

(2012) 10 CHH CK 0003
In the Chhattisgarh High Court
Case No : Acquittal Appeal No. 195 of 2010

State of M.P. (now Chhattisgarh)

APPELLANT

Vs

Parmeshwar Nai

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 450

Citation : (2012) 3 CG.L.R.W. 274

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Vinay Harit, Dy. A.G, for the Appellant; P.P. Sahu and Shri Aditya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sharma, J.—This appeal is directed against judgment dated 24-12-1997 passed by Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No. 454/1995. By the impugned judgment, accused/respondent Parmeshwar Nai has been acquitted of the charges framed under Sections 450 and 302 of the Indian Penal Code. Case of the prosecution, in brief, is as under:

Respondent Parmeshwar Nai is uncle of Tikendra Kumar (PW-5). Deceased Kalyanibai was wife of Tikendra Kumar (PW-5) and deceased Vikki, aged about 10 months and deceased Pappu @ Tumanlal, aged about 3 years were sons of Tikendra Kumar (PW-5) and deceased Kalyanibai. On 14-8-1995, at about 11:30 P.M., deceased Kalyanibai was sleeping in her house alongwith her children Vikki and Pappu @ Tumanlal. At that time, the respondent entered the house of Tikendra Kumar (PW-5). He pressed nose and mouth of Vikki and Pappu @ Tumanlal, killed and threw them in the well situated behind the house of Tikendra Kumar (PW-5). The respondent also assaulted deceased Kalyanibai with a spade and strangulated her. Merg Intimation (Ex. P-26, P-27 and P-28) were recorded in Police Station Berla in respect of deceased persons Kalyanibai, Pappu alias

Tumanlal and Vikki, respectively. The Investigating Officer reached the place of occurrence and recorded Dehati Nalishi in respect of deceased persons Kalyanibai, Pappu alias Tumanlal and Vikki vide Ex. P-35, P-36 and P-37, respectively. He gave notices (Ex. P-29, P-30 and P-31) to the Panchas and prepared inquests (Ex. P-5, P-6 and P-12) on the dead bodies of deceased persons Pappu @ Tumanlal, Kalyanibai and Vikki, respectively. The dead bodies were sent to Primary Health Centre, Berla for post mortem examination vide Ex. P-32, P-33 and P-34. Regular First Information Report (Ex. P-1) was registered in Police Station Berla. Dr. Vishnu Prasad Agrawal (PW-7) conducted post mortem on the dead bodies of deceased persons Kalyanibai, Vikki and Pappu @ Tumanlal and gave his reports (Ex. P-13, P-14 and P-15, respectively). In post mortem report (Ex. P-13) of deceased Kalyanibai, Dr. Vishnu Prasad Agrawal (PW-7) found multiple incised and lacerated wounds, fracture on left supra-orbital margin of frontal bone, fracture over left parietal and adjoining temporal region, fracture on left mandible post part, fracture on cricoid cartilage, fracture in 2nd and 3rd ribs, anterior part. He opined that the death was due to asphyxia and the cause of asphyxia was strangulation due to solid substance and suffocation due to pressure over chest. In post mortem report (Ex. P-14) of deceased Vikki, he found (i) abrasion over lower lip, 0.6 cm x 0.3 cm, (ii) contusion over lower lip, 0.3 cm x 0.4 cm, (iii) contusion over upper lip, 1 cm x 0.6 cm, (iv) contusion over left of nostril, 0.4 cm x 0.3 cm and (v) contusion over right side of nostril, 0.5 cm x 0.5 cm. He opined that mode of the death was due to asphyxia, may be due to closure of mouth and nostril. In post mortem report (Ex. P-15) of deceased Pappu alias Tumanlal, he found 2 abrasions and 4 contusions on the lip and nostril of the deceased. He opined that mode of the death was due to asphyxia, may be due to closure of mouth and nostril.

In further investigation, site-map (Ex. P-20) was prepared by Patwari Lakheshwar Singh Kashyap (PW-8). Memorandum statement (Ex. P-8) of the respondent was recorded u/s 27 of the Evidence Act and at his instance, spade was seized vide Ex. P-9, Blood stained soil, plain soil, piece of wood smeared with blood, 2 bed-sheets, 1 blanket and pieces of bangles were seized from the place of occurrence vide Ex. P-10. Lungi, shirt and underwear were also seized from the respondent vide Ex. P-11. 2 slides of semen of the respondent were prepared and seized vide Ex. P-2. Hair of the head of the respondent were seized vide Ex. P-3. Shirt of deceased Pappu alias Tumanlal, smeared with blood, was seized vide Ex. P-4. The seized articles were sent to Forensic Science Laboratory, Sagar. Report (Ex. P-39) was received therefrom. The seized articles were also sent to Serologist at Calcutta (Kolkata). Report (Ex. P-40) was received therefrom.

After completion of the investigation, charge sheet was filed against the accused/respondent in the Court of Judicial Magistrate First Class, Bemetara, who, in turn, committed the case to the Court of Session, Durg, from where, it was received on transfer by the Additional Sessions Judge, Bemetara, District Durg, who conducted the trial, framed charges against the respondent and acquitted him as

mentioned above.

