STATE OF HARYANA

v.

SURENDER AND ORS. ETC.

JUNE 1, 2007

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

Penal Code, 1860:

ss.302,394 r/w 397—Robbery—Accused stabbing one victim to death and injuring another by firing gunshot at him—Accused identified in court by injured witness—Conviction by trial court—Acquittal by High Court for not holding test identification parade—Held: Accused having denied to participate in test identification parade, cannot make a grievance about identification in Court—Acquittal by High Court set aside—Test identification parade.

Code of Criminal Procedure, 1973

Appeal against acquittal—Re-appreciation of evidence—Held: There is no embargo on appellate court to reviewing the evidence upon which order of acquittal was based—If judgement under appeal is clearly unreasonable, and relevant and convincing materials have been unjustifiably ignored, it is a compelling reason for interference—Constitution of India—Art 136.

The four respondents in the instant three appeals, were prosecuted for committing offences punishable under ss.302 and 394 read with s.397 IPC. The prosecution case was that in running train they, while committing robbery, killed one person by stabbing and injured his younger brother by firing a gunshot at him. The eye-witnesses namely, PWs 13 and 14, younger brother and sister of the deceased respectively, who were travelling with him, identified the accused in the court. The trial court convicted all the four accused of the offences charged and sentenced each of them accordingly. In the appeal filed by the accused, it was mainly pleaded that as no test identification parade was held, the identification for the first time in the court was of no consequence. The High Court did not accept the contention of the State that accused having refused to participate in test identification parade

A could not take advantage of their own lapse, and acquitted the accused. Aggrieved, the State filed the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. There is no embargo on the appellate court reviewing the
B evidence upon which an order of acquittal is based. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. In a case, where admissible evidence is ignored, a duty is caste 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. The principle to be followed by appellate
C Court considering the appeal against the judgment of acquittal is to interface 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. [Fara 7] [889-F-H; 890-A]

D

Bhagwan Singh and ors. v. *State of M.P.,* (2002) 2 Supreme 567; *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 & Ors.,* (2003) 7 Supreme 52; *State of Punjab* v. *Karnail Singh,* (2003)
E 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, relied on.

1.2. On a perusal of the High Court's order it is crystal clear that the same is clearly unsustainable. The evidence of the eye-witnesses, i.e. PW 13 and PW 14, has not been discussed by the High Court. Both are injured
F witnesses. The High Court did not indicate any reason as to why it discarded the plea of the State that the accused persons having denied to participate in the TI parade cannot make a grievance about identification in Court. The High Court has even not discarded the stand of the State as to why the plea relating to TI parade cannot be raised by the accused. The judgment of the
G High Court is clearly unsustainable and is, therefore, set aside.

[Para 6 and 8] [888-H; 889-A-B; 890-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 618-620 of 2001.

H From the Final Judgment and Order dated 06.09.2000 of the High Court

of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 36 DB of 1996, 186 DB of 1996 and 245 DB of 1996. A

Roopansh Purohit (for T.V. George) for the Appellant.

Dhiraj (for P.N. Puri) and Shipra Ghose for the Respondent.

B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Punjab and Haryana High Court directing acquittal of the respondents who were found guilty of offences punishable under Sections 302 and 394 read with Section 397 of the Indian Penal Code, C 1860 (in short the 'IPC') and sentenced to undergo life imprisonment and 10 years respectively.

2. Background facts in a nutshell are as under:

On 1.2.1994 Sushila Devi (PW-14) along with her brothers Purshotam D (hereinafter referred to as 'deceased') and Yashbir (PW-13) boarded a train at Sakurbasti (Delhi) at 6.30 p.m. for coming to Rohtak for treatment of Yashbir in Medical College and Hospital, Rohtak. When the train was in motion between Railway Stations Dehkora and Sampla, four unidentified and unknown persons description of whom were given in the report Ex./PD/1 allegedly E entered into the compartment where deceased along with Yashbir and Sushila Devi was sitting and one of the assailants stood near deceased and shouted to take out whatever they had in their possession. Deceased-Purshotam asked him to wait. Meanwhile the said youngman again shouted asking Purshotam to hand over money and when Purshotam was in the process of handing over the money, the youngman with one hand snatched the money F and gave a knife blow to the deceased in his abdomen. On receipt of the injury, Purshotam fell down. Yashbir (PW-13) who was sitting by the side of Purshotam got up and proceeded towards that man and was able to caught hold of his hand in which he was having a knife. The other appellant fired a shot from the pistol hitting Yashbir (PW-13). Some of the pellets also hit another passenger Ashok Kumar. When the train slowed down near Sampla G Railway Station, both the persons who had caused injuries and the other two accused persons got down from the compartment and fled away. With the help of Sajjan Singh (PW-3), both Purshotam and Yashbir injured were taken to Civil Health Centre, Sampla and then to Medical College and Hospital, Rohtak. However, Purshotam succumbed to the injuries on the way to M.C.H. H

