

Court No. - 9

Case :- GOVERNMENT APPEAL No. - 862 of 2002

Appellant :- State of U.P.

Respondent :- Ram Sahai And 4 Others.

Counsel for Appellant :- Govt.Advocate

Counsel for Respondent :- Nishit Upreti, Abhishek Misra, O.P Mishra, Ruhi Siddiqui, Satyendra Singh

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(ORAL)

1. Heard learned A.G.A. for the State/ appellant, learned counsel for the accused/ respondents and perused the material available on record.

2. Under challenge in this government appeal is the impugned judgment and order dated 27.03.2002 passed by the learned Additional District & Sessions Judge, Barabanki in Sessions Trial No.753 of 1977 titled State vs. Ram Sahai and others, arising out of Crime No.47 of 1995, under Sections 147, 148, 149, 323, 324, 325, 504, 506 and 307 of the Indian Penal Code¹, Police Station Ghunghter, District Barabanki, whereby the accused/ respondents were acquitted of the charges under Sections 307 read with Section 149, 325 read with Section 149, 147, 148, 504 and 506 I.P.C.

3. At the outset, it is relevant to mention that the present government appeal has been filed against five

¹ hereinafter referred to as "I.P.C."

accused/ respondents, namely, Ram Sahai, Satya Prakash, Nanhoo @ Narayan, Dinesh and Hari Shankar. However, the appeal in respect of accused/ respondent No.2, Satya Prakash, has already been abated by this Court vide order dated 13.08.2002. Thus, the preset appeal survives in respect of accused/ respondents No.1 and 3 to 5 only.

4. The case of the prosecution in nutshell is that a written report, Ext. Ka-1 came to be lodged by the first informant, P.W.-1, Rakesh Kumar on 08.8.1995 stating therein that when the first informant along with his father, P.W.-2, Swami Dayal and his uncle , P.W.-3, Mahaveer had gone to cut grass towards the Southwest direction of the village, at about 10:00 AM in the morning, all the five named accused persons assaulted his father and his uncle on the exhortation made by the accused, Ram Sahai. It was also mentioned in the written report that the accused, Ram Sahai was armed with *kanta*, whereas, accused, Satya Prakash was armed with *bhala*, and the accused Nanhoo @ Narayan was carrying a *lathi*. The brother-in-law of the accused, Satya Prakash was carrying a countrymade firearm (*addhi*), whereas, brother-in-law of the accused, Ram Sahai, namely, Hari Shankar was carrying an iron rod (*sariya*). It is further stated in the written report that when the accused persons chased him to assault, the first informant ran towards the village. On the alarm raised by the first informant, the villagers, Vinod Kumar, Ram Sewak and many other villagers, who were present

in the nearby fields, came to the spot, who also witnessed this incident. The arrival of various aforesaid persons, who came to the rescue of the first informant, led to the accused persons fleeing away from the spot, who threatened the first informant and his family members to kill them. According to written report Ext. Ka-1, the father and uncle of the first informant were brought in an injured condition to police station.

5. The injured persons, namely, Swami Dayal and Mahabeer were examined and their injury reports were proved as Ext. Ka-4 and Ext. Ka-5 respectively. According to injury report, Ext. Ka-4 of injured, Swami Dayal, following injuries were reported on the body of injured, Swami Dayal :-

"1. Multiple laceration (5 in number) on left forearm with feeling of bone illegible of # KUO Adv X-ray, laceration 1 x 0.5 to 0.5 x 0.5 in size.

2. Abrasion 1 x 0.5 cm on back of left arm 10 cm above elbow.

3. Laceration 1 x 0.5 cm on medial aspect of right leg 4 cm above ankle fresh blood.

4. Laceration 1 x 0.5 cm on outer of left leg just above ankle fresh blood.

5. Laceration 1 x 0.5 on outer of left knee. Fresh blood.

6. Abrasion 1 x 1 cm on top of right shoulder.

7. Contusion 5 x 3 cm on iliac illegible of left side (ASI illegible area) with pain on left hip. Adv X-ray.

8. Incised wound 1 X 0.5 cm on medical aspect of left thumb 2 cm above tip.”

According to injury report Ext. Ka-5 of the injured, Mahaveer, following injuries were reported on his body :-

“1. Incised wound 8 x 2 cm, bone deep on illegible of right forearm 2 cm above wrist. Fresh bleeding.

