

STATE OF HARYANA

v.

SHIBU @ SHIV NARAIN AND ORS.
(Criminal Appeal Nos.235-236 of 2001)

JULY 25, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ.]

Penal Code, 1860:

s. 302 r/w s.34 – Three accused alleged to have attacked and killed the victim – Conviction by trial court – Plea before High Court that it was a blind murder and witnesses were procured later on – Acquittal by High Court – HELD: Judgment of acquittal is to be interfered with only when there are compelling and substantial reasons – High Court has elaborately discussed the evidence and all aspects and rightly concluded that prosecution version was highly improbable and lacked credence – Appeal against acquittal.

The prosecution case against the accused-respondent was that on account of a previous quarrel between the deceased and accused-respondent no.1 in Criminal Appeal No. 235 of 2001, the accused armed with a 'pharsa' and a sword attacked the deceased. Accused-respondent no.1 caught hold of the deceased while the other two gave a sword blow and a 'pharsa' blow on the thigh and leg respectively of the deceased. On hearing cries of the victim, his brother (PW.5), cousin (PW 6) and another person reached the scene of occurrence. The victim succumbed to his injuries on the way to hospital. The trial Court convicted the accused, who was said to have given sword blow on the thigh of the deceased, u/s. 302 IPC and the other two accused u/s.302 read with 34 IPC. The case of the accused before the High Court was that it was a blind murder and the prosecution witnesses were pro-

A cured after the incident had come to light. The High Court acquitted all the accused.

B In the instant appeals filed by the State it was contended for the appellant that the accused had a motive for the crime and the evidence was cogent and credible, but the analysis done by the High Court was without any foundation and suffered from serious infirmity.

Dismissing the appeals, the Court

C HELD: 1.1 The principle to be followed by the 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 compelling reason for interference. [Para 9] [368-C-D]

E 1.2 The High court has elaborately discussed the evidence and all the aspects to conclude that the prosecution version is highly improbable and lacks credence. When the background facts as noticed by the High Court are tested on the touchstone of the principles set out by this Court it is clear that the appeals are without merit. [Para 8 and 10] [367 E-F 368-F]

F *Bhagwan Singh v. State of M.P.* 2002(4) SCC 85 – relied on [para 9]

Joseph v. State of Kerala 2003(1) SCC 465– relied on [para 9]

G *Devatha Venkataswamy v. Public Prosecutor, High Court of A.P.* 2003(10) SCC 700– relied on [para 9]

State of Punjab v. Karnail Singh 2003(11) SCC 271– relied on [para 9]

H *State of U.P. v. Babu* 2003(11) SCC 280 – relied on [para 9]

Suchand Pal v. Phani Pal 2003(11) SCC 527 – relied on [para 9] A

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
Nos. 235-236 of 2001

From the final Judgment and Order dated 11/7/2000 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 527-DB/1995 B

Rajeev Gaur 'Naseem' and T.V. George for the Appellant.

Naresh Kaushik and Lalita Kaushik for the Respondents. C

Nagendra Rai, Rishi Malhotra and prem Malhotra for the Complainant.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. These appeals are directed against the common judgment of a Division Bench of the Punjab & Haryana High Court disposing of appeals i.e. Criminal Appeal No. 527DB of 1995 and 547DB of 1995. The main judgment is in Criminal Appeal No. 527 DB of 1995. In these appeals two appellants were convicted by learned Sessions Judge, Rohtak in Sessions Case No. 13 of 1995. D E

2. Background facts in a nutshell are as follows:

On 18th January 1995, at about 8 or 8.30 a.m., Vijay since deceased, was going from his house towards the bazar for shopping and had gone a short distance, when the three accused Shibü alias Shiv Narain, Surender Singh armed with a pharsa and Bhagat Singh armed with a sword accosted him and Shibü told him that they were going to teach him a lesson for the slaps that had been given to him on 16th January, 1995. Shibü then caught hold of Vijay in his grip, whereas Bhagat Singh inflicted a sword blow on his left thigh, while Surender accused aimed a blow on his leg which did not hit its target. On receipt of the injuries, Vijay cried "Mar diya Mar diya", which attracted Attar Singh (PW5) and Rajinder (PW6), the brother F G H

A and first cousin of deceased respectively, and one Inder to the place of incident. All the accused then ran away from the spot. Vijay was, thereafter, taken to his house and then to the Civil Hospital, Bahadurgarh in a tractor by Attar Singh and some others, but he succumbed to his injuries on the way. The dead body
B nevertheless reached the hospital, on which the doctor sent information vide Ex. PE to the police, which brought ASI Ranbir Singh to the hospital. He recorded the statement of Attar Singh Ex. PK at 11.50 a.m. and on its basis, a formal FIR Ex. PK/2 was registered at Police Station, Bahadurgarh at 12.05 p.m.;
C the special report being delivered locally at 12.35 p.m. The SHO/Inspector Sumer Singh, also visited the place of occurrence and made the necessary investigation at the spot. The accused were arrested on 18th January, 1995 and on their interrogation and disclosure statements, a pharsa and a sword were recovered. On completion of the investigation, accused Bhagat Singh
D was charged for an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') while the others were charged for the same offence with the aid of Section 34 thereof and as they claimed to be innocent, were brought to trial.

