

STATE OF UTTAR PRADESH

v

RAM VEER SINGH AND ORS.

SEPTEMBER 5, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

*Code of Criminal Procedure, 1973:*

*Appeal against acquittal—In an appeal against conviction u/ss. 302/34 and 201 IPC High Court finding prosecution evidence contradictory and unreliable—Besides, dead body found after one month from a pond—Identity based solely on clothes worn by corpse—Ocular evidence not supported by autopsy report—Acquittal by High Court—Appeal against—HELD: Keeping in view the principles with regard to appeal against acquittal, on facts, the findings arrived at by High Court and order of acquittal do not suffer from any infirmity to warrant interference—Penal Code, 1860—ss. 302/34 and 201—Constitution of India—Article 136.*

Three accused-respondents were prosecuted under ss. 302/34 and 201 IPC. The prosecution case was that on the day of incident, when after the day's work, PW-1, the informant, along with her husband and their son PW-7, were returning home at about sunset, the three accused armed with 'gandasa, ballam and lathi' came from behind and attacked her husband. Hearing their cries some villagers reached there, but as they were chased by the accused they abandoned the scene. The accused dragged the victim by his feet. Later, PW-1 was said to have returned to the place of incident with the village chowkidar but they could not locate the body of the deceased. PW-1 lodged the FIR the following day at 9.15 A.M. A decomposed body was said to have been recovered from a pond at the instance of the chowkidar of the village after a month and it was identified by PW-1 as of her husband solely on the basis of the clothes worn by the corpse. The trial court convicted the accused of the offences charged and sentenced them, *inter alia*, to imprisonment for life.

In appeal before the High Court, the accused reiterating their challenge to the identity of the dead body, submitted that the autopsy report indicated that the body bore no marks of injury, cut or fracture; and that the scalp and

- A** most of the organs below the neck to the wrist were found missing. The High Court found that PW-4, who was produced as eye-witness, resiled from the statements made during the investigation; statements of PW-1 were contradictory and her evidence was totally unreliable; her conduct during the trial was not above board; though she was married to the deceased, but at the time of incident she was not living with him; the investigating officer admitted that seals of two containers in which blood stained earth and samples had been kept were found to be tampered with; he did not produce the case diary.
- B** The High Court further held that in the absence of any definite material to prove that the dead body recovered was that of the deceased, prosecution version was doubtful; the evidence of the child witness (PW-7) who was 5-6 years of age at the time of incident, i.e. two years before his deposition in Court, was not reliable as he appeared to have been tutored. In these circumstances, the High Court held that the prosecution failed to establish its case, and acquitted the accused of all the charges. Aggrieved, the State filed the instant appeal.

**D** Dismissing the appeal, the Court

- D** HELD: The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. In the instant case, the reasons indicated by the High Court for recording the order of acquittal do not suffer from any infirmity to warrant interference. [Para 9 and 10] [694-D-G]

- F** *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra*, AIR (1973) SC 2622; *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 4 Supreme 167; *Jaswant Singh v. State of Haryana*, (2000) 3 Supreme 320; *Raj Kishore Jha v. State of Bihar and Ors.*, (2003) 7 Supreme 152; *State of Punjab v. Karnail Singh*, (2003) 5 Supreme 508; *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17; *V.N. Ratheesh v. State of Kerala*, [2006] 10 SCC 617 and *Bhagwan Sing and Ors. v. State of Madhya Pradesh*, (2002) 2 Supreme 567,
- G** relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 448 of 2001.

- H** From the final Judgment and Order dated 17.12.1999 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1706 of 1980.

Mohd. Fajjail Khan, Anuvrat Sharma, V.K. Shukla and Praveen Swarup  
for the Appellant. A

Goodwill Indeevar, Varun Goswami and Anu Mohla for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment  
of a Division Bench of the Allahabad High Court setting aside the conviction  
of the respondents for offences punishable under Section 302 read with  
Section 34 of the Indian Penal Code, 1860 (in short 'the Act') and Section 201,  
IPC. Each of the respondents was sentenced to undergo imprisonment for life  
for the offence relating to Section 302/34 IPC and four years' for the other  
offence. B C

2. The prosecution case in a nutshell is as follows.

Dal Chand (hereinafter referred to as the 'deceased') along with his wife  
Smt. Raj Kaur, the informant (PW-1) and their son Paramjeet Singh (PW-7) had  
gone to graze their cattle. At about sunset time on their way back to their  
house they reached the courtyard of Ganga Ram. They were accosted by the  
appellants who came out from behind the bushes. Accused Ram Veer Singh  
was armed with a gadasa, Suresh was holding a Ballam and Chet Ram was  
possessing a lathi. They started belaboring the deceased Dal Chand, with  
their respective weapons by saying that he should not be spared. The cries  
of the above witness and the victim attracted Chottey, Ganga Ram and Dhyan  
Singh all residents of Mohanpur to the spot. On a challenge being given by  
them the assailants started dragging the victim by holding him by his feet.  
When they were challenged they rushed towards the witnesses also and the  
witnesses thereafter abandoned the chase of the assailants. They came back  
to the village and after sometime the informant had gone to the spot with the  
village Chowkidar. She did not find the body of her husband at the spot  
although blood was found lying there. The search for Dal Chand was conducted  
by his wife through out the night but he could not be located or found. No  
villager was informed or taken into confidence by her. D E F

The motive of this murder as is apparent from the FIR was to avenge  
the murder of Raghuvir Singh resident of village Bhadaria. Ram Veer Singh  
was nursing a suspicion that deceased Dal Chand, was instrumental behind  
the murder of Raghuvir. The FIR of the present incident was lodged at the  
police station, Ganeshkhara by Smt. Raj Kaur on the next day at 9.15 A.M. G H

A The body of the victim was discovered from a pond which was full of water after a month of the occurrence. It was first discovered by the village Chowkidar. He informed Smt. Raj Kaur who identified the corpse so recovered from the pond of village Bhadaria as that of her husband Dal Chand. Identity was based solely from the clothes worn by the corpse. After identification of the corpse she informed the concerned police station at about 7 P.M. After completion of investigation charge sheet was filed and charges were framed.