A Rohtak. Udey Raj (PW-2), Assistant Station Master received a telephonic message from Control Room Delhi, with regard to the firing incident. He sent message (Ex.PA) to Station House Officer, Police Station, Government Railway Police, Rohtak. When the train reached Railway Station, Rohtak, police officials were deputed to guard the compartment. SI Manohar Lal (PW-11), recorded the statement of Sushila Devi (Ex.PB/1) on 1.2.1984 at Medical College and B Hospital, Rohtak and making his endorsement Ex.PB/2 he sent the same to the police station for registration of a case and on its basis formal FIR (Ex.PB/2) was recorded. SI Manohar Lal, (PW-11) then went to Railway Station, Rohtak and inspected the compartment. He took into possession blood, pellets and empty cartridge from the compartment vide memos Ex.PR and PR/C 1. He also prepared inquest report (Ex.PU), and took into possession the clothes of the deceased and Yashbir (PW-13), vide recovery memos Ex.PN and PM respectively. He recorded the statements of the witnesses. On completion of investigation charge sheet was placed and since accused persons claimed trial, they were put to trial. On the basis of the evidence on record, more particularly, identification by eye-witnesses (PWs. 13/14) the trial Court D recorded conviction and imposed sentences as noted supra.

3. The conviction as recorded by the Trial Court was questioned in three appeals filed by the respondents. In the appeal the primary stand taken was that there was variance in evidence as to the role played by the accused persons. Additionally, it was urged that no test identification parade was held E and, therefore, the identification for the first time in the Court was of no consequence.

4. In response, learned counsel for the State pointed out that the accused persons themselves declined to take part or to be put in the test F identification parade for the purpose of identification. The High Court brushed aside the stand of the State and as noted above directed acquittal.

5. In support of the appeals, learned counsel for the appellant stated that the accused persons cannot take advantage of their own lapse. When they were asked to take part in test identification parade they refused to G participate. That being so, the High Court has not indicated any reason as to how the same was of any help to the accused and High Court has wrongly drawn adverse inference.

6. On a perusal of the High Court's order it is crystal clear that the same is clearly unsustainable. The evidence of the eye-witnesses i.e Yashbir (PW-

H

13) and Sushila (PW-14) has not been discussed. Both are injured witnesses. The High Court did not indicate any reason as to why it discarded the plea of the State that the accused persons having denied to participate in the TI parade cannot make a grievance about identification in Court. The High Court has even not discarded the stand of the State as to why the plea relating to TI parade cannot be raised by the accused. The only reason indicated by the High Court for directing acquittal reads as follows:

> "The argument of the learned Deputy Advocate General, has been that once the assailants refused to join the identification parade, there would be a presumption that they themselves were involved and none else. The Court cannot feel complacent and convinced because one person has lost life and other escaped death, about the participation of certain persons named by the police in a crime unless they are connected with the commission of the crime undoubtedly without the least shadow of doubt. As already discussed above when the identification of the appellants has taken place in Court after about two years of the occurrence for the first time and the statements of the witnesses of the occurrence are contrary to the recoveries of weapons from the appellants, it would not be safe to sustain the conviction of the appellants which may result into miscarriage of justice. Hence, it is sufficient to say that the appellants deserve the benefit of doubt. The appeals filed by the appellants are allowed and the appellants are acquitted of the charges framed against them."

7. 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

A 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* B *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,* C [2006] 10 SCC 617.

8. Above being the position, the High Court's judgment is clearly unsustainable and is set aside. The appeals are allowed. The accused shall forthwith surrender to custody to serve remainder of the sentence.

D R.P. Appeals allowed.