

RAMA KANT VERMA

v.

STATE OF U.P. & ORS.

(Criminal Appeal Nos. 934-939 of 2001)

DECEMBER 2, 2008

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

PENAL CODE, 1860:

ss.302/149 and 148 – Four persons stated to have been killed by six accused – Trial Court convicting and sentencing four of the accused to death – Acquittal by High Court – Appeals by complainant and State – Held – Conclusions arrived at by High Court are utterly confusing and based on surmises and conjectures – Presence of witnesses has been erroneously discarded – Matter remitted to High Court for disposal afresh in accordance with law.

CONSTITUTION OF INDIA, 1950:

Article 136 – Locus standi of complainant to file appeal – Held: Exercise of power by the Court is not circumscribed by any limitation as to who may invoke it.

Respondents Nos.2 to 5 along with two others were prosecuted u/ss.302/149 and 148 IPC on the allegations that they caused death of four persons by causing injuries to them by 'gandasa', 'banka' etc. at about 2.30 a.m. in the night while the victims were asleep. The victims died on the spot. The incident was stated to have been witnessed by PW1 and PW2. On the alarm raised by them, their father and some other villagers reached there and the accused fled away. The accused were identified by the witnesses in the torch light and the electric light. The cause of the incident was stated to be

- A prior enmity between the two sides owing to a litigation with regard to a land dispute. The trial court convicted respondents 2 to 5 of the offences charged and sentenced them to death. Two of the accused were acquitted. The convicts filed appeal. The State too
- B appealed against order of acquittal of two of the accused. Reference was also made by the trial court in terms of s.366 of the Code of Criminal Procedure, 1973. The High Court allowed the appeal of the accused and acquitted them, dismissed the appeal of the State and rejected the
- C reference. Aggrieved, the complainant and the State filed the appeals.

Allowing the appeals, the Court

- HELD: 1. A bare perusal of the judgment of the High
- D Court shows that the conclusions arrived at by it are utterly confusing and based on surmises and conjectures. The witnesses could not have stated the scenario with surgical precision. The presence of the witnesses has been erroneously discarded. In the
- E circumstances, the matter is remitted to the High Court for hearing the cases afresh and disposing them of in accordance with law. [Paras 6,7,9 and 10] [1020-A; 1022-F; 1024-D; 1025-G]

- F *State of A.P. v. Kandagopaludu* 2005(13) SCC 116 and *B.K. Channappa v. State of Karnataka* 2006(12) SCC 57, relied on.

2. The stand of the accused-respondents that the complainant has no locus standi to prefer any appeal is
- G of no avail. The exercise of power under Article 136 of the Constitution is not circumscribed by any limitation as to who may invoke it. In any event the State has preferred the appeal. [Para 9] [1024-D; 1025-A]

- H *Ramakant Rai v. Madan Rai & Ors.* 2003(12) SCC 395,

relied on.

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Case Law Reference:

2005 (13) SCC 116 relied on para 7

2006 (12) SCC 57 relied on para 8

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2003 (12) SCC 395 relied on para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 934-939 of 2001.

From the Order and Judgment dated 21.12.2000 of the
High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow in Criminal Revision No. 14 of 2000, Criminal Appeal
Nos. 14, 25, 26, 27, 28 of 2000 and Capital Sentence No. 1
of 2000.

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Criminal Appeal Nos. 1202-1206 of 2001.

