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STATE OF U.P.

v.

JAI PRAKASH

JUNE 20, 2007

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

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Penal Code, 1860—ss. 302, 364 & 201—Recovery of dead body from well—Deceased last seen in company of Respondent—Respondent allegedly had animosity towards family of deceased—Conviction of Respondent by Trial Court—Set aside by High Court in appeal—On facts, held: Scenario presented by prosecution not natural and improbable—In view of the nature of the evidence tendered by prosecution, High Court right in acquitting Respondent—Appeal against acquittal—Duty of Appellate Court.

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The dead body of PW3's son aged 7 years was recovered from a well. Deceased was last seen in the company of Respondent. Respondent allegedly had animosity towards the family of deceased. Trial Court convicted Respondent under Sections 302, 364 & 201 IPC. High Court set aside the conviction. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1. 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.

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[Para 6] [1093-G; 1094-A, B]

Bhagwan Singh and Ors. v. State of Madhya Pradesh, (2002) 2 Supreme 567, relied on. A

1.2. 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. [Para 6] [1094-B, C] B

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 and *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17, relied on. C

2. In the instant case the scenario presented by the prosecution does not appear to be natural. Prosecution case for establishing motive was that the accused was harassing PW-3 and had been rebuked for that. It was also stated that on several occasions accused wanted to sexually assault PW-8 and to ensure that she is not left alone, the deceased was asked to accompany her. In this background it is improbable and unnatural as rightly held by the High Court that PW-3 would permit deceased to go with the accused and would not take any precaution when she claimed to have seen the deceased in the company of the accused. Evidence of PW-4 is also not acceptable. His version in Court was that the accused was carrying the deceased on a bicycle. He did not say so during investigation. In view of the nature of the evidence tendered by the prosecution, the High Court was right in directing acquittal of the respondent. [Paras 7 and 8] [1094-E, F, G] D E F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 635 of 2001.

From the Judgment and Order dated of the 27.04.2000 of the High Court of Judicature at Allahabad in CrI. A. No. 2633 of 1980. G

Sahdev Singh, Vikas Bansal, Sanjay Kr. Singh and Anuvrat Sharma for the Appellant.

The Judgment of the Court was delivered by H

A **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of the Division Bench of the Allahabad High Court, directing acquittal of the respondent by setting aside the judgment of conviction and sentence passed by learned III Additional District and Sessions Judge, Aligarh in Sessions Trial No.391/1979. Accused was convicted for offence punishable under Sections 302, 364 and 201 of the Indian Penal Code, 1860 (in short the 'IPC').

B He was awarded life imprisonment for each of the first two offences and five years RI for the last one. All the sentences were directed to run concurrently.

2. Sans unnecessary details prosecution version as unfolded during trial is as follows:

C In the morning of 21-2-1978 the accused-respondent was found talking with Nuruddin (hereinafter referred to as 'the deceased') at about 9 '0' clock in front of his house where he was playing. The accused-respondent allegedly took him with him and thereafter Nuruddin was not seen and his dead body was recovered in the night from a well. Natthu Singh (PW-4) had allegedly

D seen in the same forenoon the deceased- Nuruddin going on a cycle with the accused-respondent. Smt. Khatoon (PW-3) mother of the deceased-Nuruddin had also seen Nuruddin with the accused-respondent outside her house at about 9 A.M. She had also seen him going with him. Thereafter, only his dead body could be recovered from a well. Amina (PW-8) had also seen Nuruddin

E talking with the accused-respondent outside her house in the morning of the day of the incident. Allahdin (PW-2) had gone to Hathras to sell iron nails and had returned home at about 5 P.M. His wife Smt. Khatoon (PW-3) had then told him that Nuruddin had not been seen since morning and that the accused-respondent had taken him. He was also informed by Natthu Singh (PW-4) and others that they had seen the deceased going on a cycle with

F the accused-respondent. He had then lodged the report the same night at 9.10 P.M.

The dead body of the deceased was recovered from the well of Raja Ram the same night at the instance of the accused-respondent who had allegedly been arrested by the SI Naresh Pal Yadav (PW-7) who had reached

G the village of the incident at about 10 P.M. Balbir (PW-6) was a witness of the recovery of the dead body of the deceased from the well at the instance of the accused and in consequence of the disclosure made by him under Section 27 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). The case was initially registered under Section 364 IPC but was subsequently

H converted additionally under Section 302 IPC and Section 201 IPC on the

recovery of the dead body.

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The dead body was subjected to postmortem which was conducted on 22-2-1978 at 3 P.M. by Dr. S.K. Saxena (PW-1). The deceased was aged about 7 years and about 11/2 day had passed since he died. The following ante-mortem injuries were found on his person:

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1. Lacerated wound 1½ " x 1" x bone deep on the scalp (L) side ' 2" outer to midline, 1½" above (L) eyebrow.
2. Three abrasions in an area of 2" x 2" on the (L) temple region varying from ¼" x ¼" to ½' x 2/10". Skin of hands and feet was corrugated.

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Death had occurred due to coma and asphyxia owing to injury to brain and drowning. The investigation was undertaken and charge sheet was filed. As noted above, the Trial Court found the accused persons guilty.

3. In appeal, the appellant urged that the version of prosecution is clearly unbelievable. If the accused had the motive the scenario as described by the prosecution does not fit in. The High Court noted if the accused was harassing PW-3 and the deceased was asked to accompany her, it is highly improbable that mother of the deceased would like the deceased to go with the accused. So far as the evidence of PW-4 is concerned it was noted that he had not stated before the Investigating Officer that the deceased was being carried by the accused at bicycle. Accordingly the High Court directed acquittal.

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4. In support of the appeal learned counsel for the appellant-State submitted that the motive was clearly established. The accused was having animosity towards the family of the deceased. Merely because PW-4 had not stated that during investigation the accused was carrying the deceased on a cycle, same cannot be a ground to discard the prosecution version.

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5. None appeared for the respondent in spite of service of notice.

6. 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

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A 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, B 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 C 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*, D (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 and *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17).

E 7. In the instant case the scenario presented by the prosecution does not appear to be natural. Prosecution case for establishing motive was that the accused was harassing PW-3 and had been rebuked for that. It was also stated that on several occasions accused wanted to sexually assault PW-8 and to ensure that she is not left alone, the deceased was asked to accompany her. In this background it is improbable and unnatural as rightly held by the F High Court that PW-3 would permit deceased to go with the accused and would not take any precaution when she claimed to have seen the deceased in the company of the accused. Evidence of PW-4 is also not acceptable. His version in Court was that the accused was carrying the deceased on a bicycle. He did not say so during investigation.

G 8. In view of the nature of the evidence tendered by the prosecution, the High Court was right in directing acquittal of the respondent. We find no merit in this appeal which is accordingly dismissed. Bail bonds executed for being released on bail, stand discharged.

H B.B.B.

Appeal dismissed.