordance with the well-known principles that if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to innocence, the view which is favourable to the accused is normally to be adopted. [Para 18] [131-E-F]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 909-910 of 2002.

From the Judgment & Order dated 7.9.2001 of High Court
of Judicature at Allahabad in Crl.A. No. 642 of 1988 and Crl.
B Revision No. 611 of 1988.

Ratnakar Dash, Manoj Kumar Dwivedi, Vijay Pratap Singh,
G.V. Rao, Jatinder Kumar Bhatia for the Appellant.

Abha R. Sharma, Susheel Tomer for the Respondents.

C The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. These appeals by the
State of U.P. are directed against the judgment of the High
Court of Judicature at Allahabad dated 7.9.2001 rendered in
D Criminal Appeal No. 642 of 1988 and Criminal Revision No.
611 of 1988. By the aforesaid judgment, the High Court set
aside the judgment of the trial court convicting Munni Ram,
Maya Ram, Ram Ugrah and Ram Ajore (respondents herein)
under Section 304/34, 147 and 323 IPC as well as under
E Section 24 of the Cattle Trespass Act, 1871. The criminal
revision challenging the acquittal of Bhagirath under Section
308/304 read with section 149 IPC was also dismissed.

2. Briefly stated, the prosecution case was that on
F 14.6.1983, in the afternoon, Sita Ram (hereinafter referred to
as PW-2) had noticed that the buffaloes of Ram Ugrah
(hereinafter referred to as respondent No: 3) and Ram Ajore
(hereinafter referred to as respondent No: 4) had trespassed
into his field and were damaging the sugarcane crop. He,
therefore, drove them out and was taking them to the cattle
G pound in the village. He had only gone a short distance when
Munni Ram (hereinafter referred to as respondent No: 1) met
him and enquired the reason why PW-2 was driving away his
buffaloes. PW-2 told him that the buffaloes had damaged his

H

sugarcane crop, therefore, he would deposit them in the cattle pound. On hearing this, respondent No: 1 went back to his house. When PW-2 reached near the house of Ilakedar, village Pradhan, respondent No: 1, Maya Ram (hereinafter referred to as respondent No: 2), respondent No: 3, respondent No: 4 and Bhagirath (hereinafter referred to as respondent No: 5) confronted him. They were armed with lathies. They took away the buffaloes from PW-2 and assaulted him with their respective weapons. The hue and cry raised by PW-2 attracted his sister-in-law, i.e. Singari Devi, his son Ramesh and his brother Ram Kewal to the spot. When they tried to intervene, they were also assaulted by the respondents. In fact, other witnesses who came to the spot were also assaulted. In this short assault, PW-2, Singari Devi, Ramesh, Hari Ram and Ram Kewal sustained injuries on vital parts of their bodies.

3. The condition of Singari Devi and Ramesh being critical, they were brought to the District Hospital, where they were admitted. All the five injured witnesses were medically examined by Dr. G.P. Agarwal (PW-10) from 10.00 PM onwards. Ramesh Chandra was first medically examined at the District Hospital, Basti on 14.6.83 but was later admitted to the Medical College, Lucknow as his condition became critical. He succumbed to his injuries on 16.6.1983 within three hours after reaching the hospital. The post mortem examination on his dead body was conducted on 16.6.1983 at 3.00 PM by Dr. V.P. Singh (PW-8).

4. Singari Devi also died on 17.6.1983 at about 4.10 AM at District Hospital, Basti. The post mortem on her dead body was conducted on the same day by PW-10 at 4.00 PM.

5. The FIR was registered on 15.6.1983 at 7.10 AM by Avadh Prasad (PW-1). The distance of the police station is 13 Kms. from village Raunakala where the incident had taken place. Initially, the case was registered under Section 147, 308 and 426 IPC. After the death of Singari Devi and Ramesh, it was converted to Section 147, 308, 426, 304 IPC and Section

A

B

C

D

E

F

G

H

A 24 of the Cattle Trespass Act, 1871. On completion of the investigation, charge sheet was duly submitted and the case was transferred to the Court of Sessions and Trial Judge.

B 6. In support of its case, the prosecution examined PW-1, who registered the FIR of the incident in the following morning; PW-2, an injured witness, Mohd. Shami (PW-3), Dr. V.M. Agarwal (PW-4), PW-8 and PW-10, who had examined all the injured witnesses and conducted autopsy on the deceased persons. PW-5, Tila Mohd. Khan is Head Moharrir. He had prepared the written report and also prepared the check report.

