A JAGDISH AND ANR.

v.

STATE OF MADHYA PRADESH

SEPTEMBER 18, 2007

B **[S.B. SINHA AND H.S. BEDI, JJ.]**

Penal Code, 1860; S. 302 r/w S. 34:

C *Murder—Four accused persons armed with weapons allegedly attacked deceased causing his death—Trial Court acquitted all of them giving benefit of doubt—Reversed by High Court—On appeal, Held: High Court, while dealing with a judgment of acquittal, although could re-appreciate the material brought on record, but it could not ordinarily interfere with the judgment of acquittal when two views are possible—High Court's jurisdiction* D *to interfere with the order of acquittal permissible only when the material on record would lead to only one conclusion that appellant is guilty and it requires to meet the reasoning of the trial Court—In the present case, High Court proceeded on the premise that the approach of the trial Court was negative as it discussed only the inconsistencies in the evidence of prosecution witnesses—The view taken by the High Court is not acceptable since no* E *reasons assigned for taking such a view—In the facts and circumstances of the case, High Court should not have interfered with the judgment of acquittal—Jurisdiction of High Court—Re-appreciation of evidence.*

Complainant, PW1, lodged an FIR alleging that on the fateful day, when F **he along with his nephews went to the house of one 'G' for borrowing his bullock cart to carry bricks, he asked them to take it from 'Beda' of one 'B' and asked his son to accompany them up to the said place. When they reached the place, the accused persons armed with weapons came out of their houses and threatened them of dire consequences. On seeing the complainant, his nephew and another, one of the accused allegedly hit one of his nephews, the** G **deceased, on his neck as a result whereof he fell down resulting in a big wound. Other accused persons also inflicted injuries on his back and neck. The accused, after inflicting injuries on the deceased, ran away. The victim succumbed to the injuries. After investigation, charge-sheet was filed by the Police. Trial Court, on the basis of the medical evidence *vis-a-vis* the ocular**

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evidence, opined that participation of three of the accused was doubtful and found contradiction in the statements of PW-2; that in view of the contradictory statements made by the prosecution witnesses in the court, vis-à-vis the prosecution story as divulged in the First Information Report, it was doubtful as to whether the appellants had caused any injury on the deceased; and that the sequence of the event in which the assaults were said to have been caused was also doubtful being contradictory and inconsistent. Trial Court acquitted all the accused persons. Appeal filed by the State was allowed by the High Court convicting the accused for alleged commission of offence punishable u/s.302 r/w S.34 IPC and sentencing them to undergo rigorous imprisonment for life. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The High Court while dealing with an appeal from a judgment of acquittal was required to meet the reasonings of the Trial Judge. There cannot be any doubt whatsoever that irrespective of the fact that the High Court was dealing with a judgment of acquittal, it was open to it to re-appreciate the materials brought on records by the parties, but it is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. [Para 12] [1087-F, G]

Rattan Lal v. *State of Jammu & Kashmir,* (2007) 5 SCALE 472, relied on.

1.2. The High Court's jurisdiction to interfere in such a matter is permissible in law provided the materials on records lead to only one conclusion that the appellants are guilty. The High Court in its impugned judgment had almost reproduced the First Information Report as also the depositions of the prosecution witnesses. It did not make any endeavour to analyze the evidence independently. It proceeded on the basis that the approach of the Trial Court was negative. According to the High Court, as the Trial Court had discussed in detail only the inconsistencies in the evidence of the prosecution witnesses, the same should not be accepted. Why a different view should be taken has not been spelt out. The High Court appears to have proceeded on the premise that the depositions of the eye-witnesses (PW-1) as also other witnesses corroborate the prosecution story, the prosecution case cannot be thrown out. [Para 13] [1088-A-C]

