A STATE OF U.P.

v.

AJAI KUMAR

(Criminal Appeal No. 277 of 2008)

FEBRUARY 7, 2008

B **[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

Penal Code, 1860 – ss. 394, 307 and 411 – Prosecution under – Allegation of looting currency notes – Victims C *sustaining injury – Recovery of part thereof from the accused – Recovered notes bearing stamp of the Bank from which withdrawn – Acquittal by trial court – High Court confirming acquittal on sole ground that recovery and arrest of the accused was doubtful – On appeal, held: The ground relied* D *on by High Court is not sustainable – Other vital aspects were lost sight of – Matter remitted to High Court for reconsideration.*

Respondent-accused was prosecuted u/ss. 394, 307 and 411 IPC. Prosecution case was that while PW-1 (informant) was going with PW2, after withdrawing money E **from Bank, the appellant-accused alongwith three others snatched away the money after firing shots from a pistol. PWs 1 and 2 suffered injuries. Part of the currency notes which were recovered from the accused persons, bore stamp of the Bank. Before conclusion of the trial, two of** F **the accused died and one absconded. Trial court acquitted the appellant. High Court dismissed the appeal of the State on the ground that arrest and recovery was doubtful as there was contradiction with regard to the date of arrest in view of a telegram sent by a relative. Hence** G **the present appeal.**

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1. High Court's conclusion is clearly

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presumptuous. The fact taken into consideration by the High Court could not have been a ground to hold that the prosecution version was unacceptable and the trial Court had rightly directed acquittal. The impugned order goes to show that the only ground on which the High Court found that there was no scope for interference was the telegram sent by a relative. Various other factors which throw light on the controversy have not been considered in the proper perspective by the High Court. The effect of the evidence of the two victims and the recovery of part of the recovered amount has been completely lost sight of. It is to be noted that contrary to what the trial Court and the High Court noted, the seized recovery notes clearly show the stamp of the Bank from where the money was withdrawn. The relevance of this factor has been completely lost sight of by the trial Court and the High Court. [Paras 6 and 8] [557-E, G; 558-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 277 of 2008.

From the final Judgment and order dated 4.9.2006 of the High Court of Judicature at Allahabad in G.A. No. 58/2003.

S.G. Hussain, Manoj K Mishra and Anil Kumar Jha for the Appellant.

K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court dismissing the appeal filed by the appellant-State questioning correctness of the order of acquittal recorded by the trial Court. Originally, three persons apart from respondents were arrayed as accused persons. Two of them expired before trial was concluded and one had absconded and could not be arrested.

A Four persons faced trial for offences punishable under Sections 394, 307, 411 of the Indian Penal Code, 1860 (in short the 'IPC'). The allegation was that on 15.3.1994 while the informant alongwith one Sushil Kumar, son of the owner Shri Gopal was going towards the shop after withdrawing B Rs.1,25,000/- from the State Bank of India, the accused persons forcibly snatched away the money after firing shots from the pistols held by them. The informant and aforesaid Sushil Kumar suffered injuries and were taken to hospital for treatment. The first information report was lodged and investigation was C undertaken and part of the money was recovered from the accused persons. Several witnesses were examined to further the prosecution version.

PWs 1 and 2 i.e. Bhagwat Narain and Sushil Kumar were stated to have sustained injuries in the incident. The trial Court D directed acquittal primarily on the ground that the witnesses could not say definitely as regards the numbers on currency notes which were stated to have been withdrawn from the bank and to have been robbed by the accused persons. This was highlighted to show the fallacy of the conclusions to direct E acquittal.

Several other factors were also indicated questioning correctness of the decision. Appeal was filed with leave of the High Court and same was dismissed with the following observations:

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> "..We have perused the judgment. A perusal of which would indicate that Prem Narayan the relative of Chandesh Ravat (dead) has made a telegram on 17.3.1994 to the Senior Superintendent of Police concerned to the effect that G Chandesh Ravat was arrested by the police of Mahurani from his house and the arrest has shown by the police is 20.3.1994, therefore, the arrest as well as the recovery becomes doubtful.
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> In above view of the matter no interference in the order of H acquittal is warranted.

The leave to appeal is hereby rejected." A

3. Learned counsel for the appellant submitted that the High Court has not indicated the basis for coming to the conclusion that the trial Court was right. In fact there was no analysis of the evidence of the victims who had categorically implicated the accused persons and had also described in detail the respective role played by each. B

4. Learned counsel for the respondent on the other hand submitted that the order of acquittal was reinforced by the order of dismissal of the appeal by the impugned order and no interference is therefore called for. C

5. While dealing with leave to appeal against acquittal, this Court in *State of Rajasthan v. Sohan Lal* (2004 (5) SCC 573) inter-alia observed as under: D

"**3.** We have carefully considered the submissions of the learned counsel appearing on either side. This Court in *State of Orissa* v. *Dhaniram Luhar (2004 95) SCC 568)* has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for, or sufficient to obviate and dispense E F G H

with the obvious necessity to record reasons. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: "varying according to the Chancellor's foot". Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. The State does not in pursuing or conducting a criminal case or an appeal espouse any right of its own but really vindicates the cause of society at large, to prevent recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and avert anarchy, by upholding the rule of law. The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders of acquittal, as a matter of course, but that does not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, as in this case ("the court does not find any error"), with no further, on the face of it, indication of any application of mind whatsoever. All the more so, when the orders of the High Court are amenable to further challenge before this Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing statutory right of appeal, though a regulated one, cannot be said to be a proper and judicial manner disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first

appellate court. The need for recording reasons for the conclusion arrived at by the High Court, to refuse to grant leave to appeal, in our view, has nothing to do with the fact that the appeal envisaged under Section 378 Cr.P.C is conditioned upon the seeking for and obtaining of the leave from the court. This Court has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal."

(Underlined for emphasis)

6. In view of the fact that the High Court's conclusion is clearly presumptuous and the mere claim that a telegram was sent by a relative of Chandesh Ravat the deceased- accused, same could not have been a ground to hold that the prosecution version was unacceptable and the trial Court had rightly directed acquittal.

7. Learned counsel for the respondent on the other hand submitted that not only on the ground of a telegram but also on other grounds, the High Court upheld the view of the trial Court.

8. A bare reading of the impugned order which is reproduced above goes to show that the only ground on which the High Court found that there was no scope for interference was the telegram sent by a relative. Various other factors which throw light on the controversy have not been considered in the proper perspective by the High Court. The effect of the evidence

A of the two victims and the recovery of part of the recovered amount has been completely lost sight of. It is to be noted that contrary to what the trial Court and the High Court noted, the seized recovery notes clearly show the stamp of the bank from where the money was withdrawn. The relevance of this factor
B has been completely lost sight of by the trial Court and the High Court.

9. That being so, we set aside the impugned order of the High Court and remit the matter to it for consideration in accordance with law.
C

10. The appeal is allowed.

K.K.T. Appeal allowed.