S.R. Singh, P.S. Mishra, Manoj K. Mishra, V.K. Mishra, Rati
Gupta, Sanjay Visen, Fazail Khan, Anil Kumar Jha, Ajai Bhalla,
Abhinav Jain, Tathagat Harshvardhan and Abha R. Sharma for
the appearing parties.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals
is to the judgment of a Division Bench of the Allahabad High
Court, Lucknow Bench, directing acquittal of the respondents
2 to 5 who were found guilty of offences punishable under
Section 302 read with Sections 149 and 148 of the Indian
Penal Code, 1860 (in short the 'IPC'). Appellant was the
informant in the case. The aforesaid accused respondents
were found guilty of offences punishable under Section 302
read with Section 149 IPC and 148 IPC and each of them was
sentenced to be hanged separately till death. Since
confirmation of the death sentence was required, reference was

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- A made in terms of Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). The convicted accused preferred appeals. The present appellant filed a revision against the judgment and order of acquittal in respect of two persons namely Ram Kripal Verma and Ram Tilak Verma. The
- B High Court allowed the appeal filed by the convicted appellants, while dismissing the revision petition filed by the informant and rejected the reference.

2. The prosecution version as unfolded during the trial is as follows:

- C An F.I.R. was lodged at 6.30 A.M. on 11.11.94 at Police Station, Tarun by Rama Kant (P.W. 1) with the allegation that his cousin Girish Varma was sleeping in the room of the Tube-well alongwith him. His grandfather Sukhai and his uncle Ram
- D Naresh were sleeping under the Chhappar near the tube-well. His brother Umakant Varma (PW2) was sleeping inside the Saria for looking after the cattle. Sukhai and Ram Naresh raised alarm and asked for help, at which Ramakant alongwith Girish came out of the tube-well room after opening its door,
- E and saw that Krishna Murari and Kashi Ram by means of Gandasa and Raghava Ram and Ram Milan by means of Banka, and 2-3 others, who had muffled/covered their faces by means of cloth were causing injuries to Sukhai and Ram Naresh. Ram Dev, another uncle of the informant, was sleeping south of the tube-well under the Chhappar. Ramakant, Umakant
- F and Girish tried to rescue the victims, but the assailants attacked Girish and Ram Dev also by means of their weapons. Ramakant, Uma Kant escaped and ran into the field of Sugarcane and also raised alarm. It was night time 2.30 A.M. on 11 .11.1994 (in between the night of 10th and 11th
- G November, 1984). Due to cries and alarm raised by them, Ram Tej, father of informant, and several villagers came with lathis and torches. The assailants ran away towards south. It was further alleged that the four appellants were seen and identified by Ramakant (PW 1) Uma Kant (PW 2), Ram Tej and villagers
- H in the light of the torches and in the electricity light. It was also

alleged that litigation in respect of land had been going on in between the victims and appellant Krishna Murari. The cattle of Krishna Murari were sent to the house of Ram Kripal ten days prior to the occurrence and he had also sent his family out of the village to his wife's house in another village. Rama Kant further alleged that in the morning Daljeet Singh (PW3), Jaising Mau and Hari Om (PW4) told him that on 10.11.94 at 9.00 A.M. the appellants were seen by them, taking non-vegetarian food alongwith Ram Tilak and Ram Kripal at the shop of Ram Kripal. Ramakant therefore, alleged his suspicion against Ram Kripal and Ram Tilak as the persons who were instrumental in the commission of this crime conspiring with the appellants. All the four victims had died on the spot. Leaving them there as such on the spot, he lodged the written report (Ext.Ka.1) at the Police Station where its check report (Ex.Ka.16) and G.D.entry(Ex.Ka.17) was prepared by Ram Harsh Yadava (PW12) head constable and thus a case crime No.156 of 94 was registered. Investigation was given to the Station Officer of the P.S. Sudhakar (PW 10) who, at the time of registering of the case, was busy in his duty at Ayodhya in "Chaulah Kosi Parikarima" and who on receiving information of this case reached PS Tarun, and obtained copy of the FIR and other relevant papers from the PS and reached the spot of occurrence in village Bearauli at about 9.00 A.M. and found other police personnel including Riaz Khan of P.S, Haiderganj, and Sibte Haider SSI (PW13) of PS Tarun. He got the inquest reports of the dead Sukhai and Ram Naresh prepared through Riaz Khan. S.I. Riaz Khan died before the evidence and the inquest reports and connected papers Ext.Ka 25 to Ext.Ka 36 were proved by Ram Narain Pandey (PW 14) and also got the inquest reports in respect of deceased Ram Dev and Girish prepared through PW 13 Sibte Haider S.I. (Ex.Ka 17. 18 and Ka.20 to 24) under his supervision and direction. He sent the dead bodies for *post mortem* examination to Faizabad through constables at about 12.15 P.M. on that very day i.e. 11.11.1994.