1.3. It is unfortunate that the High Court while arriving at the aforementioned conclusion did not pose unto itself the right question. In the

event, it intended to arrive at a finding different from the one arrived at by the Trial Court, it was obligatory on its part to analyze the materials on record independently. The High Court was also required to meet the reasoning of the Trial Judge. If the Trial Judge, upon appreciation of the evidence, arrived at a conclusion that the time of occurrence disclosed in the First Information Report was not correct inasmuch whereas the occurrence is said to have taken place at 08.00 a.m. but in fact it took place much prior thereto, it could not be opined that the First Information Report was lodged within an hour of the incident. The deposition of one of the accused as also other prosecution witnesses should have been subjected to a deeper analysis by the High Court keeping in view the fact that such an exercise had been resorted by the trial Court. The High Court also committed a serious illegality insofar as it inferred that the medical evidence corroborated the ocular evidence. Evidently it did not. It is a case where the High Court should not have interfered with the judgment of acquittal passed by the Trial Court.

[Paras 14 and 15] [1088-C-F]

State of Rajasthan **v.** *Bhawar Singh,* **[2004] 13 SCC 147;** *Kallu alias Masih and Ors.* **v.** *State of M.P.,* **[2006] 10 SCC 313 and** *Ramappa Halappa Pujar & Ors.* **v.** *State of Karnataka,* **(2007) 6 SCALE 206, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 988 of 2006.

From the Judgment and Order dated 23.3.2006 of the High Court of Madhya Paradesh, Jabalpur Bench at Gwalior in Criminal Appeal No. 23 of 1991.

Dr. T.N. Singh, Lakhan Singh Chauhan and Dr. Kailash Chand for the Appellants.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Appellants herein, who are two in number, have filed this appeal being aggrieved by and dissatisfied with a judgment and order dated 23.03.2006 passed by the High Court of Madhya Pradesh, Jabalpur, Gwalior Bench at Gwalior, whereby the judgment of acquittal dated 30.04.1990 passed by the learned Session Judge, Datia, in S.T. No. 38 of 1987 was set aside convicting them for alleged commission of an offence punishable under Section 302 read with Section 34 of IPC and sentencing them to undergo rigorous imprisonment for life and a fine of Rs. 5,000/-.

2. A First Information Report was lodged by one Mangal Singh (PW-1) alleging that at about 8.00 A.M. on 27.09.1987 he along with his nephew Gabbar Singh and another nephew Mansingh (deceased) went to the house of one Govindas Kurmi for borrowing his bullock cart to carry bricks. They were informed that the same was in the 'Beda' of Birjoo. He asked his son to accompany them up to the said place. While the cart was being led and they reached near the house of Mangoo Kurmi, they found him armed with ballam, Thakurdas armed with axe, Jagdish armed with axe and Devidayal armed with pharsa, were standing at the Chabootra of their house. All the four of them started abusing them saying that they would finish the deceased finally that day. Thakurdas allegedly hit the deceased Mansingh on his neck as a result whereof he fell down. He allegedly again inflicted another blow on his neck causing a big wound. Jagdish inflicted an axe blow on the his back. Devidayal inflicted a pharsa blow on the neck of the deceased and Mangoo inflicted a ballam blow on his back. They inflicted two or three more blows on the back of the deceased, whereafter they ran away.

3. Appellants, thus, along with Thakurdas and Mangoo were tried for commission of the murder of Mansingh. Before the learned Trial Judge the prosecution in support of its case, inter alia, examined Mangal Singh, (informant) as PW-1, Kailash and Dabbu, who are said to be eye-witnesses, as PW-2 and PW-4 respectively.

4. The learned Trial Judge disbelieved the prosecution witnesses. The defence of the appellants in the case was that the deceased Mansingh was not a man of good character. He had many enemies. He had also strained relations with one Pragi Choudhari. He had taken the wood of Pragi and grabbed the land of Lal Singh. He had also shot at Bhagirath and had assaulted one Lalloo and committed a theft. He, therefore, might have been murdered by any one of them.

