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STATE OF UTTAR PRADESH

v.

OM PAL & ORS.

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(Criminal Appeal No. 1213 of 2014)

MARCH 21, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

*Penal Code, 1860:*

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*s. 302/34 – Prosecution under – Of respondents-accused – Conviction by trial court relying on the evidence of two eye-witnesses and the complainant – Acquittal by High Court disbelieving the witnesses – On appeal, held: High Court while appreciating the evidence rightly disbelieved the presence of the eye-witnesses in view of their unnatural behaviour and their contradictory statements – FIR was lodged by the complainant on the basis of information of one of the eye-witnesses – When the evidence of eye-witness is not believable, evidence of complainant cannot be given credence – Prosecution thus failed to prove the guilt of the accused beyond reasonable doubt – Acquittal giving benefit of doubt is justified.*

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**Dismissing the appeal, the Court**

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**HELD: 1. Admittedly, the complainant-PW1 has not witnessed the occurrence. He believed whatever PW-2 (eye-witness) informed him and accordingly he lodged the complaint. It is also indisputable that PW1 was inimical with the respondent party. It is evident from the record that on the aspect of how PW1 came to know about the incident, he made contradictory statements. There was no independent witness and according to prosecution, despite the efforts made by police to record statements from the public, no one was ready to give evidence. As per the statement of PW1, besides PWs 2 and 3, two more persons have also witnessed the incident. It is quite unnatural that none of the eye-witnesses has lodged complaint, but on the basis of information provided by PW2, PW1 lodged the complaint believing his version. [Para 10] [100-E-G]**

2. On the other hand, the conduct and statements of PW2 do not inspire confidence for the reason that his depositions under Section 161, Cr.P.C. were quite different to what he stated before Court in his examination-in-chief. He could not even give a satisfactory reason for his presence at the time and place of occurrence. Furthermore, he did not choose to lodge complaint with the police by himself even though he had witnessed the occurrence as admittedly the complaint was lodged by PW1 on the information provided by PW2. Apart from that, there were certain conflicting statements in his evidence as regards how the deceased got injuries, and also his conduct of not making a hue and cry and not disclosing to anyone about the occurrence. This gives rise to suspicion on the credibility and trustworthiness of PW2. When the evidence of PW2 itself is unbelievable and jeopardizing the prosecution case, in no manner the evidence of PW1 could be given credence. [Para 11] [100-H; 101-A-C]

3. The conduct of PW3 - wife of the deceased, who was stated to be in a shock and not in consciousness for about a month after the death of her husband is also not believable. There is no valid documentary or medical evidence on record in support of the claim of prosecution. Looking at the unnatural behavior of eye-witnesses, PWs 2 and 3 and their contradictory statements, it cannot be said that their evidences are genuine so as to convict the accused. [Para 12] [101-D]

4. The High Court, while appreciating the evidence of the three important witnesses i.e. PWs 1, 2 and 3, rightly disbelieved the presence of PWs 2 and 3 at the place of occurrence and discredited the evidence of P.W.1 - complainant. Undoubtedly, the prosecution in its effort to establish the case with the support of evidences of PWs 1, 2 and 3, has miserably failed to prove the guilt of the accused beyond reasonable doubt. [Para 14] [101-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1213 of 2014

From the Judgment and Order dated 06.04.2007 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2622 of 2005.

