MANSOOR & ORS.

v.

STATE OF MADHYA PRADESH

May 6, 1971

[I. D. DUA AND V. BHARGAVA, JJ.]

Code of Criminal Procedure, 1898, *s.* 4(1) (t), 492, 417(3)—*Presentation of appeal in High Court against acquittal of accused—Additional Government Advocate when appointed Public Prosecutor can present appeal—Such appeal is a 'case' in which the Public Prosecutor is entitled to act—Power of High Court in hearing appeal against acquittal—Principles.*

Constitution of India, Art. 136—*Scope of arguments in appeal by special leave.*

The appellants were charged along with five others for the offences of murder and attempt to murder. Five accused persons were acquitted by the trial court. Four of the appellants were convicted by the trial court, the conviction being upheld by the High Court. The fifth appellant was acquitted by the trial court but convicted by the High Court in an appeal by the State. In appeal by special leave it was contended before this Court; (i) that the conviction of the appellants could not be sustained on the evidence; (ii) that the High Court in reversing the judgment of acquittal by the trial court against one of the appellants had not followed the principles laid down by this Court; and (iii) that the Additional Government Advocate was not authorised to present the appeal against acquittal in the High Court because such appeal was not a 'case'.

HELD: (i) Under Art. 136 of the Constitution this Court does not normally re-appraise the evidence for considering the credibility of the witnesses. Unless the trial is vitiated by some illegality or irregularity of procedures or their is some violation of the rules of natural justice resulting in unfair trial, or unless the judgment has resulted in gross miscarriage of justice, this Court does not as a rule proceed to evaluate the evidence for coming to its own independent conclusion. No such infirmity had been made out by the appellants' counsel in the present case. [736 F]

(ii) The appellants' counsel was also unable to show that the High Court in reversing the judgment of the trial court against one of the appellants had failed to observe the principles laid down by this Court. [737 H]

Sanwat Singh & Ors. v. *State of Rajasthan*, [1961] 3 S.C.R. 120, *Keshav Ganga Ram Navaga & Anr.* v. *State of Maharashtra*, Cr. A. No. 100/68 dt. 3-2-1971, *Sheo Swarup* v. *King Emperor*, (1934) L.R. 61 I.A. 398 and *Laxman Kalu* v. *State of Maharashtra*, A.I.R. 1968 S.C. 1390, referred to.

(iii) The Additional Government Advocate who presented the appeal against acquittal in the High Court was notified as Public Prosecutor for the High Court in respect of cases arising in the State of Madhya Pradesh. The case resulting in the acquittal of the accused persons would clearly be a case arising in the State and within the contemplation of the notification. Reading s. 4(l)(t) Cr. P.C. which defines 'public prosecutor' together

with s. 492 Cr. P. C. under which the State Government is empowered to appoint Public Prosecutors, the Additional Government Advocate when appointed as a Public Prosecutor for the High Court in respect of cases arising in the State of Madhya Pradesh must be held to be a Public Prosecutor lawfully empowered to present appeals in the High Court against orders of acquittal. [740 C]

Bhimappa Basappa Bhu Sannayar v. *Laxman Shivrayappa Samagouda & Ors.* A.I.R. 1970 S.C. 1153 and *Bhagwan Das* v. *The King*, A.I.R. 1949 P.C 263, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 30 and 31 of 1967.

Appeals by special leave from the judgment and order dated April 21, 1966 of the Madhya Pradesh High Court, Indore Bench in Criminal Appeals Nos. 248 and 313 of 1965.

Nur-ud-din Ahmed, C.L. Sareen, J. C. Talwar and *R. L. Kohli* for the appellants (in Cr. A. No. 30 of 1967).

I. N. Shroff, for the appellant (in Cr. A. No. 31 of 1967).

Nur-ud-din Ahmed, C. L. Sareen, S. K. Mehta and *K. L. Mehta*, for respondents Nos. 1 to 4 and 9 (in Cr. A. No. 31 of 1967).