5. Appellant examined one Brijnandan as DW-1. According to the said witness on the date of incident at about 4 and 5 a.m. when he was going for easing himself in the morning, he saw the dead body of Mansingh lying near the well and Thkurdas was with him. In the meantime, Kailash had also arrived. He, thereafter, asked Thakurdas to call Mangal Singh, brother of the deceased. According to him, Mangal Singh had stated that the deceased had inimical relations with many persons, and one of them might have killed him. The police later on arrived and had questioned him.

A 6. Before the learned Trial Judge, Dr. R.N. Gupta, who conducted the autopsy, examined himself as PW-3. According to him, on post-mortem of the dead body he found the following external injuries :

"1. One incised oblique wound on the rt. side of the neck size 3 x ½"

B 2. Another incised oblique wound 1" above the aforesaid wound 2.5 x ½"

3. Wound, size 3.5 x-ray 1" towards backside on the neck.

4. Wound, size 3 x ½" lt. side of neck.

C 5. Wound, size 3 x 1" Lt. side of neck.

All wound were on the neck sufficiently deep due to which respiratory canal, oesophagus food canal, blood vessels and bones were cut. Blood clotted all four sides of wound, and margins were contracted.

D 6. One incised wound on the back side of neck in the middle of both the shoulders 3 x 1" size (original copy of witness No. 3 is un-illegible).

7. One incised wound over the lt. shoulder 2 x ½". Face turned pale, eyes closed because of blood spots. Mouth was little open"

E 7. The said post-mortem examination was held on 27.6.1987. According to the doctor, there was no injury on the back of Mansingh and all the seven injuries were possible to be inflicted by only one weapon. When two axes and one pharsa, which were said to be the weapons of offence, were produced before him, he opined that having regard to the size of the injuries, the same F could have been caused with an axe but could not have been caused with a pharsa.

8. It is not in dispute that the aforementioned Birjoo was admittedly a witness whose name was shown in the charge-sheet, but the prosecution did not examine him.

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9. The learned Session Judge analyzed the evidence of two witnesses and arrived at the conclusion that the medical evidence does not support the ocular evidence. It was found that Devidayal allegedly had given a pharsa blow and Jagdish was alleged to have given a blow on the back of Mansingh but no injury was found on the back of the deceased nor any axe or ballam H injury was found on his back. No penetrating wound of ballam or lathi was

found at all on the deceased. He, therefore, was of the opinion that the participation of the Mangoo, Jagdish and Devidayal was doubtful. It was further opined that Jagdish was alleged to have given two-three axe blows on the back of the deceased, whereas Devidayal had given two-three phrasa blows on his back and Jagdish was said to have given two-three luhangi blows; but that evidence also stood belied by medical evidence.

10. The learned Trial Judge also noticed that PW-2 contradicted himself insofar as he stated that at the time of incident he was at his well, which is about 8 to 10 furlongs away from the house of Mangoo Kurmi. According to him after getting up from his bed, he used to go straight to his well. He had furthermore accepted that he had come to his well at about 4 and 5 a.m. in the morning and at that time he found the dead body of Mansingh lying there. The said fact finds support from the statement of Dabbu (PW-4) and was was also supported by the defence story, as disclosed by Brijnandan (DW-1).

11. It is interesting to note that the aforementioned prosecution witnesses were not declared hostile. Whereas at one place of the deposition, PW-4 stated that he had been a witness to the assault by the accused persons upon the deceased, in his cross-examination, he accepted that when he reached the place of occurrence he had found the dead body lying there. It had also been found by the learned Trial Judge that whereas no injury caused by axe or ballam on the back of the deceased was found, according to the prosecution witnesses, accused Mangal Singh, Jagdish and Devidayal had inflicted ballam, lathi or axe blows on his back. It was found by the learned Trial Judge that keeping in view the contradictory statements made by the prosecution witnesses in court, vis-à-vis the prosecution story as divulged in the First Information Report, it was doubtful as to whether the appellants had caused any injury on the deceased. It had further been found that the sequence of the event in which the assaults were said to have been caused was also doubtful being contradictory and inconsistent.

