

STATE OF RAJASTHAN
v.
NETRAPAL AND ORS.

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FEBRUARY 27, 2007

[C.K. THAKKER AND LOKESHWAR SINGH PANTA, JJ.]

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Penal Code, 1860/Arms Act, 1959—Section 395/Section 3 r/w s. 25(1)(a)—Conviction under—Acquittal by High Court granting benefit of doubt—Justification of—Held: In facts and circumstances of the case, prosecution failed to prove 'beyond reasonable doubt' that the accused were the persons who had committed the dacoity—Hence, acquittal justified.

C

Judicial depreciation—High Court making harsh observations and using strong language against prosecution witnesses—Held: Such comments neither justified nor called for—In view of conflicting statements, the Court may not believe a version against the accused—But cannot say that the other version was 'false' or 'incorrect'—Judicial restraints and discipline are necessary to orderly administration of justice.

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During midnight dacoity was committed in the house of complainant and two others. 10-15 dacoits armed with lathis and guns attacked them and looted their movable properties. In the incident they shot complainant's father. Case was registered. Complainant stated that he could recognize the accused in electric light. Police recovered empty bores from the spot. Accused were arrested and put to identification. Witnesses identified them. Recovered articles were also identified by the owners. Trial Court convicted and sentenced four accused under section 395 IPC and one among the four and two others under section 3 read with section 25 of Arms Act. High Court acquitted all the accused of the charges levelled against them giving them benefit of doubt in identification of accused persons; recovery of articles at their instance and their identity. Hence, the present appeals.

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Dismissing the appeal, the Court

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HELD: 1.1. Having considered the facts and circumstances in their entirety, the High Court was not wrong in coming to the conclusion that the prosecution failed to prove 'beyond reasonable doubt' that the accused were

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A the persons who had committed the dacoity and, hence, they could not be convicted. [Paras 8 and 19] [308-G]

B 1.2. High Court found that the dacoity was committed at mid night; there was inconsistency regarding electricity in the village and as such the statement of witnesses that they had identified dacoits in the light was false and unbelievable. With regard to identification of accused, at the identification parade, the High Court considered the evidence of PW's who stated that they came to know about the arrest of dacoits after few days. High Court observed that all this shows that "the accused persons were arrested just after 7-8 days of the incident" but their arrest was shown on December 21/22, 1987. C For a number of days, the accused persons were detained at the police station. Immediately, their arrest was not shown. The Court observed that it meant the arrest of the accused persons, their giving information as well as the recovery were "all false ones and they all have been manipulated later on". D The Court also found the recovery of the articles as doubtful because prior to the arrest of the accused persons and before their giving information under section 27 of the Evidence Act, the articles were recovered by the police. Hence, the alleged recovery as well as the identification of the ornaments were all farce. The High Court also observed that identification parade was not conducted in a fair and proper manner and no precautionary steps had been taken by the Magistrate. [Paras 5, 6 and 7] [305-C, G-A, B-C]

E 2.1. While allowing the appeals filed by the accused and in extending benefit of doubt, the High Court was rather harsh in making certain observations and in using strong language against the prosecution witnesses. It observed that the prosecution evidence was not consistent as regards availability of electric light at the place of offence. One may appreciate that F in such circumstances, the Court may be on its guard and consider the evidence carefully. However, the High Court, observed that the statements of prosecution witnesses were 'completely false and incorrect ones'. The comment was neither called for nor justified. In view of conflicting statements, the Court may not believe a version against the accused. But it does not necessarily mean that the other version was 'false' or 'incorrect'.