3. The accused persons pleaded innocence. They seriously challenged the identity of the dead body as that of the deceased. The Trial Court found the accused persons guilty and convicted and sentenced them, as aforesaid. Before the High Court, the accused persons took the plea that the autopsy conducted by Dr. K.S. Tewari (PW-2) indicated that the body bore no marks of injury. Most of the organs below the neck to the wrist were found missing by the Doctor. Scalp too was found missing but the skull bones were found intact. They bore no mark of any injury, i.e. any cut or fracture. The body was found in highly decomposed state. The clothes did not have any mark of assault by weapons or blood stains. It was also submitted that the evidence of PW-1 did not inspire confidence. Her testimony was full of contradictions and it was apparent that she was not telling the truth. The evidence of the child witness (PW-7) was also found to be fragile and the court should not have acted on it.

4. The stand of the State, on the other hand, was that the evidence was sufficient to fasten the guilt on the accused persons.

5. The High Court analyzed the material on record and the conclusions arrived at by the Trial Court. It noted that PW-4, Chhotey Lal, who was claimed by the prosecution to be one of the eye-witnesses resiled from the statements made during investigation. It was found that the dead body was found from a pond which was full of water after about a month. The evidence of PW-1 was found to be totally unreliable. She claimed that she had gone to the police station with the blood of her husband which was collected from the spot next morning. According to her, this was done by her after lodging the F.I.R. The High Court noticed that her testimony was that first she went to the police station to lodge the report. After that, she came back and went to police station with blood on the second occasion. She had admitted that it was raining very heavily and it continued to rain throughout the day. She had admitted that when she had gone to report the case at the police station, it was raining. She did not come out as it continued to rain until evening. The

High Court found it hard to believe that she had gone with the blood taken from the spot to the police station. Her statement was also controverted by the investigating officer who stated that he had recovered the blood and sample of earth from the spot of occurrence the next day. The time of lodging the FIR was found to be suspicious by the High Court in view of several contradictory statements made by PW-1. The investigating officer also admitted in his cross examination that the seals of the two containers in which blood stained earth and samples had been kept were found to be tampered with.

6. The investigating officer had admitted that he had recorded the statement of Chhotey Lal (PW-4) on 31.8.1978 as this witness was not available earlier. The case diary interestingly was not produced during trial by the investigating officer. The High Court found that in the absence of any definite material to prove that the dead body was that of the deceased, the prosecution version was rendered to that extent, doubtful. Since PW-4 resiled from his statement made earlier, the High Court examined the evidence of PW-1 in detail. With reference to her evidence, it was noticed that her relationship with the deceased was not free from doubt. She claimed that she was married to the deceased. But the child witness whose evidence was otherwise found to be not sufficient to fasten the guilt of accused, stated that she was not living with the deceased on the relevant date. It was noted by the High Court that PW-1 from the next day of murder was staying with one Ikram. It was noted by the High Court that the village Chowkidar who was supposed to have searched for the dead body, was not examined and no explanation was offered by the prosecution for the non-examination. The High Court noted that PW-1's conduct was totally not above board during trial. She filed an affidavit and an application in the court to show that she was not aware of the incident, as alleged. Though the High Court found that these papers were not exhibited, yet, taking into account the admission of PW-1 that she had in fact put her thumb impression on these documents, found that to be a factor throwing doubt on the credibility of PW-1.

7. So far as Paramjeet (PW-7) is concerned, his evidence was also found to be not reliable because he appeared to have been tutored. He was aged about 7-8 years when he gave the statement on 11.7.1980. The incident had occurred on 24.08.1978, i.e. nearly two years before his deposition. That means that he was about 5-6 years old at the time of incident. The High Court, with reference to his evidence found that the testimony he gave in court was the result of tutoring. In these circumstances, the High Court concluded that the prosecution has failed to establish the accusation.

A 8. Though learned counsel for the State submitted that the circumstances highlighted by the prosecution were sufficient to record conviction, we find that the High Court has examined all the relevant aspects in detail and has recorded the judgment of acquittal.

B 9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. 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 his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors. v. State of Madhya Pradesh*, (2002) 2 Supreme 567]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra*, AIR (1973) SC 2622, *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 4 Supreme 167, *Jaswant Singh v. State of Haryana*, (2000) 3 Supreme 320, *Raj Kishore Jha v. State of Bihar and Ors.*, (2003) 7 Supreme 152, *State of Punjab v. Karnail Singh*, (2003) 5 Supreme 508, *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17 and *V.N. Ratheesh v. State of Kerala*, [2006] 10 SCC 617.

G 10. In the instant case, we find that the reasons indicated by the High Court for recording the order of acquittal do not suffer from any infirmity to warrant interference. The appeal is accordingly dismissed.