The Judgment of the Court was delivered by

Dua, J.—These are two appeals by special leave. In one appeal, Mansoor, Rashid, Ishaq, Yunus and Mehmood s/o Bhondekhan are the appellants and in the other the State has appealed against the acquittal of Ajimkhan, Hakimkhan, Mahmoodkhan s/o Dilawarkhan, Gabbu and Mehmood s/o Bhondekhan. All the ten accused, namely, Mansoor s/o Bhondekhan, Rashid s/o Allabeli, Ishaq s/o Wali Mohammad, Yunus s/o Mohammed Hussain, Ajimkhan s/o Wariskhan, Hakimkhan s/o Anaskhan, Mahmoodkhan s/o Dilawarkhan, Gabbu s/o Mohammad Sharif, Mahmood s/o Bhondekhan and Makku s/o Bhondekhan, were charged and tried by Additional Sessions Judge, Indore, for offences under ss. 302/34, 302/149, 307/34 and 307/149 I.P.C. Out of them 8 accused persons, namely Mansoor, Rashid, Ishaq, Yunus, Ajimkhan, Hakimkhan, Mahmoodkhan s/o Dilawarkhan and Mehmood s/o Bhondekhan, were in addition charged under ss. 302, 307 and 148 I.P.C. All these charges relate to the murder of one Karamat Beg Pahalwan s/o Mirza Karim Beg at Bombay Bazar Choraha on January 19, 1965, at about 12-30 P.M. and to an attempt on the life of Ikbal Beg s/o the deceased Karamat Beg Pahalwan at the same time and place.

The Trial Court convicted Mansoor, Rashid, Ishaq and Yunus and acquitted the rest giving them benefit of doubt. In regard to Gabbu it was observed that he had not been shown

to be in possession of any weapon of offence and that it could not be said that he had any knowledge of the object of the members of the party led by Mansoor. He was, therefore, held not to be member of this assembly. No other case was sought to be made out against him.

Each of the three injuries (Nos. 2, 3 & 9) inflicted on the deceased Karamat Beg were held by the Trial Court to be individually sufficient in the ordinary course of nature to cause Karamat's death. But as none of the accused persons were proved beyond doubt to have inflicted any particular fatal injury to the deceased, they were all convicted under s. 302 read with s. 34 I.P.C. For coming to the finding of common intention, reliance was placed on *Mathurala Adi Reddy* v. *The State of Hyderabad.* (1) The injury inflicted on Ikbal Beg was imputed to Mansoor, but this injury was held to constitute an offence only under s. 324 I.P.C. As all the four accused had joined in this assault with common intention they were all convicted under s. 324 read with s. 34 I.P.C. Under s. 302/34 I.P.C. all the four accused were sentenced to imprisonment for life and under s. 324/34 I.P.C. they were sentenced to 6 months rigorous imprisonment.

The convicted persons appealed to the High Court against their conviction, and the State appealed against acquittal of the others. The State also presented a revision petition for enhancement of the sentences imposed on those convicted.

The High Court upheld the conviction of Mansoor, Rashid, Ishaq and Yunus and dismissed their appeal. It allowed the State appeal only against the acquittal of Mehmood s/o Bhondekhan and convicted him along with four persons convicted by the Trial Court. The result was that the charges under s. 148 I.P.C. and s. 302/149 I.P.C. were also held proved against all the five convicted accused persons. This charge was held established in addition to the charge under s. 302/34 I.P.C. Similarly with respect to the injury inflicted on Ikbal Beg, the charge under s. 324/149 I.P.C. was held proved. In the final result, Mehmood s/o Bhondekhan along with the four accused persons convicted by the Trial Court were all held guilty of offences under s. 302/34 I.P.C., s. 302/149 I.P.C. and s. 148 I.P.C. With respect to the injuries inflicted on Ikbal Beg also all these five persons were held guilty of offences under s. 324 read with ss. 34 and 149 I.P.C. The sentence for this offence was maintained, but they were in addition sentenced under s. 148 I.P.C. to one year's rigorous imprisonment. The High Court did not find any cogent ground for enhancing the sentence of life imprisonment to that

(1) A.I.R. 1956 S.C. 177.

of death for the offence under S. 302 read with Ss. 34 and 149 I.P.C. The revision was accordingly dismissed.