Sudhakar Pandey I.O. (P.W.10) took down the statements

- A. of Rama Kant Derma (PWI), Manik Lal Varma (PW7) and Munna Lal (PW 8). He inspected the place of occurrence at the instance of the witnesses of fact and prepared the map of the site (ExKa 6). He found the dead body of Sukhai on a Cot and found Kathri and Chadar and Razai thereon stained with the blood of the deceased and found blood stained on the wall and prepared its recovery memo (ExKa.7) and sealed these articles with a material taken from the wall as well. Similarly, the dead body of Ram Naresh was on a cot with Angocha, Kathri, Chadar, another coloured chadar and one bush-shirt stained with blood. There were stains of blood on the wall and the memo (Ex Ka8) thereof was also prepared and articles with blood on walls were sealed separately. In the same manner, dead body of Ramdev was found on the Cot with kathri, chadar, banyan, gamchha stained with blood, and blood was found on the ground near the Cot. These articles were sealed and blood stained and sample earth was taken and sealed separately and memo (Ex.Ka9) was prepared by him. The bedding consisting of Kathri, Rajai and two chadars and Tehmad of deceased Girish were found on the cot which was also stained with blood. The dead body of Girish was found in a pit (gaddha) where his blood had also fallen down. Blood stained and sample earth were taken into possession and were sealed separately by the I.O. and memo of this and other articles was prepared (Ex.Ka 10). Then statements of witnesses were taken down. He arrested Kashiram, Raghava Ram and Ram Tilak on the same day. He was transferred from Tarun P.S. on 13.11.94. The investigation then was conducted by his successor Ashutosh Sharma (PW 11), who arrested Ram Milan and recorded the statements of remaining witnesses and then submitted charge sheet (Fa.Ka15) against the six named persons.
- G. *Post-mortem* on the dead bodies was conducted by Dr. O. P .Khattri (PW-9).

H. After investigation charge sheet was filed. As all the six persons alleged false implication, trial was held. Accused

persons were examined by one head constable Nahar Singh of the CB CID Dog squad Head Quarter, Lucknow. Fourteen witnesses were examined to further the prosecution versions. Ramakant (PW1), Umakant (PW2), Daljeet Singh (PW 3), Hari Om (PW4), Amar Jeet Singh (PW5), Mithai Lal (PW 6) Manik Ram Varma (PW7) and Munna Lal (PW8) were stated to be eye witnesses. The trial court believed prosecution versions and disbelieved the defence plea and convicted and sentenced the accused persons as aforesaid. In appeal the High Court directed acquittal.

3. Learned counsel for the appellants submitted that the conclusions of the High Court are utterly fallacious and mostly based on surmises and conjectures. It has not even analysed the factual conclusions.

4. In response, learned counsel for the acquitted accused persons submitted that analysis have been made from the evidence of PWs 1 & 2 by the High Court to point out the infirmities. Identification was not possible, and, therefore, the presence as claimed is doubtful. So the High Court is correct in its conclusions. Even if the reasons are not elaborate, the evidence of PWs 1 & 2 has to be read together and a reasonable doubt is raised about the credibility of these witnesses. There are manifest suppressions. Vital factors like absence of light in the chappars and improbability of any light emanating from the bulbs hanging on the Neem Tree have been taken note of. The room and the chappars are at the distance of 100 metres and, therefore, the possibility by identification was rightly disbelieved. Except one dead body, found in the pit, others were found in lots. Since the accused persons are known co-villagers, there had obvious reasons to hide their identity. There were omissions in the inquest report and there was also delay in sending the FIR and the inquest report. Since all relevant aspects have been considered, in an appeal of acquittal, so far as the appellants are concerned, no interference is called for.