2. Abraded area of 7 x 1.5 cm on back of right shoulder.

3. Laceration 1 x 1 / 2 cm on medial aspect of right leg 15 cm below knee. Fresh bleeding.

4. Traumatic swelling around left knee. KUO Adv. X-ray

5. Abrasion 4 x 2 cm just below knee.”

6. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, P.W.-1, Rakesh Kumar, the first information report, Ext. Ka-2 came to be lodged against the accused/ respondents on 08.08.1995 at 12:25 Hrs. for the offence under Sections 147, 148, 149, 307, 324, 325, 504 and 506 I.P.C. at Police Station Ghunghter, District Barabanki.

7. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared the site plan thereof Ex. Ka-8.

² hereinafter referred to as Cr.P.C.

8. Upon conclusion of investigation, the Investigating Officer, submitted a charge sheet, Ext. Ka-9 against the accused/ respondents No.1 to 4 for the offence under Sections 147, 148, 149, 307, 324, 325, 323, 504 and 506 I.P.C. He also submitted a charge sheet, Ext. Ka-10 against the accused/ respondent No.5 for the offence under Sections 147, 148, 149, 307, 324, 325, 323, 504 and 506 I.P.C.

9. Charges for the offences under Sections 307 read with Section 149, 325 read with Section 149, 147, 148, 504 and 506 I.P.C. were framed against the accused/ respondents, who denied the charges and claimed to be tried.

10. In order to bring home guilt of the accused/ respondents, the prosecution has examined the first informant, Rakesh Kumar as P.W.-1, Swami Dayal, who is an injured witness, as P.W.-2 and Mahaveer, who is also an injured witness, as P.W.-3.

11. The accused/ respondents in their statements recorded under Section 313 Cr.P.C. have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case and they claimed to be innocent.

12. No evidence in defence was adduced by the accused/ respondents before the learned trial court.

13. The learned trial court, after appreciating the evidence available on record adduced by the prosecution and by the accused, acquitted the accused/ respondents as stated herein above.

14. In such circumstances referred to above, the appellant/ State is before this Court with the present government appeal.

15. The State sought leave to appeal which appears to have been granted to them vide order dated 04.7.2002 passed by a co-ordinate Bench of this Court.

16. Learned A.G.A. for the appellant/ State has submitted that the prosecution had proved its case on the basis of reliable testimonies of prosecution witnesses.

17. His further submission is that the prosecution witnesses of fact, namely, P.W.-1, Rakesh Kumar, who is the first informant, and P.W.-2, Swami Dayal, who is an injured witness, have deposed against the accused/ respondents in a consistent manner, therefore, learned trial court erred in disbelieving reliable testimonies of prosecution witnesses, which renders the impugned judgment and order dated 27.03.2002 perverse.

18. His next submission is that even injury reports of the injured, namely, Swami Dayal and Mahaveer, which have been proved as Ext. Ka-4 and Ex. Ka-5, respectively, corroborates the prosecution story.

Therefore also the acquittal of the accused/ respondents was not justified.

19. It is also submitted by the learned A.G.A. for the State/ appellant that the impugned judgment and order dated 27.03.2002 has been passed against the weight of evidence available on record. Therefore also, the same deserves to be set aside.

20. His further submission is that the learned trial court has failed to appreciate the prosecution evidence in its correct perspective which led the learned trial court to arrive at a wrong conclusion that prosecution has failed to prove its case beyond reasonable doubt, therefore, the impugned judgment and order dated 27.03.2002 being perverse deserves to be set aside and the surviving accused/ respondents deserve to be convicted for the offences, for which, they were charged by the trial court.

21. Per contra, learned counsel for the surviving accused/ respondents No.1 and 3 to 5 has vehemently submitted that having regard to the fact that one of the injured witnesses, namely, Mahaveer, who is stated to have received injuries in the same incident, has not supported the prosecution case and he was declared hostile by the prosecution. This fact shows that the prosecution has not come up with the real case before the Court.