In this Court again there are two appeals—one by the five accused convicted by the High Court, and the other by the State against the acquittal of the remaining five accused persons. In the appeal by the State the sentence for life imprisonment has been stated to be inadequate for the gruesome murder in broad day-light. Both these appeals have been presented in this Court by special leave under Art. 136 of the Constitution. They were first heard by us on August 27 & 28 and September 22, 1970. It appears from the record that the accused persons had not filed any list of defence witnesses in the Court of Committing Magistrate. A list of 13 witnesses was, however, filed in the Court of the Additional Sessions Judge and summons were issued with respect to those witnesses. On the day when the defence witnesses were to be examined they were not present with the result that the Trial Court declined further adjournment for their production. At the time of arguments in the Trial Court the question of prejudice to the accused persons because of the refusal to grant adjournment for the production of the defence witnesses was raised, but the Court did not consider that any prejudice had resulted to the accused persons who wanted to examine them. From the record we find that only Mansoor. Mehmood s/o Bhondekhan, Mahmoodkhan s/o Dilawarkhan, Hakimkhan and Ajimkhan desired to examine defence witnesses. The other accused persons had declined to examine any witness in defence. Out of the list of 13 witnesses Shri Bonge the hand-writing expert was given up. The circumstances in which the defence witnesses were disallowed by the Trial Court are that on June 10, 1965, the accused persons were called upon to enter upon their defence. It was found that none of the defence witnesses were present in the Court on that day. It also appears that the plea in support of which the witnesses, except witnesses Nos. 9 & 13, were sought to be examined was one of *alibi*. The Trial Court granted an adjournment only for one day to enable the accused persons to secure the attendance of the witnesses on June 11, 1965. On that day, two witnesses were reported to be out of station and with respect to one witness it was reported that there was no person of that name at the address which had been taken from the list of defence witnesses furnished by the accused. The summons to Munshi had not been received back. The defence was, in the circumstances, closed.

After Shri Nuruddin had addressed us on this grievance, we asked him if he at this stage considered it necessary to examine the witnesses in defence. The learned counsel, after consulting his clients and considering the matter, stated in the Court that

he was not interested in producing any defence evidence at this late stage. Arguments were then continued and practically at the close of the arguments Shri Nuruddin on reconsideration of the matter expressed his desire to be permitted to produce defence evidence. We accordingly made an order on September 22, 1970 directing the Trial Court to permit the accused persons to examine 10 witnesses. This request, though belated, was allowed in the interests of justice. In the Trial Court, however, only one witness Munshi Khan s/o Kasam was examined in defence. According to this witness he had gone to the Trial Court on June 16, 1965 but was informed by some clerk or peon that the case had already been decided : thereupon he returned home. According to his evidence about 5 or 6 years ago during the days when the incident in question took place his mother was ill and had been admitted in the M.Y. Hospital. The incident in question had, according to him, taken place in Bombay Bazar near Agra Hotel. The witness used to visit Mehrabkhan Patel who had a milk shop in Bombay Bazar and indeed he used to sleep at Mehrabkhan's place. At about 12 noon on the date of the incident the witness and Chhotekhan were talking to each other near Agra Hotel when they saw Karamat Pahalwan coming from Mochipura side uttering abuses to Ishaq and Mansoor. Mansoor was also seen standing opposite Agra Hotel. Karamat Pahalwan saying that Mansoor's servants had started thinking too much of themselves because of incitement from their master rushed at Mansoor with a stick measuring 2 or 2¼ ft. in length and 1 or 1½ inches thick. Karamat gave a blow to Mansoor with the stick hitting him on the head. Mansoor started bleeding. Chhotekhan took Mansoor on his bi-cycle to the police station. A big crowd collected there but the witness went away. This is all that this witness stated in his examination-in-chief. In cross-examination he said that he could not remember the date of the incident and also that he did not know whether Chhotekhan was alive or dead. According to him none of the accused present in the Court were present at the scene of the occurrence except Mansoor. The witness remained in the M.Y. Hospital for about eight days in connection with his mother's treatment. He denied that Ikbal s/o Karamat had any stick in his hand or that he gave any blow to Mansoor. This evidence seems to us to be wholly un-impressive and does not call for any serious consideration or comment.