G [Paras 9 and 10] [306-E-G]

H 2.2. Some of the witnesses stated that they heard that the accused were arrested after few days. But the evidence of Investigating Officer was that the accused were arrested on December 21/22, 1987. The Court, may not rely on such evidence but to hold that the accused were arrested and were detained

but such detention was not shown was not at all justified. [Para 11] A
[306-A-H]

2.3. High Court has passed strictures against Additional Munsif and Judicial Magistrate, II. According to the High Court, though the Magistrate had stated that he had taken all steps after the recovery of ornaments and had sent one of the clerks of the Court with a direction to bring similar ornaments from the market without showing those ornaments to prosecution witnesses, the statement of the Magistrate could not be believed. The High Court stated: "How did the Magistrate know that the clerk who had gone with those ornaments, to fetch similar type of ornaments, did not show those ornaments to either the witnesses or other persons"? The remark was uncalled for, to say the least. There is nothing on record to show that the ornaments were shown to prosecution witnesses or to any other person. Moreover, it will be too much to impute motive either in the Magistrate or in the clerk of the Court without there being anything on record. [Paras 12 and 13] [307-B-D] B

2.4. It cannot be gainsaid that while dealing with a case on hand, a Court of Law may comment on the conduct of parties or witnesses and may also make necessary observations keeping in view the evidence adduced by them. It is also true that the Judges are flesh and blood mortals with likes and dislikes and normal human traits. At the same time, however, it cannot be overlooked that judicial restraints and discipline are necessary to orderly administration of justice. [Paras 14 and 17] [307-E, H] C D

2.5. In the facts and circumstances of the instant case, neither the remarks made by the High Court against prosecution witnesses were justified nor the language used was called for. The observations were also not necessary for determining the question in controversy. They are, therefore, to be deleted. [Para 18] [308-F] E

State of U.P. v. Mohd. Naim, [1964] 2 SCR 363: AIR (1964) SC 703, relied on. F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 711-712 of 1996.

From the Judgment and Order dated 3.11.1989 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Appeal Nos. 302 and 322/1989. G

Naveen Kumar Singh, Aruneshwar Gupta, Mukul Sood and Shashwat Gupta for the Appellant.

R.K. Kapoor, Mukesh K. Verma, Govind Kaushik (for Anis Ahmed) H

A Khan), Varinder Kumar Sharma, Jitendra Mohapatra, Dr. Sushil Balwada and Dr. K.S. Chauhan for the Respondents.

The Judgment of the Court was delivered by

B **C.K. THAKKER, J.** 1. These appeals have been preferred by the State of Rajasthan against the judgment and order dated November 3, 1989 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Criminal Appeal Nos. 302 of 1989 and 322 of 1989 acquitting all the accused of the charges levelled against them.

C 2. Brief facts of the case are that during the night intervening 25th and 26th November, 1987, a report was lodged by one Ramji Lal (PW 1) at Police Station, Sever that a dacoity had been committed at Village Samarpur. It was alleged that at about 12.00 night, while he was sleeping in his room with his father Dwarika Prasad and younger brother Satish, 10-15 dacoits armed with lathis and guns came to his room and hit them with lathis and looted movable properties, ornaments of gold and silver from the houses of Ramji Lal, Chandan, D Gopal and Ramsukh. In the incident, they shot at Dwarka Prasad on chest who died. Ramji Lal, PW 1 also stated before the Police that he could recognize the accused in the electric light. On the report a case was registered and the police visited the place of incident. Police recovered 3 empties of .12 bore, 3 empties of .315 bore and a glass piece of .315 bore from the spot. On E November 27, 1987, Ramsukh, Ramji Lal and Chandan submitted a list of articles looted from their houses. The accused persons were arrested by the Police. The Additional Munsif and Judicial Magistrate, Bharatput put them to identification by the witnesses. The witnesses identified them. The seized and recovered articles were also put to identification and they were also identified F by the persons to whom they belonged.