2. Shri Vinay Harit, learned Deputy Advocate General for the State/appellant argued that the trial Court did not properly appreciate the evidence of the prosecution witnesses. Memorandum statement of the respondent was recorded u/s 27 of the Evidence Act and at his instance, a spade, on which blood was found, was seized. The learned trial Court wrongly disbelieved the evidence of recovery and acquitted the respondent. Therefore, the impugned judgment of acquittal is not sustainable and the appeal deserves to be allowed.

3. Shri P.P. Sahu and Shri Aditya Kumar, learned counsel for the respondent, supporting the impugned judgment of acquittal, submitted that the judgment passed by the learned trial Court, being well reasoned, is impeccable and does not warrant any interference by this Court. They further argued that if two views are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Hence, the appeal deserves to be dismissed.

4. We have heard learned counsel for the parties at length and have also perused the record of Sessions Trial No. 454/1995.

5. Now, we shall examine whether the judgment of acquittal passed by the learned trial Court is perverse and deserves to be set aside?

Appeal Against Acquittal:

6. In Jugendra Singh Vs. State of U.P., , the Hon''ble Supreme Court observed thus:

17. To appreciate the submissions raised at the bar and to evaluate the correctness of the impugned judgment, we think it appropriate to refer to certain authorities in the field which deal with the parameters for reversing a judgment of acquittal to that of conviction by the appellate court.

18. In Jadunath Singh and Others etc. Vs. State of Uttar Pradesh, a three Judge Bench of this High Court held thus:--

This Court has consistently taken the view that an appeal against acquittal the High Court has full power to review that at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in Sheo Swarup and Others vs. King Emperor and AIR 1945 151 (Privy Council) . These two decisions have been consistently referred to in judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals: see Surajpal Singh and Others Vs. The State, and Sanwat Singh and Others Vs. State of Rajasthan,

19. In Damodarprasad Chandrikaprasad and Others Vs. State of Maharashtra, it has been held that once the Appellate Court comes to the conclusion that the

view of the trial court is unreasonable, that itself provides a reason for interference. The two-Judge Bench referred to the decision in *The State of Bombay Vs. Rusy Mistry and Another*, to hold that if the finding shocks the conscience of the Court or has disregarded the norms of legal process or substantial and grave injustice has been done, the same can be interfered with.

20. In *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*, the three-Judge Bench opined that there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage of our jurisprudence owes to individual liberty constrains the higher court not to upset the finding without very convincing reasons and comprehensive consideration. This Court further proceeded to state that the cherished principles of golden thread to prove beyond reasonable doubt which runs through the wave of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. Emphasis was laid on the aspect that a balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish the marginal innocents.

21. In *State of Karnataka Vs. K. Gopalakrishna*, it has been held that where the findings of the Court below are fully unreasonable to perverse and not based on the evidence on record or suffer from serious illegality and include ignorance and misreading of record, the Appellate Court will be justified in setting aside such an order of acquittal. If two views are reasonably possible and the view favouring the accused has been accepted by the court below, that is sufficient for upholding the order of acquittal. Similar view was reiterated in *Ayodhya Singh Vs. State of Bihar and Others*,

22. In *Anil Kumar Vs. State of U.P.*, it has been stated that interference with an order of acquittal is called for if there are compelling and substantial reasons such as where the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated.

23. In *Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh*,) it has been observed that in an appeal against acquittal, the Appellate Court has every power to re-appreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is a presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court, but that is not the end of the matter. It is for Appellate Court to keep in view the relevant principles of laws of re-appreciate and reweigh as a whole and to come to its own conclusion in accord with the principle of criminal jurisprudence.

24. In *State of Goa Vs. Sanjay Thakran and Another*, it has been reiterated that

the Appellate Court can peruse the evidence and interfere with the order of acquittal only if the approach of the lower court is vitiated by some manifest illegality or the decision is perverse.

25. In *State of U.P. Vs. Ajai Kumar*, the principles stated in *State of Rajasthan Vs. Sohan Lal and Others*, were reiterated. It is worth noting that in the case of *Sohan Lal*, it has been stated thus:--

This Court 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.

26. In *Chandrappa and Others Vs. State of Karnataka*, this Court held as under:--

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on

record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

27. In *S. Ganesan Vs. Rama Raghuraman and Others*, one of us (Dr. B.S. Chauhan, J), after referring to the decision in *Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra*, considered various aspects of dealing with a case of acquittal and after placing reliance upon earlier judgments of this Court, particularly in *Balak Ram Vs. State of U.P.*, *Budh Singh and Others Vs. State of U.P.*, *S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs. and Others*, *Arulvelu and Another Vs. State* represented by the Public Prosecutor and Another, and *Babu Vs. State of Kerala*, held that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal. Similar view has been reiterated in *Ranjitham Vs. Basavaraj and Others*, and *State of Rajasthan Vs. Shera Ram @ Vishnu Dutta*,

7. In *Kilakkatha Parambath Sasi and Others Vs. State of Kerala*, the Hon"ble Supreme Court observed thus:

10.....It is true that in *Arulvelu and Another Vs. State* represented by the Public Prosecutor and Another, and a string of earlier and later judgments, it has been held that the High Court should not interfere in an appeal against acquittal save in exceptional cases, and that interference in such an appeal was called for only if the findings of the Trial Court were not borne out by the evidence and were perverse. It is however equally well established that the High Court can re-appraise the evidence so as to find out as to whether the view taken by the Trial Court was justified or not and if it finds that the Trial Court's findings were not possible on the evidence, interference must be made failing which there would be a travesty of justice.....