A B C D E F G

When these appeals came up for hearing before us with the remand report of the Trial Court and the record of the defence evidence, Shri C. L. Sareen the learned counsel appearing in support of the appeal by the convicted appellants again took us through the relevant record and addressed arguments challenging the conviction of the appellants. After reading the testimony of Munshikhan he made a faint attempt to persuade us to accept

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A his evidence, but realising the futility of this venture he soon gave up the attempt. His main and principal contention, however, was that the witnesses whose evidence was not relied upon by the Trial Court with respect to the presence of the five accused persons, whose acquittal was upheld by the High Court, should not have been believed for convicting the present appellants. In
B support of this contention he took us through the evidence of Iqbal Beg s/o the deceased (P.W. 1) and submitted that he was an interested witness and his evidence was unbelievable because his testimony did not tally with the evidence of Narayansingh P.W. 25 who had prepared the site plan. The counsel also referred to certain portions of the statements of Ahmed Khan P.W. 2, Mohammad Shafi P.W. 3, Ismail P.W. 6, Dr. B. N.
C Chatterjee, P.W. 10, Shitlaprasad P.W. 24 and Abdulkadar P.W. 29 for the purpose of persuading us to hold that their evidence is not worthy of credance. His attack was also directed to the First Information Report. According to him the F.I.R. lodged by Ikbal Beg was not in reality the first information in point of time, because the information with regard to this incident had
D already been made by Mansoor. We are wholly unable to agree with the counsel that the information lodged by Ikbal Beg was not the F.I.R. and that Mansoor had made the report earlier. The case diary of the police was also subjected to some criticism for the purpose of discrediting the investigation.

E All these arguments which the learned counsel has taken pains to advance are misconceived in this Court for the simple reason that under Art. 136 of the Constitution this Court does not normally re-appraise the evidence for considering the credibility of the witnesses as if it is a court of first appeal. Unless the criminal trial is vitiated by some illegality or irregularty of procedure or there is some violation of the rules of natural
F justice resulting in unfair trial, or unless the judgment has resulted in gross miscarriage of justice, this Court does not as a rule proceed to evaluate the evidence for coming to its own independent conclusion. No such infirmity has been made out by the appellants' learned counsel.

G We may briefly state the broad essential features of the prosecution story as narrated by the eye witnesses and as accepted by the High Court. Mansoor has employed accused Ishaq, Yunus and Gabbu. Rashid is a friend of Mansoor since childhood. Accused Mahmoodkhan s/o Dilawarkhan, Ajimkhan and Hakimkhan are three Pathans who usually visited Mansoor's shop. They
H are stated to indulge together in the nefarious trade of smuggling opium. Karamat Beg and his son Ikbal Beg are opposed to Mansoor's party. Indeed there have been incessant quarrels between the two factions. Mansoor's servants often used to act