3. The Trial Court framed charges against the accused persons for offences punishable under Sections 395 read with 397 and 396 of the Indian Penal Code ('IPC' for short) and also under Section 3 read with Section 25 of the Arms Act. The accused persons denied the charges framed against G them. They also denied recovery of the articles and contended that they were falsely implicated in the case. The prosecution examined 23 witnesses in support of its case. No evidence was adduced in their defence by the accused persons. The Special Judge, Dacoity Affected Area, Bharatpur convicted accused Netrapal, Dhanpal, Raju and Shyam Singh under Section 395 IPC and ordered them to undergo rigorous imprisonment for seven years. Netrapal, H Lakhmi and Vijendra were convicted for offences punishable under Section 3

read with Section 25(1) (a) of the Arms Act and were ordered to undergo rigorous imprisonment for three years. A

4. On appeal, the High Court acquitted all the accused of the charges giving them benefit of doubt in the matter of identification of the accused persons; of recovery of articles at their instance and of identity of articles and ornaments. B

5. With regard to the identification of the accused persons at the time of commission of offence, the High Court found that the dacoity was committed during the night intervening 25th and 26th November, 1987. Admittedly, it was a dark night. The evidence was not consistent as to electricity at the house of PW1 Ramji Lal. So far as Ramsukh is concerned, temporary electric bulb was there in the chowk. But the evidence also showed that the bulb was not working. There was also inconsistency as to whether there was electricity in the village. The Court also considered the statement of PW 23 Ramswaroop Yadav, SHO. He did not mention as to at which place the electric bulb at the house of Ramsukh was on, nor was the existence of the bulb was shown in the site-plan-Ex. P2. He orally mentioned that there was electric light in the village. The Court noted that there was no reason for the SHO not to mention the presence of electric bulb in the site-plan if it was there as it was a very important aspect and it was the case of prosecution that the witnesses had identified the dacoits in the light of electric bulb. The Court also observed that it was not possible that the dacoits would come in such a way that they could be easily identified by village people. They would try to hide their identities. According to the High Court, the statement of all the witnesses who had stated that they had identified the dacoits in the light was 'false and unbelievable' and in the dark night, the witnesses could not have identified the miscreants. D E F

6. With regard to identification of accused, at the identification parade, the High Court considered the evidence of PW 1 Ramji Lal, PW 6 Sukkho and PW 7 Rekha who stated that they came to know about the arrest of dacoits after few days. "All this shows" observed the High Court, "that the accused persons were arrested just after 7-8 days of the incident" but their arrest was shown on December 21/22, 1987. For a number of days, the accused persons were detained at the police station. Immediately, their arrest was not shown. The Court proceeded to state that according to the prosecution, just after their arrest, the accused persons gave information under Section 27 of the Evidence Act and on the basis of that information, certain articles were H

A recovered. But, according to the prosecution witnesses, they had come to know 7-8 days after the incident that the accused persons had been arrested and that the stolen articles were recovered. The Court observed that it meant the arrest of the accused persons, their giving information as well as the recovery were “all false ones and they all have been manipulated later on”.

B 7. The Court also found the recovery of the articles as doubtful because prior to the arrest of the accused persons and before their giving information under Section 27 of the Evidence Act, the articles were recovered by the police. Hence, the Court observed that the alleged recovery as well as the identification of the ornaments were all farce. The High Court also observed C that identification parade was not conducted in a fair and proper manner and no precautionary steps had been taken by the Magistrate. The High Court, therefore, held that the trial court was wrong in convicting the accused and the prosecution “failed to prove beyond reasonable doubt that the appellants (accused) were the persons who had committed the dacoity as alleged by it”.

D 8. We have been taken by the learned advocates for the parties to the evidence as also to the findings recorded by the trial Court as well as by the High Court. In the facts and circumstances of the case, in our opinion, it cannot be successfully contended that the High Court was wrong in granting benefit of doubt to the accused and in passing an order of acquittal.

E 9. We may, however, advert to one aspect before parting with the matter. While allowing the appeals filed by the accused and in extending benefit of doubt, the High Court was rather harsh in making certain observations and in using strong language against the prosecution witnesses. For instance, the prosecution evidence was not consistent as regards availability of electric F light at the place of offence. One may appreciate that in such circumstances, the Court may be on its guard and consider the evidence carefully. The High Court, however, observed that the statements of prosecution witnesses were ‘completely false and incorrect ones’.

G 10. In our considered view, the above comment was neither called for nor justified. In view of conflicting statements, the Court may not believe a version against the accused. But it does not necessarily mean that the other version was ‘false’ or ‘incorrect’.