V. V. V. Pattabhiram, Sanjay Kumar Tyagi, Advs for the Appellant.

- A B. P. Gupta, (AC), K. S. Rana, Advs for the Respondents.  
The Judgment of the Court was delivered by
- N.V. RAMANA, J.** 1. This appeal by way of special leave petition is filed by the State of Uttar Pradesh against the final judgment and order dated 6<sup>th</sup> April, 2007 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 2622 of 2005. By the said judgment, the High Court has acquitted the respondents who were accused in Sessions Trial No.1090 of 2003 before the District Court, Ghaziabad, Uttar Pradesh.
2. The prosecution case, in brief, is that on 25-3-1993 at about 9.00 a.m. Mahipal (deceased) and his wife Prakashee (PW3) were going to their fields on a buffalo cart and Tej Pal, Ram Swaroop and Dharmendra (PW2) were following them. While they were on their way, the three accused (respondents herein) appeared out of a sugercane field near the fields of one Alias, while hurling abuses against Mahipal fired at him. The fire opened by Om Pal was missed but the fire opened by Mukhtiar hit Mahipal. Navin assaulted Mahipal with the butt of the Tamancha on his head. On receiving information from Dharmendra (PW2) about the incident, Naresh (PW1) accompanied by Dharmendra took the injured Mahipal to the police station, Babugarh and lodged FIR. Thereafter, on the way to hospital, Mahipal succumbed to the injuries.
3. The Investigating Officer, Sub-Inspector R.K. Chaudhary (PW6) carried the investigation, recorded statements, prepared site plan (Ext. Ka-3), collected plain earth as well as blood stained earth from the place of occurrence and after conducting inquest at the hospital, sent the dead body for postmortem. The accused Mukhtiar was arrested on 29.3.1993 near village Bacchrota and from his possession one illegal pistol of 315 bore and one ammunition cartridge (Ext.K.13) were recovered. On 8<sup>th</sup> April, 1993 the I.O. recorded the statements of other accused Omal and Navin. A Tamancha, allegedly used in the crime, was later recovered at the instance of accused Ompal on 14.4.1993. The statement of the wife of deceased (PW3) was recorded on 24.4.1993.
- After concluding the investigation, the Judicial Magistrate, Hapur committed the case to the Court of Sessions where charges were framed under Section 302, IPC read with Section 34, IPC against all the three accused and additionally charges were framed against accused Mukhtiar under Section 25 of the Arms Act. The accused pleaded not guilty and claimed to be tried.
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4. At the trial, the prosecution mainly relied on the evidences of complainant—Naresh Pal (PW1) and eyewitnesses Dharmendra (PW2) and Prakashee (PW3), wife of the deceased. The motive for committing the crime was said to be that there was enmity between the parties as about three years before the date of occurrence, accused Mukhtiar was shot at and in that regard a case was in progress at Hapur Court in which Mahipal (PW1) was accused. P.W. 4—Pratap Singh was examined as a witness to prove the conspiracy. P.W.5 is Dr. Hari Kishan Agarwal, who had conducted the post mortem of deceased Mahipal. P.W. 6 S.I. R.K. Chaudhary—I.O. and P.W. 7— Paltoo Ram, Head Constable are the formal witness. At the end of the trial, the Trial Court came to the conclusion that the prosecution has successfully proved the guilt of the accused. Accordingly, the accused were convicted under Section 302 read with 34, IPC and sentenced to suffer life imprisonment and to pay a fine of Rs. 5,000/- each and in default thereof, to further suffer six months rigorous imprisonment.

5. The trial Court's judgment awarding conviction and sentence has been assailed by the accused by way of criminal appeal before the High Court. On appreciation of the material placed before it, the High Court recorded its finding that the prosecution witnesses, on whose evidence the trial Court has relied on, are not reliable. Accordingly, the High Court set aside the judgment of the trial Court and acquitted all the three accused. Dissatisfied with the acquittal order passed by the High Court, the State of Uttar Pradesh has preferred the present appeal before this Court.

6. We have heard the learned counsel appearing on behalf of the appellant and the learned *Amicus Curiae* appearing on behalf of the respondents.

7. Learned counsel for the State vehemently contended the impugned order and submitted that the High Court has failed to appreciate the factum of presence of two eyewitnesses PWs 2 and 3 at the spot, who deposed in clear terms the way in which the accused carried the assault on the deceased resulting in his death. The injuries on the body of the deceased fully corroborates the prosecution case and the medical evidence also supports the case of prosecution, but the High Court has, by setting aside the well reasoned judgment rendered by the trial Court, committed a grave error of law calling for this Court's interference.

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A 8. Learned Amicus Curiae, however, supported the view taken by the High Court and submitted that there is no need for this Court to interfere with the order of acquittal passed by the High Court.