in offensive and provocative manner towards Karamat and his son. As a result of fresh trouble about a couple of months prior to the present occurrence, proceedings under s. 107 Cr. P.C. were also initiated between the parties. On January 19, 1965, Karamat started from Taj Laundry at about noon time for going to his house with some guava fruit and a bottle. Those were *Ramzan* days. He was proceeding along Jawahar Marg and as he turned towards Bombay Bazar he met Ishaq and Yunus Ishaq spot at Karamat which infuriated him. In his younger days Karamat used to be known as a renowned wrestler. Ishaq ran away followed by Karamat who was shouting at Ishaq. When they reached near the Grand National Bakery they saw Mansoor there. On Karamat's complaint about misbehaviour of Mansoor's servants, Mansoor retorted that the matter should be settled once for all right then. Ikbal hearing his father's shouts also followed him. In response to Karamat's enquiry as to what was to be settled, Mansoor directed his servants to start the job. Rashid than assaulted Karamat with a knife. Mansoor also suggested that Karamat's veins should be cut off. Ikbal who had also reached there snatched a stick from a *faqir* who happened to be closeby and tried to save his father. But before he could intervene Mansoor had given one knife blow to Karamat on his neck and another on his chest. Yunus and Ishaq also started grappling with Karamat. Ikbal gave stick blows to them. On this Mansoor asked Rashid to cut off Ikbal's veins and he himself also aimed a knife blow at Ikbal but the blow missed the mark. Ikbal in the meantime slipped away but not before Ishaq had caused him an injury on his left hand. Mehmood also gave a blow on Ikbal's left arm. Karamat who was given further blows by the party of Mansoor became unconscious. Ikbal straight went to the police station and lodged the report. These broad features of the prosecution version as given by the eye witnesses were accepted by the High Court and since it was a case of party factions the evidance was sifted by both the Courts to see that if there was some element of doubt with respect to any individual accused person he should be given its benefit.

Mr. Sarin next submitted that the High Court had not followed the standard laid down by this Court for dealing with the appeals against acquittal and in support of this submission he relied on the decisions of this Court in *Sanwat Singh & others* v. *State of Rajasthan*(1) and on an unreported judgment of this Court in *Keshav Ganga Ram Navge & Anr* v. *State of Maharashtra*(2). In our opinion, this submission is wholly unfounded. The High Court did not ignore the standard laid down by this

(1) [1961] 3 S.C.R. 120.

(2) Cr. A. No. 100 of 1968 decided on February 3, 1971.

A Court in *Sanwat Singh's case*(1). According to that decision the words "substantial and compelling reasons" for setting aside an order of acquittal used in this Court's earlier decisions are intended to convey the idea that an appellate court shall not only bear in mind the principles laid down by the Privy Council in *Sheo Swarup* v. *King Emperor*,(2) but must also give B its clear reasons for coming to the conclusion that the order of acquittal was wrong. In the case before us the High Court has kept these observations in view when dealing with the acquittal appeal. In *Keshav Ganga Ram Navge's case*(3) the Additional Sessions Judge had disbelieved the evidence of the eye witnesses, who according to him, had spoken about the incident in a parrot-like manner. The three dying declarations were also C rejected by the Trial Court and the other evidence was also held untrust worthy. The High Court on appeal against the acquittal relied on two out of the three dying declarations and while dealing with the evidence of the eye witnesses did not consider the discrepancies and improbabilities of the version given by those witnesses as pointed out by the Trial Court. The Court quoted D with approval some observations made in *Laxman Kalu* v. *State of Maharashtra*(4) in which it was said that the powers of the High Court in an appeal against acquittal are not different from the powers of the same Court in hearing an appeal against conviction, but the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions E Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. The High Court in the case before us, in our opinion did not go against these observations. Indeed the appellants' learned counsel was unable to show how the High Court had ignored the principles laid down by this Court in the decisions cited while dealing with appeals against F acquittal. In *Sanwat Singh's case*(1), it is worth-noting, this Court had dismissed the appeal and had made the following observations with regard to the exercise of power of this Court under Art. 136 of the Constitution. It was said there :

> "Article 136 of the Constitution confers a wide G discretionary power on this Court to entertain appeals in suitable cases not otherwise provided for by the Constitution. It is implicit in the reserve power that it cannot be exhaustively defined, but decided cases do not permit interference unless "by disregard to the forms of legal process or some violation of the principles of natural

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(1) [1961] 3 S. C. R. 120.
(2) (1934) L.R. 61 I.A. 398.
(3) Cr. A. No. 130 of 1968 decided on Feb. 3, 1961.
(4) A.I.R. 1968 S.C. 1390.

justice or otherwise, substantial and grave injustice has been done". Though Art. 136 is couched in widest terms, the practice of this Court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the court. In the present case, the High Court has not contravened any of the principles laid down in *Sheo Swarup's case* (1) and has also given reasons which led it to hold that the acquittal was not justified. In the circumstances, no case has been made out for our not accepting the said findings."