H 11. Again, some of the witnesses stated that they heard that the accused were arrested after few days. But the evidence of Investigating Officer was that the accused were arrested on December 21/22, 1987. The Court, in the

light of the above facts, may not rely on such evidence but to hold that the accused were arrested and were detained but such detention was not shown was not at all justified.

12. Similarly, the High Court has passed strictures against PW 21 Barkatullah Khan, Additional Munsif and Judicial Magistrate, II. According to the High Court, though the Magistrate had stated that he had taken all steps after the recovery of ornaments and had sent one of the clerks of the Court with a direction to bring similar ornaments from the market without showing those ornaments to prosecution witnesses, the statement of the Magistrate could not be believed. The High Court stated; "How did the Magistrate know that the clerk who had gone with those ornaments, to fetch similar type of ornaments, did not show those ornaments to either the witnesses or other persons"?

13. In our considered opinion, the above remark was uncalled for, to say the least. There is nothing on record to show that the ornaments were shown to prosecution witnesses or to any other person. Moreover, it will be too much to impute motive either in the Magistrate or in the clerk of the Court without there being anything on record.

14. It cannot be gainsaid that while dealing with a case on hand, a Court of Law may comment on the conduct of parties or witnesses and may also make necessary observations keeping in view the evidence adduced by them. It is also true that the Judges are flesh and blood mortals with likes and dislikes and normal human traits.

15. Thomas Reed Powell once said; "Judges have preferences for social policies as you and I. They form their judgments after the varying fashions in which you and I form ours. They have hands, organs, dimensions, senses, affections, passions. They are warmed by the same winter and summer and by the same ideas as a layman is."

16. Justice John Clarke has also stated; "I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. *Alas! we are 'all the common growth of the Mother Earth' - even those of us who wear the long robe.*" (emphasis supplied)

17. At the same time, however, it cannot be overlooked that judicial restraints and discipline are necessary to orderly administration of justice. One must always keep in view golden advice given by S.K. Das, J. in *State*

A *of U.P. v. Mohd. Naim*, [1964] 2 SCR 363 : AIR (1964) SC 703;

B “If there is one principle of cardinal importance in the administration
C of justice, it is this : the proper freedom and independence of Judges
D and Magistrates must be maintained and they must be allowed to
perform their functions freely and fearlessly and without undue
interference by anybody, even by this Court. At the same time it is
equally necessary that in expressing their opinions Judges and
Magistrates must be guided by considerations of justice, fair-play and
restraint. It is not infrequent that sweeping generalizations defeat the
very purpose for which they are made. It has been judicially recognized
that in the matter of making disparaging remarks against persons or
authorities whose conduct comes into consideration before courts of
law in cases to be decided by them, it is relevant to consider (a)
whether the party whose conduct is in question is before the court
or has an opportunity of explaining or defending himself; (b) whether
there is evidence on record bearing on that conduct justifying the
remarks; and (c) whether it is necessary for the decision of the case,
as an integral part thereof, to animadvert on that conduct. *It has also
been recognized that judicial pronouncements must be judicial in
nature, and should not normally depart from sobriety, moderation
and reserve.*”

E (emphasis supplied)

[see also *Samya Sett v. Shambhu Sarkar*, [2005] 6 SCC 767; V.G. Ramachandran, ‘Law of Writs’, Revised by Justice C.K. Thakker and M.C. Thakker, 6th Edn., 2006; Vol. 2; pp. 1788-91]

F 18. In the facts and circumstances of the present case, in our considered view, neither the remarks made by the High Court against prosecution witnesses were justified nor the language used was called for. The observations were also not necessary for determining the question in controversy. They are, therefore, ordered to be deleted.

G 19. Having considered the facts and circumstances in their entirety, we are of the view that the High Court was not wrong in coming to the conclusion that the prosecution failed to prove ‘beyond reasonable doubt’ that the accused were the persons who had committed the dacoity and, hence, they could not be convicted. The appeals are dismissed accordingly.

H N.J. Appeals dismissed.