A 5. In the State's appeal similar stand to that of the informant have been taken.

B 6. A bare perusal of the High Court's orders shows that the conclusions of the High Court are utterly confusing and based on surmises and conjectures. A few instances about the absurd conclusions are as follows:

C "A reading of the *post mortem* examination report indicates that the four persons were done to death without any hindrance or interference and without any person resisting forcefully and without raising any alarm.

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D It was alleged in the FIR that the miscreants were seen and identified by Ramakant, Umakant, Ram Tej and "villagers" in the light of electricity and torches.

E PW1 Ramakant says that he had a torch with him. He is unable to say as to why he did not show it to the I.O. or why its memo was not prepared or why the I.O. was not told about it.

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F It is stated that it was dark in the field. It was not mentioned in the FIR that any of these persons had any torch with them at that crucial time. The dispute of presence of electricity light would have been done away with if the torches had been with them. But PW 2 says that there was no other source of light there except the bulbs but PW 1 says that he had a torch; and was unable to say whether PW2 had it or not. This shows that none of them was even present on the spot. The story about torch is quite false.

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H There was no mention in the FIR that there were two

bulbs or these were hanging on the two trees. Conspicuously the entire story, at all places, is silent about the miscreants having any torch etc.

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According to PW 2 Umakant and PW1 Ramakant none of the male family members were sleeping in the house in the village and all the male members of the family were sleeping at the tube-well. Although there is nothing very much abnormal in it, but under the circumstances this does not seem to be the truth. The presence of Ramakant and Umakant on the spot is highly doubtful and rather false. PW 2 says that all the appellants had open faces, whereas the other three persons had muffled their faces by cloth and had come to commit the crime taking advantage of night and without raising any alarm or noise. And that their houses are next to their house and some are within a radius of 100 metres. This all appears to be unbelievable in view of the above and is thus false.

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FIR number and distance of P.S. from the place of occurrence which find mention in the F.I.R., have not been mentioned in the four inquest reports prepared by the two police officers under the supervision and direction of the I.O.

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Even there is no GD on record of the arrival of the IO to the PS for taking the papers, and of departure for the spot on 11.11.1994.

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Though normally these things do not matter much and in normal cases prosecution cannot be made to suffer

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A due to faults and latches on the part of investigating agency or other police officials. But in the facts and special circumstances of this case, these become material.

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B The Doctor (PW 9) conducted *post mortem* of the dead bodies on 12.11.1994 w.e.f. 11 AM and last was started at 3PM if the dead bodies had been received earlier then the *post mortem* could have been conducted earlier in the morning, or could have been conducted the same day. The doctor was also not categorical in his statement about the FIR. The time of death was approximate and it could not definitely be said that the occurrence took place at 2.30 AM. These all facts are fatal to the case of prosecution and indicate that FIR was prepared some time later on and was ante timed.

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E After arrival of the police, efforts were made to find out the culprits and for that purpose help of the dog squad was also taken. And when dog squad also failed then the case was made out naming those with whom there was enmity, and that must have been done on suspicion. The FIR was ante-timed."

F 7. The witnesses could not have stated the scenario with surgical precision. In *State of A.P. v. Kandagopaludu* [2005(13) SCC 116] it was inter alia observed as follows:

G "We have been taken through the evidence of PWs 1, 2 and 3 before whom extra-judicial confession has been made by the accused. The testimony of PWs 1, 2 and 3 is consistent. The learned counsel for the respondent pointed out that in the evidence of PWs 1 and 2 there is contradiction that the accused did not state before them that he came seeking protection from them. In our view, this discrepancy cannot be termed as a contradiction which

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would be fatal to the prosecution case. Every discrepancy in the statement of a witness cannot be treated as fatal to the prosecution case. A discrepancy which is not fatal to the prosecution does not create any infirmity. The incident had taken place on 24-1-1992 and PW 2 was examined on 22-1-1996 after almost four years. Human memories are apt to blur with the passage of time. After lapse of almost four years, it cannot be expected that a witness can depose with mathematical precision."

