

STATE OF RAJASTHAN
v.
NARAYAN
(Criminal Appeal No. 1629 of 2008)

OCTOBER 17, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860 – ss.302, 316 and 309 – Appeal against acquittal – Power and duty of the Appellate Court – Allegation that accused murdered his wife – Accused found lying in a pool of blood, gasping for breath while his wife lay dead besides him – Throats of both accused and his wife were found cut – Conviction by Trial Court – But acquittal by High Court – Appeal against – Held: Presumption of innocence of the accused is further strengthened by acquittal – Appellate Court while considering an appeal against acquittal can interfere only when there are compelling and substantial reasons for doing so – On facts, the weapon of offence was found under the clothes of deceased and therefore the defence version that deceased probably took her life after causing serious injuries on the neck of accused not improbable – Reasons which weighed with High Court to direct acquittal cannot be characterized as perverse – Acquittal accordingly affirmed.

Criminal jurisprudence:

Administration of justice – Held: In criminal cases, if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to his innocence, the view favourable to the accused should be adopted.

According to the prosecution, accused-Respondent committed the offence of murdering his wife as he suspected that she was carrying a child in her womb from some other person.

A Respondent was found lying in a pool of blood, gasping for breath while his wife lay dead besides him. The throat of both Respondent and his wife were found cut.

B Placing reliance on the circumstantial evidence, the Trial Court held the Respondent guilty under ss.302, 316 and 309 of IPC and sentenced him to undergo life imprisonment. The High Court however accepted the possibility of a suicide pact between Respondent and his wife or that Respondent's wife committed suicide after inflicting blows on the neck of Respondent who survived and after holding that the prosecution version was not established, acquitted the Respondent. Hence the present appeal.

Dismissing the appeal, the Court

E HELD:1.1. 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. [Para 6] [704-B-E]

H 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] [704-F-G]

Bhagwan Singh and Ors. v. State of Madhya Pradesh (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 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 – relied on.

2. In the present case, the High Court had noted that there was no quarrel between the accused-Respondent and his wife. Though the brother of accused was the informant, but he resiled from the statement during investigation; similar was the position regarding PW2 i.e. father of the informant and PW 3 the neighbour of the appellant. The only evidence which was relied upon by the trial court was the presence of the injured accused near the dead body. Notably the weapon was found under the clothes of the deceased as was stated by PW10, the Investigating Officer. Therefore, the defence version that the deceased probably took her life after causing serious injuries on the neck of the accused cannot be described as an improbable stand. The reasons which have weighed with the High Court to direct acquittal cannot be characterized as perverse. [Para 7] [705-B-D]

CASE LAW REFERENCE

(2002) 2 Supreme 567	relied on	Para 6
AIR (1973) SC 2622	relied on	Para 6

A	(1996) 4 Supreme 167	relied on	Para 6
	(2000) 3 Supreme 320	relied on	Para 6
	(2003) 7 Supreme 152	relied on	Para 6
	(2003) 5 Supreme 508	relied on	Para 6
B	(2003) 7 Supreme 17	relied on	Para 6
	(2006) 10 SCC 617	relied on	Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1629 of 2008

C From the final Judgment and Order dated 23.11.2005 of
the High Court of Judicature for Rajasthan, Bench at Jaipur in
D.B. CrI. Appeal No. 146 of 2000

D Manish Kumar, Ansar Ahmed Chaudhary, Satya Prakash
and Promila Matta for the Appellant.

The Judgment of the Court was delivered by

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

E 2. Challenge in this appeal is to the judgment of a Division
Bench of the Rajasthan High Court, Jaipur Bench, directing
acquittal of the respondent.

F 3. Learned Sessions Judge, Sikar, in Sessions case No.
97 of 1999 had found the respondent guilty of offence punishable
under Sections 302, 316 and 309 of the Indian Penal Code,
1860 (in short the 'IPC') and had sentenced him to undergo
imprisonment for life, seven years and three years imprisonment
respectively, fines were also imposed with default stipulation.
In appeal, acquittal was directed.

G 4. Prosecution version in a nutshell is as follows:

H The complainant, Kishore son of Mal Chand Raiger got
registered a First Information Report (Exhibit P-1) in the Police
Station Losal on 22.3.1999 to the effect that his brother Narain
used to reside in the house of Ramdeva Ram near their old

house. In the morning hours his son Sushil came to call him and told that his mother and father are inside the house and the door is closed from the inside but none of them got up even after calling them. Then he saw that both of them were sleeping on a bed. They raised noise and the people gathered there. Ex-Chairman, Bhoora Ram also came there. When all of them entered the room, they found that his sister-in-law and his brother were lying trenched with blood. The throat of his sister-in-law had been cut. She had died but his brother was breathing though his throat was also cut. On this information, Case No.42/99 was registered under Section 302/307 of IPC. When he was asked about the delay in coming, he explained that it took time in calling the persons of the locality and the relatives etc. He also told that his sister-in-law Bhanwari Devi was having pregnancy of 5-6 months and his brother Narain had come from abroad only three months back, and that is why his brother used to enquire from his sister-in-law about the person from whom she was having a child in her womb and frequent quarrels used to take place on this issue.

Investigation was undertaken on the basis of the report lodged and on completion thereof charge sheet was filed. The accused faced trial since he pleaded innocence. Trial court noticed that there was no eye witnesses' version available and the case rested on circumstantial evidence. But the circumstances were found sufficient to establish the accusations. Accordingly, conviction was recorded and sentences imposed as noted earlier. In appeal before the High Court primary stand was that the witnesses did not support the prosecution version. PW 11 who was posted as the officer in charge clearly accepted that the accused was admitted to the hospital on 5.4.1999 and the medical examination of the accused was conducted prior to taking over the investigation by PW 11. He was lying in a pool of blood and his neck was slit and he was gasping for breath. The High Court accepted the possibility that there was suicide pact between husband and wife or that the wife attacked the husband and then committed suicide after inflicting blows

A on the neck of the husband who survived. In any event it was held that the prosecution version was not established.

B 5. Learned counsel for the appellant-State had submitted that the High Court had acted on surmises to infer a suicide pact, there was no evidence in that regard and on the contrary the High Court ought to have accepted that the husband-accused had committed murder of his wife.

C 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 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)].

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F 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) Su-

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preme 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). A

7. The High Court had noted that there was no quarrel between the accused and his wife. Though Kishore, brother of accused was the informant as noted above, but he resiled from the statement during investigation; similar was the position regarding PW2 i.e. father of the informant and PW 3 the neighbour of the appellant. The only evidence which was relied upon by the trial court was the presence of the injured accused near the dead body. It is to be noted that the weapon was found under the clothes of the deceased as was stated by PW10, the Investigating Officer. Therefore, the defence version that the deceased probably took her life after causing serious injuries on the neck of the accused cannot be described as an improbable stand. D
The reasons which have weighed with the High Court to direct acquittal cannot be characterized as perverse. That being so, there is no merit in this appeal which is accordingly dismissed. C

B.B.B.

Appeal dismissed.