A STATE OF U.P.

v.

GOVIND DAS @ GUDDA AND ANR.

AUGUST 10, 2007

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

Penal Code, 1860:

ss.302/34—Trial Court acquitting one accused—Another accused
C *sentenced to death and rest awarded life imprisonment—Appeal and reference relating to death sentence—High Court set aside conviction—On appeal, held, approach of High Court is unsustainable—Mere fact that co-accused had been acquitted is not sufficient to discard prosecution version in its totality—While setting aside order of Conviction, High Court ought to have*
D *analysed the evidence to show as to how the conclusion of trial Court as regards acceptability of evidence of any witness was erroneous—That has not been done—Matter remitted to High Court for fresh consideration.*

The Sessions Judge had convicted the respondents for offence punishable under s.302 r/w. s.34 IPC. Each of the accused persons were
E **sentenced to undergo life imprisonment. Respondent No.1 was sentenced to death for offence punishable under s.302 IPC. Another accused 'S' was acquitted by the trial Court. The two accused persons preferred appeals before the High Court and reference was made relating to death sentence awarded. By the impugned order, the High Court found the accused persons innocent**
F **and set aside the conviction and sentence awarded. Hence these appeals.**

Partly allowing the appeals and remitting the matter to High Court, the Court

HELD: The approach of the High Court is clearly unsupportable. It
G **did not bother to even analyse the evidence and/or to refer to any finding recorded by the trial court as to in what way the evidence was not acceptable. The mere fact that the co-accused had been acquitted is not sufficient to discard the prosecution version in its totality. It is not understood as to what was meant by the High Court by stating that there was no corroboration of 'investigation'. This is not the way an appeal or reference for confirmation of**
H

death sentence is to be dealt with. When the High Court was setting aside the order of conviction the least that was required to be done was analysis of the evidence to show as to how the conclusions of the trial Court as regards acceptability of the evidence of any witness was erroneous. That apparently has not been done. [Para 4] [970-E, F, G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1049-1050 of 2007.

From the Judgment and Order dated 17.05.2005 of the High Court of Judicature at Allahabad in Criminal Appeal No. 4978 of 2002 and Criminal Appeal No. 5234 of 2002 and Reference No. 8 of 2002.

Sahdev Singh, Javed Mahmud Rao and Shahid Ali Rao for the Appellants.

Sanjay Jain, Anand Thakral, Mukesh Tyagi and Aditya Kumar for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. These appeals are against the judgment of the Division Bench of the Allahabad High Court by which it directed acquittal of the respondents. Before the High Court the respondents had questioned correctness of the judgment passed by Additional Sessions Judge, Hamirpur, convicting the respondents for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') Each of the accused was sentenced to undergo life imprisonment and a fine of Rs.20,000/- with default stipulation. Respondent-Govind Das was sentenced to death for an offence punishable under Section 302 IPC. It is to be noted that there were two deceased persons; one was Loknath and the other was Naval Kishore. Accused Sushila was acquitted by the trial Court. Since accused Govind Das was awarded death sentence, the matter was referred to the High Court for confirmation of the sentence. The two accused persons preferred appeals before the High Court and a reference was made relating to death sentence awarded. By the impugned order, the High Court found the accused persons innocent and set aside the conviction and sentence awarded.

3. Though many points were urged in support of the appeals, we find it unnecessary to go into those because of the casual and summary way of

A disposal of the two appeals and the reference relating to the death sentence. The High Court after analyzing the evidence and stand of the accused persons and the prosecution in its judgment running into 23 pages (in the paper book to this Court) allowed the appeals of the accused persons with the following observations:

B "We have carefully scrutinized the evidence on record. In our opinion implicit evidence cannot be placed on the testimonies of both eye witnesses. They have implicated Smt. Sushila in the crime. The involvement of Smt. Sushila was to reconcile the conflict in direct and medical evidence. Since the punctured wound on the body of Lok
C Nath were of small dimensions, therefore, weapon Barachhi and pointed Sariya was introduced by the witnesses. After the acquittal of Smt. Sushila punctured wound remains unexplained. Learned Sessions Judge has already held that Ballam which is alleged to be recovered on the pointing out of Jai Kishan is not weapon of crime. There is no corroboration of any other independent testimony or of medical
D evidence or investigation."

In view of the discussion made above, both the appeals are allowed. The conviction and sentences awarded by the trial Court are set aside. The appellants are acquitted of the charges. The appellants are in jail. They shall be released forthwith if not wanted in any other
E case. The reference made by learned Sessions Judge for the confirmation of death sentence is rejected."

4. To say the least, the approach of the High Court is clearly unsupportable. It did not bother to even analyse the evidence and/or to refer to any finding recorded by the trial court as to in what way the evidence was
F not acceptable. The mere fact that the co-accused had been acquitted is not sufficient to discard the prosecution version in its totality. It is not understood as to what was meant by the High Court by stating that there was no corroboration of 'investigation'. This is not the way an appeal or reference for confirmation of death sentence is to be dealt with. When the High Court
G was setting aside the order of conviction the least that was required to be done was analysis of the evidence to show as to how the conclusions of the trial Court as regards acceptability of the evidence of any witness was erroneous. That apparently has not been done.

5. Therefore, without expressing any opinion on the merits of the case,
H we set aside the impugned judgment of the High Court and remit the matter

to it for fresh consideration. Since the matter is pending since long, we request the High Court to explore the possibility of disposal of the appeals and the reference made to it relating to confirmation of death sentence within a period of six months from the date of receipt of copy of this judgment. The appeals are accordingly allowed to the aforesaid extent. A

D.G. Appeals partly allowed. B