C According to him, he had completed the other formalities pertaining to the FIR. PW-6, Om Prakash and PW-7, Umesh Babu had filed their affidavits. They had only escorted the dead body to the mortuary. PW-9 Vidya Vinod Pathak is Sub-Inspector Police Station, Kotwali, Basti. He prepared the inquest memo. He also arrested respondent No: 1, 3 and 5 and took them in police custody. PW-11 Chhangur Singh had prepared the panchayatnama of the dead body Ramesh Chandra. Shiv Saran Singh, PW-12 is the investigating officer. This in a nutshell is the entire prosecution evidence.

E 7. The defence of the respondents is a cross version of the incident. According to them, the incident occurred when PW-2, Hari Ram, Ram Kewal, Ramesh and Gulam Nabi were trying to remove a branch of the Jamun tree, which had been cut from the tree and fallen in the field of the respondents. The incident

F occurred according to the respondents at about noon time. Respondent No: 2 had gone to the field empty handed and requested the aforesaid persons not to remove the fallen branch of the Jamun tree. On being so requested, they started beating him. His alarm attracted respondent No: 1 and respondent No:

G 3, who came to the spot armed with lathies. PW-2, Hari Ram, Ram Kewal, Ramesh and Gulam Nabi also attacked respondent No: 1 and respondent No. 3. In the mean time, family members of both the sides gathered at the spot and started hurling brickbats on each other. Consequently, both

H

sides suffered injuries. Respondents also got their injuries medically examined at the District Hospital.

A

8. After medical examination, they had gone to lodge the report at the Police Station, Kotwali, Basti. Gulam Nabi, who is the son of the Village Pradhan was already present there. It was at then that they were arrested. In order to prove their version, they have also produced four defence witnesses. Ram Dulare Tripathi, DW-1 produced the application sent by the accused party to the Superintendent of Police containing the defence version.

B

C

9. Upon examination of the entire evidence led by the parties, trial court convicted and sentenced the respondents as follows:-

(i) Munni Ram, Maya Ram, Ram Ugrah, Ram Ajore and Bhagirathi under Section 147 and 323. They were sentenced to R.I. for 1 year under Section 147 and 1 year R.I. under Section 323 IPC.

D

(ii) Respondents Munni Ram, Maya Ram, Ram Ugrah and Ram Ajore were also convicted under Section 304 read with Section 34 IPC and sentenced to R.I. for 10 years and a fine of Rs. 5,000/- each. In default of payment of fine, they were sentenced to further 2 years R.I.

E

(iii) Bhagirathi was, however, acquitted of the offences under Section 308/304 IPC read with Section 149.

F

(iv) All the other accused were also acquitted of the offences under Section 308 and 149.

G

(v) All the five accused were also convicted under Section 24 of the Cattle Trespass Act and sentenced to R.I. for 1 month only.

10. Against the aforesaid conviction and acquittal, the

H

A accused respondents herein approached the High Court by
way of Criminal Appeal No. 642 of 1988 and the complainants
challenged the acquittal of respondent no: 5 by way of a
Criminal Revision No. 611 of 1988. The High Court by its
judgment dated 7.9.2001 allowed the aforesaid Criminal
B Appeal and acquitted all the respondents. The Criminal
Revision No. 611 of 1988 filed by the complainants was
dismissed maintaining the acquittal of the respondent no: 5.

C 11. In the present appeal, the State of U.P. has challenged
the common judgment on various grounds.

12. We have heard the learned counsel for the parties. Mr.
Ratnakar Dash, appearing for the State of U.P. submitted that
the High Court has erroneously disbelieved the clear and
consistent evidence of the eye-witnesses who were also injured
D witnesses. PW-2, according to him had clearly stated that on
14.6.1983 at about 3.30-4.00 PM, he was distributing kerosene
from the P.D.S. shop which had been allotted to him. He went
to answer the call of nature and asked PW3 to distribute the
kerosene in his absence. He was carrying some water in a lota
E with him for cleaning himself after going to the toilet. At that time,
he saw the buffaloes of respondent no: 3 and 4 were damaging
his sugarcane crop. He had driven out the cattle and was taking
them to the cattle pound in the village. Particular reliance was
placed on the evidence by PW-2. According to the learned
F counsel, this witness had given a detailed and consistent
version as to how the buffaloes of the accused persons namely
respondent no: 3 and 4 had damaged his sugarcane crop. He
had also narrated the sequence about taking the buffaloes
towards the cattle pound in the village. Thereafter, he had
narrated how the five accused armed with lathies had assaulted
G him. They had abused him and also told him that they will finish
him off. He had also further narrated the sequence of events
as to how the other members of the family were also attacked.
The witnesses have completely supported the prosecution
H version with regard to the treatment of injury and the

subsequent death of Ramesh and Singari Devi. PW-3 had also given a consistent account of the entire incident which led to the death of two persons. These witnesses had also denied the cross-version suggested by the defence, the respondents herein. According to the learned counsel, the injuries suffered by the defence were superficial and self inflicted. Learned counsel further submitted that the High Court wrongly disbelieved the entire prosecution version on the ground that the injuries suffered by the respondents had not been explained by the prosecution.