8. In *Haricharan and Another Vs. State of Madhya Pradesh and Others*, the Hon"ble Supreme Court observed thus:

9.....

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in

the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

9. Tikendra Kumar (PW-5) deposed that deceased Kalyanibai was his wife and deceased Vikki and deceased Pappu alias Tumanlal were his sons. The respondent is his uncle (real brother of his father). Deceased Kalyanibai was Soni by caste, therefore, the respondent and his other uncle Govind and grand mother Kejabai used to create disputes with the deceased. Therefore, he was demanding his share in the property from the respondent and Govind.

10. Ramnarayan (PW-4) deposed that deceased Kalyanibai, wife of Tikendra Kumar (PW-5), was Soni by caste, therefore, some dispute was being created by the respondent. Tikendra Kumar (PW-5) had called a meeting in the village for partition. The respondent, Lakhan, Makhan, Govind and Madhav were present in the meeting. Madhav is father of Tikendra Kumar (PW-5).

11. Looking to the evidence of Ramnarayan (PW-4) and Tikendra Kumar (PW-5), it appears that there was some land dispute between the respondent and Tikendra Kumar (PW-5).

12. Now, we shall examine whether the above dispute is sufficient to hold the respondent guilty of committing murder of Kalyanibai, Vikki and Pappu alias Tumanlal.

13. Tikendra Kumar (PW-5) deposed that it is true that Makhan had taken responsibility of Pushpa and Tikeshwari, Lakhan had taken responsibility of Janki and the respondent had taken responsibility of Tikendra Kumar (PW-5). He nowhere stated in his deposition that the respondent killed the 3 deceased persons. He deposed that police had taken Prahalad, Dhruw and Lakhan to police station under suspicion. Ramnarayan (PW-4), Chummanlal (PW-3) and Sukhchainlal (PW-1) also deposed in similar fashion. Sukhchainlal (PW-1) specifically deposed that he and the respondent had gone to the police station to lodge the report. The police official had enquired from Lakhan, Prahalad and Dhruw. It appears that firstly the Investigating Officer started investigation keeping in view Lakhan, Prahalad and Dhruw as suspects.

14. The prosecution adduced the evidence of memorandum statement of the respondent and recovery of spade at the instance of the respondent as also recovery of hair of the respondent.

15. Sub-Inspector V.P. Singh (PW-11) deposed that he recorded the memorandum statement (Ex. P-8) of the respondent and at the instance of the respondent, seized the spade vide Ex. P-9. He further deposed that hair of the head of the respondent was also seized vide Ex. P-3. The seized articles were sent to the FSL for chemical examination.

16. Punitdas (PW-2) deposed that the hair of the respondent was seized vide Ex. P-3. Chummanlal (PW-3) deposed that the spade was seized from the respondent vide Ex. P-9.

17. Sub-Inspector R.K. Sharma (PVV-9) deposed that he sent the seized articles to FSL, Sagar for chemical examination. In FSL Report (Ex. P-39), article A-patra of wood, CI and C2-bed-sheets, D-blanket, E-hair, F-blood stained soil, H-spade, 11 and 12-petticoat and blouse were found stained with blood. In Serological Report (Ex. P-40), article 33-wooden patra, 34 and 35-bed-sheets, 36-blanket, 37-blood stained soil, 38-spade, 39-petticoat, 40-blouse, 41 and 42-shirts and 44-underwear were found stained with human blood. Rest of the items were disintegrated and blood group could not be determined. The above articles were found stained with human blood but their blood group could not be determined.

18. In *Ashish Batham Vs. State of Madhya Pradesh*, , the Hon"ble Supreme Court observed as follows:

8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

19. In the instant case, only the presence of human blood was reported on the seized articles, but their blood group could not be determined. It was also not determined that the blood found over the spade was matching with the blood group of the deceased or with the blood found over articles of the deceased.

Therefore, mere the seizure of spade and hair of the head of the respondent in the above manner was not sufficient to connect the respondent with the crime in question.

20. We have gone through the entire evidence on record with a view to find out as to whether the view taken by the learned trial Court is perverse or otherwise unsustainable. After going through the entire evidence available on record, we do not find any compelling and substantial reason to interfere with the judgment of acquittal. It is not a case in which the judgment may be said to be unreasonable or a case in which relevant and convincing materials have been eliminated in the process of appreciation. For the foregoing reasons, we do not find any infirmity in the finding of acquittal recorded by the learned trial Court. The appeal is liable to be and is hereby dismissed.