B 9. Having heard learned counsel on either side, we have given our thoughtful consideration to the facts and circumstances of the case in the light of material placed before us. It appears that the trial Court based its judgment mainly relying upon the evidences of three prosecution witness i.e. P.W.1—Naresh Pal, the complainant, PW2—Dharmendra, an eyewitness and PW3—Prakashee, another eyewitness and wife of the deceased. However, in the view expressed by the High Court, the aforesaid witnesses are not credible. Since the entire prosecution case hinges on the depositions of these three witnesses, it is imperative for the Court to scrutinize their evidences properly so as to sift the chaff from the grain and find out the truth. In that pursuit, their evidences are to be considered from the point of view of credibility and trustworthiness. Once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence.

C 10. Admittedly, the complainant—PW1 has not witnessed the occurrence. He believed whatever Dharmendra (PW2) informed him and accordingly he lodged the complaint. It is also indisputable that PW1 was inimical with the respondent party. There was also a criminal case pending in Hapur Court relating to an incident of firing at the accused, in which the deceased as well as PW1 were accused and Respondent No.3 herein was the victim. It is evident from the record that on the aspect of how PW1 came to know about the incident, he made contradictory statements. There was no independent witness and according to prosecution, despite the efforts made by police to record statements from the public, no one was ready to give evidence. As per the statement of PW1, besides PWs 2 & 3, two more persons Tej Pal and Ram Swaroop have also witnessed the incident. It is quite unnatural that none of the eyewitnesses has lodged complaint, but on the basis of information provided by Dharmendra (PW2), PW1 lodged the complaint believing the version of Dharmendra.

D 11. On the other hand, the conduct and statements of PW2 (Dharmendra) who was stated to be an eyewitness do not inspire confidence for the reason that his depositions under Section 161, Cr.P.C. were quite different to what he stated before Court in his examination-

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in-chief. He could not even give a satisfactory reason for his presence at the time and place of occurrence. Furthermore, he did not choose to lodge complaint with the police by himself even though he had witnessed the occurrence as admittedly the complaint was lodged by PW1 on the information provided by PW2. Apart from that, there were certain conflicting statements in his evidence as regards how the deceased got injuries, and also his conduct of not making a hue and cry and not disclosing to anyone about the occurrence on his way to the house of Naresh Pal, gives rise to suspicion on the credibility and trustworthiness of PW2. When the evidence of PW2 itself is unbelievable and jeopardizing the prosecution case, in no manner the evidence of PW1 could be given credence.

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12. We are also not inclined to believe the conduct of PW3—wife of the deceased, who was stated to be in a shock and not in consciousness for about a month after the death of her husband. We find no valid documentary or medical evidence on record in support of the claim of prosecution that PW3 was really in such unconscious state for about a month. Looking at the unnatural behavior of eyewitnesses PWs 2 & 3 and their contradictory statements, it cannot be said that their evidences are genuine so as to convict the accused.

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13. Also there were some notable flaws in the prosecution case which cannot be ignored. According to PW4 (Pratap Singh), on the previous night of the incident, he along with one Jakar (not examined) heard the accused hatching conspiracy to murder the deceased, but the prosecution did not present Jakar as a witness. It is incredible on the part of PW4 that despite knowing about the conspiracy, he did not reveal it to the victim party so as to save the life of the deceased. The trial Court also disbelieved his evidence.

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14. The High Court, while appreciating the evidence of the three important witnesses i.e. PWs 1, 2 and 3, rightly disbelieved the presence of PWs 2 and 3 at the place of occurrence and discredited the evidence of P.W.1—complainant. Undoubtedly, the prosecution in its effort to establish the case with the support of evidences of PWs 1, 2 and 3, has miserably failed to prove the guilt of the accused beyond reasonable doubt. The High Court has, therefore, committed no illegality or manifest error in acquitting the accused giving them the benefit of doubt, under the circumstances. We express our concurrence with the findings recorded

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A by the High Court for acquitting the respondents. For the aforesaid reasoning, we do not find any merit in this appeal calling for our interference under Article 136 of the Constitution.

15. Accordingly, the Criminal Appeal filed by the appellant – State of U.P. is dismissed.

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Kalpana K. Tripathy

Appeal dismissed.