

A

HABIB

v.

STATE OF UTTAR PRADESH  
(Criminal Appeal No. 911 of 2007 etc.)

B

MAY 1, 2013

**[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]**

C

*Penal Code, 1860 – s.302 – Prosecution of 3 accused – Acquittal by trial court – High Court convicting 2 of the accused and upholding acquitted of one – Appeal by the convicted accused – Held: Prosecution case is supported by evidence of eye-witnesses and medical evidence – Conviction upheld.*

D

*Administration of Criminal Justice – If two views are possible, one pointing to the guilt and other to the innocence, view favourable to the accused to be adopted.*

E

*Motive – Evidentiary value – Held: Motive loses its significance in case of direct trust-worthy evidence.*

F

*Appeal – Appeal against acquittal – Held: In such appeal, appellate court is required to re-appreciate the evidence.*

G

**The Appellants-accused ‘H’ and ‘M’ along with another accused were prosecuted for murder. As per prosecution, there were eye-witnesses to the incident. Trial court acquitted all the accused. In appeal, High Court maintained the acquittal of one accused, but setting aside the acquittal of appellants-accused, convicted accused ‘H’ u/s 302 IPC and convicted accused ‘M’ u/s 302/34 IPC. Hence, the present appeals.**

H

**Dismissing the appeals, the Court**

A

**HELD: 1. The High Court has correctly appreciated the oral and documentary evidence, including the medical evidence of PW6 and rightly came to the conclusion that the trial court had committed an error in discarding their evidence. [Para 10] [483-B]**

B

**2. In an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or perverse. 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 the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented. [Para 10] [483-B-D]**

C

D

***State of Punjab vs. Ajaib Singh and Ors.* (2005) 9 SCC 94; *V.N.Ratheesh v. State of Kerala* (2006) 10 SCC 617: 2006 (3) Suppl. SCR 314 – relied on**

E

**3. If there is direct trustworthy evidence of witnesses as to the commission of offence, motive part loses its significance. Therefore, if the genesis of the occurrence is proved, the ocular testimony of the witnesses could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. [Para 6] [481-F-G]**

F

***Sheo Shankar Singh vs. State of Jharkhand* (2011) 3 SCC 654: 2011(4) SCR 312; *Bipin Kumar Mondal vs. State of West Bengal* (2010) 12 SCC 91: 2010 (8) SCR 1036 – relied on.**

G

H

A 4. The mechanical rejection of the evidence on the sole ground that it is interested, would invariably lead to the failure of justice. The mere fact that PW1 and PW2 are interested witnesses, being relatives, is not a reason to discard their evidence, if the evidence is trustworthy.

B Both, PW 1 and PW 2 have, categorically stated that the first shot was fired by appellant-accused 'M' but missed his aim and it was appellant-accused 'H' who fired the fateful shot at the neck of the deceased and thereafter three culprits ran away from the spot. Prosecution also

C placed reliance on the testimony of PW 3, who was a co-villager of the informant and he fully corroborated the testimony of other witnesses regarding the part played by the three accused persons in the commission of crime. Nothing could be brought out in the corss-

D examination of PW1, PW2, PW3 to discredit their statement. [Paras 7, 8] [482-A-E]

*Brathi vs. State of Punjab* (1991) 1 SCC 519; 1990 (2) Suppl. SCR 503; *State of Jammu and Kashmir vs. S. Mohan Singh and Anr.* (2006) 9 SCC 272; *Shyamal Ghosh vs. State of West Bengal* (2012) 7 SCC 646: 2012 (10) SCR 95 – relied on.

**Case Law Reference**

F	2011 (4) SCR 312	relied on	Para 6
	2010 (8 ) SCR 1036	relied on	Para 6
	1990 (2) Suppl. SCR 503	relied on	Para 8
	(2006) 9 SCC 272	relied on	Para 8
G	2012 (10) SCR 95	relied on	Para 8
	(2005) 9 SCC 94	relied on	Para 10
	2006 (3) Suppl. SCR 314	relied on	Para 10

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A  
No. 911 of 2007.