22. Her further submission is that having regard to the settled legal position in this regard that unless the finding of the trial court is perverse and is based on conjectures and surmises only, it is impermissible for the appellate court to interfere with the judgment.

23. Having heard learned A.G.A. for the State, learned counsel for the respondents and upon a close scrutiny of the evidence available on record including the impugned judgment, we find that learned trial court has recorded categorical finding of fact that, in fact, the two injured persons received injuries in this incident, however, the prosecution has failed to establish that such injuries, which were reported on the person of the injured persons, were caused by the accused persons or somebody else.

24. The mode of appreciation of evidence in an appeal against acquittal was discussed by Hon'ble the Supreme Court in **Brahm Swaroop and another vs. State of Uttar Pradesh**³. Paragraph No.38 of which is extracted herein below :-

"38. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference

³ (2011) 6 SCC 288

with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference.”

(emphasis supplied by us)

25. Hon'ble Supreme Court in the case of **Chandrappa and others v. State of Karnataka**⁴ has held that an appellate court 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. It also held that 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.

26. The principles laid down by Hon'ble Apex Court in **Chandrappa's case (supra)** have been quoted with approval by Hon'ble Supreme Court in **Rajesh Prasad v. State of Bihar**⁵.

27. Learned trial court, after due analysis of the evidence available before it, has also recorded a finding of fact that there was some enmity between the parties,

⁴ (2007) 4 SCC 415

⁵ (2022) 3 SCC 471

which gives rise to the possibility of false implication of the private respondents. It also transpires from the impugned judgment and order that the parties had settled their dispute to give quietus to their long-standing dispute. The fact that the learned trial court noted material contradictions in the statements of the two injured persons, who, according to the prosecution, had received injuries in the same incident, also led the learned trial court to disbelieve the prosecution's story, which, in our considered opinion, cannot be faulted, as it is based on a detailed analysis of the testimonies of the prosecution witnesses examined before the learned trial court. The conclusions drawn by the learned trial court in acquitting the private respondents are a possible view of the matter based on the evidence on record. Thus, having regard to the overall facts and circumstances of this case, we do not find any perversity in the impugned judgment and order dated 27.03.2002.

28. We are fortified by a judgment rendered by Hon'ble the Supreme Court in **R. Sreenivasa vs. State of Karnataka**⁶, wherein, Hon'ble the Supreme Court in paragraph Nos.17 and 18 has held as under:-

"17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In Laxman

⁶ 2023 SCC OnLine SC 1132

*Prasad v. State of Madhya Pradesh, (2023) 6 SCC 399, we had, upon considering Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 and Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750, held that '... In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.' It would be unsafe to sustain the conviction of the appellant on such evidence, where the chain is clearly incomplete. **That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to Suresh Thipmappa Shetty v. State of Maharashtra, 2023 INSC 749.***

18. That apart, in Chandrappa v. State of Karnataka, (2007) 4 SCC 415, it was laid down that an appellate court, in the case of an acquittal, must bear in mind that there is a double presumption in favour of the accused. It was also emphasised that when two views are possible, the one favouring the accused is to be leaned on. The powers of the appellate Court have been recently summarised in Jafarudheen v. State of Kerala, (2022) 8 SCC 440 at Paragraphs 25-27. On these factors as well, the Impugned Judgment is untenable."

(emphasis supplied by us)

29. In the light of what has been discussed above, we are of the considered view that the appeal lacks merit, which deserves to be dismissed and the same is hereby **dismissed**.

30. The surviving accused/ respondents No.1 and 3 to 5 are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

31. In compliance with the provision contained in Section 437-A Cr.P.C. the surviving accused/ respondents No.1 and 3 to 5 are directed to furnish the personal bonds and two sureties each to the satisfaction of the court concerned within a period of eight weeks from today.

32. Before we part with the case, we express our appreciation for the distinguished assistance rendered by Ms. Ruhi Siddiqui, who was appointed as Amicus by this Court vide order dated 19.3.2024 for the accused/ respondents. She shall be given Rs.11,000/- as fee for assistance rendered by her as Amicus.

33. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J.) (Sangeeta Chandra, J.)

Order Date :- 8.11.2024
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