13. On the other hand, learned counsel for the respondents submitted that the High Court has rightly rejected the prosecution version for a number of cogent reasons. The injuries suffered by the respondents cannot be said to be superficial. The FIR has been clearly ante-timed and ante-dated. The genesis of the incident has been suppressed and a wholly false version has been projected in the FIR. According to the learned counsel, the complainants were in fact the aggressors. The incident had taken place in the field belonging to the respondents when they had objected to the complaints removing the illegally cut branch of the Jamun tree.

14. We have carefully considered the submissions made by the learned counsel for the parties and gone through the judgment of the High Court. The High Court upon a very careful appraisal of the entire evidence notices that this being a case of cross-versions, it was the duty of the Court to ascertain which of the two versions were genuine and probable. Taking up the evidence of PW-1, the High Court concludes that the very presence of this witness is dubious. In coming to the aforesaid conclusion, the High Court has taken into consideration, the inconsistent versions of PW-2 and PW-3. It is also noticed that the name of PW-1 is not even mentioned in the FIR as a witness. The High Court also notices that the story about the kerosene oil being distributed by PW-2 is also concocted. According to the High Court, the prosecution had failed to produce any record

A of the distribution of kerosene either by PW-2 or any other individual.

B 15. In view of the very presence of PW-1 being shaky, the High Court concluded that in these circumstances, no authenticity can be attached to the version given by him in the FIR. The High Court further notices that PW-1 had tried to cover up the lacunae in the FIR. Subsequently, he admitted in cross-examination that some portion of the FIR was narrated on the information given by PW-2 and PW-3. He was also unable to give any cogent description of the sequence of assault on injured. The High Court concluded that his presence on the spot in the circumstances was rendered doubtful. His evidence was that of an interested witness who had deep affinity with PW-2 and the son of village Pradhan, who was instrumental in the arrest of the respondents. His evidence was, therefore, discarded by the High Court.

E 16. Taking up the evidence of PW-2, the High Court disbelieved the story that he had gone to answer the call of nature. The High Court also disbelieved that PW-1 was present at the spot when PW-2 entrusted the job of distribution of kerosene oil to PW-3. Upon a complete analysis of the entire evidence, the High Court concluded that the story about PW-2 leaving the kerosene shop for answering the call of nature is a made up story and does not bear scrutiny. He even feigned to have defended himself with the vessel (lota) which had got damaged during the process. The High Court took due notice of the fact that neither any blood-stained cloth nor the damaged vessel (lota) were taken into custody by the investigating authorities. The High Court concluded that this witness had deliberately introduced Avadh Prasad (PW-1) in the case. He did not distribute any oil on the day of the incident. The story about driving the buffaloes to the cattle pound was disbelieved as the animals were found going towards the house of the witness PW-2. The evidence given by PW-3 has also been discarded for similar reasons.

H

17. The High Court, thereafter, notices that the defence version cannot be discarded. The injuries suffered by the respondents were not superficial in nature. Three of the respondents were suffered one injury each on their head. The High Court further notices that the three respondents had actually gone to the police station to make a complaint about the assault on them by the complainants. Therefore, it cannot be said that the defence version is not probable. The High Court also concluded that merely because the prosecution witnesses had suffered more injuries than the respondents, would not be sufficient to hold that the respondents were the aggressor party. In other words, the defence version cannot be discarded only on the basis of lesser number of injuries having been suffered by them. The High Court concluded that the prosecution version is so mixed up with falsehood that any truth or semi-truth is not possible to be distinguished therein. The High Court also notices that in this case, the evidence of the prosecution witnesses is not corroborated by any other independent witnesses.

A

B

C

D

18. In our opinion, the conclusions reached by the High Court cannot be said to be such which has led to a miscarriage of justice. The High Court has taken a possible view which could legitimately be taken on the basis of the inconsistencies in the evidence of the prosecution. The High Court has acted in accordance with the well-known principles that if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to innocence, the view which is favourable to the accused is normally to be adopted.

E

F

19. It is well settled that in an appeal by special leave under Article 136 of the Constitution, against an order of acquittal passed by the High Court, this court would not normally interfere with a finding of the fact based on appreciation of evidence, unless the approach of the High Court is clearly erroneous, perverse or improper and there has been a grave miscarriage of justice.

G

H

- A 20. We are of the considered opinion that in this case, the High Court has merely corrected the omissions in the appreciation of evidence committed by the trial court in convicting the respondents. The High Court has taken a view which is plausible as well as possible. In light of the aforesaid
- B findings, we find no merit in these appeals and the same are accordingly dismissed.

K.K.T.

Appeals dismissed.