E As noted above, PWs 5 & 6 Attar Singh and Rajinder respectively were stated to be eye witnesses to the occurrence. The trial court concluded that the enmity between the parties stood proved as they had been on opposite sides in the
F panchayat elections and on account of this factor, accused Shibu had abused Attar Singh sometime earlier and had been given a beating by him. The court also found that the prosecution version as stated by Attar Singh (PW-5) and Rajinder (PW-6) was natural. Accordingly, the three accused persons were found
G guilty, convicted and sentenced as afore-stated.

H Stand of the appellant before the High Court in the appeals was that the murder was a blind one as the prosecution witnesses have been procured after the incident had come to light.

3. Learned counsel for the State on the other hand submitted that not only it was their motive for the killing but the evidence was cogent and credible. The High Court found substance in the plea of the three accused appellants (respondents herein) and directed their acquittal.

4. Learned counsel for the State submitted that the analysis as done by the High Court is without any foundation and suffers from serious infirmity.

5. Learned counsel for the complainant also supported the stand of the State.

6. Learned counsel for the accused on the other hand submitted that the High Court has highlighted the discrepancies in evidence and therefore the appeals deserve to be dismissed.

7. The High Court after analyzing the evidence recorded as follows:

"We are of the opinion that the presence of Attar Singh PW-5 and Rajinder FW-6 at the spot is difficult to accept. In D.D.R. No.15 which pertains to the present incident, the names of Rajinder & Inder have not been mentioned and the fact as to whether Attar Singh was an eye witness, has also not been clearly spelt out. Moreover, it appears to us that the description of the attack given by the two witnesses also belies their presence for two reasons; firstly, that in the F.I.R, it has been clearly stated that two injuries had been caused to the deceased i.e. one by Bhagat Singh with a sword and the other by Surender Singh with pharsa. The post mortem report however, speaks of only one injury by Bhagat Singh. It was to cover this situation that both Attar Singh PW-5 and Rajinder PW-6, in the course of their statements given in Court, for the first time stated that though Surender Singh had aimed a pharsa blow on the left thigh, yet no injury had been caused to the deceased as, he had, at the crucial time, been able to move his leg out of harms way. There is yet another circumstance which

A believes the prosecution case and also shows that the
investigation has not been fair. In column, 10 of the inquest
report Ex.PL/2 (original Hindi version), it is apparent that
B a serious interpolation has been made to fit in with the
new story. We find that the presence of the injury on the
ankle allegedly caused by Surender Singh was first noted
and then by interpolating the word "nahi", the effort has
C been made to show that there was no second injury on the
deceased. This interpolation is further evident from the
fact that an injury which was present would alone find
mention in the document and not a negative fact that there
D was no injury. The counsel therefore, appears to be right
in placing reliance on *Sat Darshan Kalra v State of Punjab*
1996 (1) Recent Criminal Reports, 367, in which this
Court has held that where the investigation had not been
fair and an interpolation had been made in some important
document, a serious doubt could be created with regard
to the integrity of the investigation and the veracity of the
prosecution's story.

E There is yet another significant circumstance to show that
the two eye witnesses had not seen the occurrence. PW
5 Attar Singh had clearly stated in the evidence that a
sword blow had been inflicted in the thigh of Vijay from the
height of the arm of the assailant Bhagat Singh. Likewise,
Rajinder - PW 6 in his statement had stated that Bhagat
F Singh had inflicted a blow in a thrusting manner. Dr. Manju
Arora PW-4, who had conducted the post mortem
examination was cross examined in extenso by the
defence counsel as to the inferences that could be drawn
on the medical evidence and she clearly stated that as the
G direction of the injury was from below to upward and as
the attack had been made from "straight front and stabbing,
then this injury was not possible while standing. If one tries
to cause this injury from sword from upward to downward,
even then, this injury cannot be caused" and further "in the
event of the assailant and the injured standing, assailant
H

has to bend down and take the weapon in such a low position, at least from the side of the entry wound, otherwise, in standing position, this injury cannot be caused". It bears repetition that Vijay had been in a standing position when he had been caused the injury by Bhagat Singh. The doctor has clearly opined that the injury in question could not have been caused as the victim and the assailant were both standing in a normal posture. It can thus, be deduced from the evidence of the doctor that in this situation, the injury could have been found either parallel to the ground or moving from upward to downward.

The presence of the eye witnesses is further belied by another obvious circumstance. As per the prosecution story, Shibu accused had been given a few slaps by Attar Singh PW-5 after he had abused him on the evening of 16th January, 1995. Vijay had not even been present at the time when the slaps had been administered. It is, therefore, obvious that if Shibu bore any malice, it would have been towards Attar Singh and had he been present at the spot standing close by witnessing the attack on Vijay, he would not have been allowed to go scot free and unscathed."

8. The High Court has elaborately highlighted the afore-said aspects to conclude that the prosecution version is highly improbable and lacks credence.

9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. 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

- A 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 reappreciate 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 v. State of M.P.* (2002(4) SCC 85))
- C The principle to be followed by the 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. This position has been reiterated in *Joseph v. State of Kerala* (2003(1) SCC 465), *Devatha Venkataswamy v. Public Prosecutor, High Court of A.P.* (2003(10) SCC 700), *State of Punjab v. Karnail Singh* (2003 (11) SCC 271), *State of U.P. v. Babu* (2003 (11) SCC 280) and *Suchand Pal v. Phani Pal* (2003 (11) SCC 527).
- E

- F 10. When the background facts as noticed by the High Court are tested on the touchstone of the principles set out above, it is clear that the appeals are without merit, deserve dismissal, which we direct.

R.P.

Appeals dismissed.