12. The High Court while dealing with an appeal from a judgment of acquittal was, thus, required to meet the aforementioned reasonings of the learned Trial Judge. There cannot be any doubt whatsoever that irrespective of the fact that the High Court was dealing with a judgment of acquittal, it was open to it to re-appreciate the materials brought on records by the parties, but it is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. [See *Rattan Lal* v. *State of Jammu & Kashmir*, (2007) 5 SCALE 472].

13. The High Court's jurisdiction to interfere in such a matter is permissible in law provided the materials on records lead to only one conclusion that the appellants are guilty. The High Court in its impugned judgment had almost reproduced the First Information Report as also the depositions of the prosecution witnesses. It did not make any endeavour to analyze the evidence independently. It proceeded on the basis that the approach of the Trial Court was negative. According to the High Court, as the Trial Court had discussed in details only the inconsistencies in the evidence of the prosecution witnesses, the same should not be accepted. Why a different view should be taken has not been spelt out. The High Court appears to have proceeded on the premise that the depositions of the eye-witnesses, namely, Mangal Singh (PW-1) as also other witnesses corroborate the prosecution story, the prosecution case cannot be thrown out.

14. It is unfortunate that the High Court while arriving at the aforementioned conclusion did not pose unto itself the right question. In the event, it intended to arrive at a finding different from the one arrived at by the Trial Court, it was obligatory on its part to analyze the materials on record independently. The High Court was also required to meet the reasoning of the learned Trial Judge. If the learned Trial Judge upon appreciation of the evidence arrived at a conclusion that the time of occurrence disclosed in the First Information Report was not correct inasmuch whereas the occurrence is said to have taken place at 08.00 a.m. but in fact it took place much prior thereto, it could not be opined that the First Information Report was lodged within an hour of the incident. The deposition of Mangal Singh as also other prosecution witnesses should have been subjected to a deeper analysis by the High Court keeping in view the fact that such an exercise had been resorted by the learned Session Judge. The High Court also committed a serious illegality insofar as it inferred that the medical evidence corroborated the ocular evidence. Evidently it did not.

15. We, therefore, are of the opinion that it is a case where the High Court should not have interfered with the judgment of acquittal passed by the learned Trial Judge.

16. In *State of Rajasthan* v. *Bhawar Singh,* [2004] 13 SCC 147, this Court has held :

"6. We find that the High Court has carefully analysed the factual position. Though, individually some of the circumstances may not

have affected veracity of the prosecution version, the combined effect of the infirmities noticed by the High Court is sufficient to show that the prosecution case has not been established. The presence of PWs. 3, 4 and 8 at the alleged spot of incident has been rightly considered doubtful in view of the categorical statement of PW-5, the widow that she sent for these persons to go and find the body of her husband. It is quite unnatural that PWs. 3, 4 and 8 remained silent after witnessing the assaults. They have not given any explanation as to what they did after witnessing the assault on the deceased. Additionally, the unexplained delay of more than one day in lodging the FIR casts serious doubt on the truthfulness of prosecution version. The mere delay in lodging the, FIR may not prove fatal in all cases. But on the circumstances of the present case, certainly, it is one of the factors which corrodes credibility of the prosecution version. Finally, the medical evidence was at total variance with the ocular evidence. Though ocular evidence has to be given importance over medical evidence, where the medical evidence totally improbablises the ocular version that can be taken to be a factor to affect credibility of the prosecution version. The view taken by the High Court is a possible view. The appeal being one against acquittal, we do not consider this to be a fit case where any interference is called for. The appeal fails and is dismissed."

17. Yet again in *Kallu alias Masih and Ors.* v. *State of M.P.*, [2006] 10 SCC 313, this Court opined :

"8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

[See also *Rattanlal* (supra) and *Ramappa Halappa Pujar & Ors.* v. *State of Karnataka,* (2007) 6 SCALE 206].

A 18. For the reasons aforementioned, the judgment of the High Court cannot be sustained which is set aside accordingly. The appeal is allowed. The appellants shall be released forthwith, if not required in connection with any other case.

S.K.S. Appeal allowed.

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