From the Judgment & Order dated 23.3.2007 of the High  
Court of Judicature at Allahabad in Government Appeal No.  
114 of 1982. B

WITH

CrI. A.No. 915 of 2007.

M.Z. Chaudhary, Aftab Ali Khan for the Appellant. C

Vibhu Tiwari, Bharti Tyagi, Ravi Prakash Mehrotra for the  
Respondent.

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J.** 1. The appellants herein D  
were charge-sheeted for the offences punishable under Section  
302 of the Indian Penal Code. The accused Habib was charge-  
sheeted under Section 302 IPC and the remaining two accused  
persons including Manuwa were charge-sheeted under Section E  
302 read with 34 IPC, however, Manuwa was also charge-  
sheeted under Section 307 IPC as well.

2. The trial court after appreciating the oral as well as  
documentary evidence acquitted all the accused persons vide F  
its judgment dated 3.10.2008. Aggrieved by the said order the  
State preferred G.A. No.114 of 1982 before the High Court of  
judicature at Allahabad. The High Court, vide its judgment dated  
23.3.2007 confirmed the acquittal of the accused Bhatta but  
acquittal of Habib and Manuwa was set aside. Habib was found  
guilty and convicted for the offences punishable under Section G  
302 IPC and accused Manuwa was convicted under Section  
302 read with Section 34 IPC. Aggrieved by the said order  
Habib has filed Criminal Appeal No.911 of 2007 and Manuwa  
has filed Criminal Appeal No.915 of 2007.

H

A 3. The prosecution story is that Sammo, daughter of  
 deceased Fakira and sister of Hamid (PW 1) - complainant  
 was married to Habib, one of the accused. Sammo left the  
 matrimonial home due to demand of dowry. Later PW 1 settled  
 B her marriage with another person but the nikah was not  
 performed since no divorce was obtained from her husband-  
 accused Habib. The prosecution version is that on 13.1.1981  
 at about 6.30 PM PW 1 Hamid accompanied by his father  
 Fakira (deceased), his brother Rafique, servant Ashraf and  
 C other person namely Kailash Chandra were proceeding to a  
 place Goverdhan along with cattle through a canal road. The  
 accused Manuwa, his son Habib, appellants herein, and his  
 brother Bhappa met PW 1 and others on the way and enquired  
 about their destination. PW 1 informed that they are going to  
 Goverdhan for cattle business. On seeing them, accused  
 D Manuwa instigated his sons Habib and Bhappa to challenge  
 PW 1 and others. Manuwa himself opened fire with a view to  
 kill Fakira, but it did not hit Fakira, Habib also opened fire and  
 shot Fakira at his neck and he fell down and died on the spot.  
 PW1 Hamid lodged a report to the police station Goverdhan,  
 Mathura on 13.1.1981 at about 8.45 PM. Thereafter a case  
 E Crime No.13 under Section 302 IPC was registered. The case  
 was tried by the Sessions Judge, Mathura. Prosecution, in  
 order to bring home the charge, examined PW 1 Hamid, the  
 informant, PW 2 Rafique, brother of the deceased, PW 3  
 Kailash Chandra, eye-witness to the murder, PW 4 Radhey  
 F Shayam, head constable, PW 5 Ram Kheladi, constable, PW  
 6 Dr. K.K. Khanna, CMO of Mathura to prove the post-mortem  
 report, prepared by Dr. K.K. Seth. PW 7 Brijpal Singh –  
 Investigating Officer and PW 8 Bankey Lal, constable. On the  
 side of the defence, accused examined Abdul as DW1 and  
 G Rajendra Prasad Pandey as DW2.

4. Sessions Court after appreciating the oral and  
 documentary evidence acquitted all the accused persons and  
 on appeal preferred by the State, the High Court reversed the  
 H judgment of the trial court and, as already stated, convicted the

accused persons and sentenced them to undergo imprisonment for life.