8. In *B.K. Channappa v. State of Karnataka* [2006(12) SCC 57] it was *inter alia* observed as follows:

"We have independently scrutinised the evidence of the material witnesses in the teeth of the rival contentions of the parties. On reappraisal and scrutiny of the evidence of the injured witnesses Shekharappa (PW 2), B.G. Shivamurthaiah (PW 3) and B.G. Prakashiah (PW 4), they have fully established the case of the prosecution against A-2, A-3, A-17, A-19 and A-20, although there were certain discrepancies in their testimony and in comparison to the versions of PW 6, PW 7 and PW 19, the eyewitnesses, in regard to the weapons of offence individually used by A-1, A-3, A-17, A-19 and A-20 for inflicting injuries on the person of each of the injured witnesses as also on the person of the deceased. The discrepancies, as pointed out by the learned counsel for the appellants, are minor and insignificant. The occurrence took place on 5-7-1995 and the witnesses were examined in the court after about a gap of almost five years. The evidence on record further shows that the injured witnesses had been subjected to lengthy and searching cross-examination and in such type of cross-examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot be treated as very serious, vital and significant so as to disbelieve and discard the substratum of the prosecution case. The evidence of the injured witnesses and other eyewitnesses

A has been rightly reappreciated and accepted by the High
Court and we find no cogent and sound reason to differ
from the well-reasoned judgment upholding the order of the
trial court. There is, therefore, no merit in the argument of
the learned counsel for the appellants that the evidence of
B the injured witnesses and other eyewitnesses should be
labelled as the evidence of the interested witnesses. On
the other hand, we find that the evidence of all the
eyewitnesses including injured persons is quite natural,
convincing and trustworthy. There is no material on record
C from which an inference can be drawn that the material
witnesses have implicated the appellants Karibasappa (A-
2), Halanaika (A-3), B.K. Manjunatha (A-17), B.K.
Parmeshwarappa (A-19) and B.K. Shivarajappa (A-20) in
a false case.

D 9. There is substance in the plea by learned counsel for
the appellant that the presence of the witnesses has been
erroneously discarded. It was submitted by the respondents-
accused that the complainant has no locus standi to prefer any
appeal. In any event, State has preferred appeal. In *Ramakant*
E *Rai v. Madan Rai & Ors.* [2003(12) SCC 395] it was inter alia
observed as follows:

"A doubt has been raised about the competence of a
private party as distinguished from the State, to invoke the
jurisdiction of this Court under Article 136 of the
F Constitution of India, 1950 (in short the 'Constitution')
against a judgment of acquittal by the High Court. We do
not see any substance in the doubt. Appellate power
vested in this Court under Article 136 of the Constitution
is not to be confused with ordinary appellate power
G exercised by appellate courts and appellate tribunals under
specific statutes. It is a plenary power, 'exercisable outside
the purview of ordinary law' to meet the pressing demands
of justice (See *Durga Shankar Mehta v. Thakur Raghuraj*
Singh (AIR 1954 SC 520). Article 136 of the Constitution
H neither confers on anyone the right to invoke the jurisdiction

of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Criminal Procedure Code, 1973 (in short the "Code") does not provide for an appeal to the High Court against an order of acquittal by a subordinate Court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in *Mohan Lal v. Ajit Singh* (1978 (3) SCC 279) this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, well established by the practice of this Court.

10. In the circumstances, we deem it proper to remit the matter to the High Court for hearing the cases afresh and dispose them of in accordance with law.

11. The appeals are allowed.

R.P.

Appeals allowed.