In the present case we further find that Mahmood who was convicted on appeal against acquittal has since served out his sentence and is no longer in jail. The counsel contended that if Mahmood's conviction were to be set aside then there would be no justification for applying ss. 148 and 149 I.P.C. We are not persuaded to hold that the judgment of the High Court suffers from any such grave or serious error as would justify our interference with the order convicting Mahmood. The High Court considered the evidence and came to its own conclusion. No legal error suggesting miscarriage of justice has been pointed out by the learned counsel. The conviction of the present appellants, it may be pointed out, is also under s. 302 read with s. 34 I.P.C. and this conviction would, in any event, be unassailable even though s. 148 I.P.C. is not attracted. We, however, do not accept the contention that Mahmood was wrongly convicted and s. 148 I.P.C. is not attracted.

Finally the counsel laid stress on the submission that the appeal in the High Court was incompetent because the Additional Government Advocate who had presented the appeal was not the Public Prosecutor. The Gazette Notification to which our attention has been drawn shows that Mr. Dubey, the Additional Government Advocate, was notified as Public Prosecutor for the High Court in respect of the cases arising in the State of Madhya Pradesh. The counsel raised an ingenious argument, namely, that Mr. Dubey could not be considered to be a Public Prosecutor for presenting appeals in the High Court against orders of acquittal, because the appeal could not be described as a case, which arose in the High Court in which eventuality alone, he would act as a Public Prosecutor. The argument has merely to be stated to be rejected. The counsel tried to seek support from a decision of this Court reported as *Bhimappa Bassappa Bhu Sannavat* v. *Laxman Shivrayappa Samagouda and others.*(2) In this decision it was said that the word "case" which is not

(1) (1934) L. R. 61 I.A. 398. (2) A.I.R. 1970 S.C. 1153.

A defined by the Code of Criminal Procedure is well understood in legal circles and it ordinarily means a proceeding for the prosecution of a person alleged to have committed an offence. It was added that in other contexts this word may represent other kinds of proceedings. But in the context of s. 417(3) the Court said it must mean a proceeding which at the end results either B in discharge, conviction, or acquittal of an accused person. If anything, this decision goes against the appellants' contention. The case resulting in the acquittal of the accused persons would cleary be a case arising in the State and within the contemplation of the notification, and the Additional Government Advocate who is the Public Prosecutor for the High Court would be entitled to present the appeal in such a case. Reading s. 4(1)(i) Cr. P.C., C which defines "Public Prosecutor" together with s. 492 Cr. P.C. under which the State Government is empowered to appoint Public Prosecutors, the Additional Government Advocate when appointed as a Public Prosecutor for the High Court in respect of the cases arising in the State of Madhya Pradesh must, in our opinion, be held to be a Public Prosecutor lawfully empowered D to present the appeals in the High Court against orders of acquittal. The Privy Council decision reported as *Bhagwan-Das v. The King*(1) cited by Shri Sarin also goes against his contention. It is further note-worthy that this objection was not raised in the High Court. We are, therefore, unable to sustain the submission that the appeal against the order of acquittal was E filed in the High Court by an unauthorised person.

The appeal on behalf of the accused persons must, therefore, fail.

Mr. Shroff rightly did not press the appeal against acquittal of the five accused persons, which was based on the concurrent F order by both the courts below. In regard to Mahmood also, who having served out his sentence has already been released, he did not seriously press his appeal for enhancement of sentences. Otherwise too, in regard to the prayer for enhancement of the sentences, we do not find any cogent grounds for differing with the order of the High Court.

G In the final result, both the appeals fail and are dismissed.

G. C. *Appeals dismissed.*

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(1) A.I.R. 1949 P.C. 263.