5. Mr. M.Z. Chaudhary, learned counsel appearing for the appellants submitted that the High Court has committed a serious error in reversing the order acquittal which was passed by the trial court after appreciating the oral and documentary evidence adduced by the prosecution as well as by the defence. He submitted that various circumstances pointed out by the trial court in disbelieving the evidence of the prosecution witnesses should not have been disturbed by the High court and no reason exist to do so. Learned counsel also pointed out that the eye-witnesses are closely related and there are possibilities of false implication due to some grudge entertained by the deceased and the complainant against the accused persons since PW 1's sister was married to Habib.

6. Sammo, sister of Hamid, as already stated, was married to accused - Habib, son of Manuwa and the third accused Bhatta is real brother of Manuwa and uncle of Habib. Sammo left the matrimonial home due to strained relationship with Habib, the accused. Prior to the incident the deceased and PW 1 had settled the marriage of Sammo with somebody before getting divorce from Habib. The motive for the murder was the strained relationship between the accused persons and PW 1 and the deceased. It is settled legal position that if there is direct trustworthy evidence of witnesses as to the commission of offence, motive part loses its significance. Therefore, if the genesis of the occurrence is proved, the ocular testimony of the witnesses could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. This legal position has been settled by this Court in its Judgment in *Sheo Shankar Singh v. State of Jharkhand* (2011) 3 SCC 654 and *Bipin Kumar Mondal v. State of West Bengal* (2010) 12 SCC 91.

7. We are of the view that the mere fact that PW 1 Hamid, PW 2 Rafique are son and brother of the deceased, that itself

A is not a ground to disbelieve their evidence. Both, PW 1 and PW 2 have, categorically stated that the first shot was fired by Manuwa but missed his aim and it was Habib who fired the fateful shot at the neck of the deceased and thereafter three culprits ran away from the spot. Prosecution also placed  
 B reliance on the testimony of PW 3, Kailash Chandra who is a co-villager of the informant and he fully corroborated the testimony of other witnesses regarding the part played by the three accused persons in the commission of crime. We have gone through the depositions of PW1, PW2, PW3 and nothing  
 C could be brought out in the corss-examination to discredit their statement.

8. We are of the view, the mere fact that PW1 and PW2 are interested witnesses being relatives is not a reason to discard their evidence, if the evidence is trustworthy. This Court  
 D in *Brathi v. State of Punjab* (1991) 1 SCC 519 held that the mechanical rejection of the evidence on the sole ground that it is interested would invariably lead to the failure of justice. In *State of Jammu and Kashmir v. S. Mohan Singh and Another* (2006) 9 SCC 272 this Court held that in a murder trial, merely  
 E because a witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be trustworthy. In *Shyamal Ghosh v. State of West Bengal* (2012) 7 SCC 646 this Court held that merely because three witnesses were related to the deceased, the other witnesses, not similarly  
 F paced would not attract any suspicion of the court on the credibility and worthiness of their statements.

9. The medical evidence of PW6, Dr. K.K. Khan, who was examined to prove the port-mortem report by Dr. K.K. Seth, would indicate that Fakira was done to death as a result of  
 G gunshot injury on his neck. The doctor, who conducted the autopsy found that death had taken place about one day prior to the examination which was done at 5.30 PM on 14.1.1981. Doctor also found one gun short wound of entry trachea deep  
 H on the front of neck and there were fractures of third and fourth

cervical vertebrae and laceration at the level of third and fourth cervical vertebrae.

10. We are of the view that the High Court has correctly appreciated the oral and documentary evidence, including the evidence of PW6, the Chief Medical Officer and rightly came to the conclusion that the trial court had committed an error in discarding their evidence. This Court in *State of Punjab v. Ajaib Singh and Others* (2005) 9 SCC 94, also recorded that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or perverse. 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 the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented as noted in the Judgment of this Court in *V.N. Ratheesh v. State of Kerala* (2006) 10 SCC 617.

11. We are of the considered view that the High Court has rightly found that the finding recorded by the trial court was unreasonable and perverse and reversed the order of acquittal passed by the trial Court. The appeals, therefore, lack merits and the same are dismissed.

K.K.T.

Appeals dismissed.