

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. 2024:AHCLKO:19393-DB

Reserved on :- 25.01.2024

Delivered on :- 04.03.2024

Court No. - 10

Case :- GOVERNMENT APPEAL No. - 635 of 1982

Appellant :- State of U.P.

Respondent :- Mohd. Ilyas And Others

Counsel for Appellant :- Govt.

Advocate, B.M. Sahai, R.P. Srivastava

Counsel for Respondent :- S.C. Shukla, Ashok Kumar

Srivastava, Irshad Ali, Syed Suleman Abbas

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per :- Ajai Kumar Srivastava-I, J)

1. We have heard Ms. Meera Tripathi, learned A.G.A. for the State-appellant, Sri Irshad Ali, learned counsel for the surviving accused-respondents nos.4 & 5 and have also perused entire records.

2. By means of the present government appeal, after seeking leave to appeal under Section

378(3) Cr.P.C., the State has assailed the judgment and order dated 21.05.1982, passed by the learned Session Judge, Pratapgarh in Sessions Trial Nos.188 of 1980 & 5 of 1981, arising out of Crime No.98 of 1980, under Sections 147, 148, 149 & 302 I.P.C., Police Station, Jethwara, District Pratapgarh, whereby the learned trial Court has acquitted the accused-respondents, Nayeem, Farid, Nizam, Hanif and Basant of the charges under Sections 147 and 302/149 I.P.C. and accused-respondents, Ilyas and Imam Ali of the charges under Sections 148 and 302/149 I.P.C.

3. From a perusal of record, it transpires that the instant government appeal was filed against seven respondents, namely, Nayeem, Farid, Nizam, Hanif, Basant, Ilyas and Imam Ali, out of which, respondents, Ilyas, Imam Ali, Nayeem, Hanif and Basant Bahadur, respondent nos.1, 2, 3, 6 & 7 respectively, have died. The instant appeal in respect of respondent nos.1, 2, 3, 6 & 7 has already been abated. Therefore, the appeal survives only with regard to the respondent nos.4 & 5, namely, Farid & Nizam, respectively.

4. The prosecution case, in short conspectus, is that the victim of this case Mohd Ali is the resident of Village, Sarai Bhimsen. The deceased, Mohd. Ali and his nephew, Mohd. Hanif, who is the complainant of the case, are said to have gone to their field situated near the village on the day of occurrence 13.09.1980 at about 5:00 A.M. for reaping Sanai

(Flex) crop from the field and that while both of them were engaged in reaping Sanai (Flex) crop from the field, all of a sudden, all accused persons appeared there. Accused Basant Bahadur Singh and Hanif exhorted the other accused to attack and kill the victims whereupon accused Ilyas fired from his country made pistol at both the deceased and the complainant but fortunately it missed the mark and both of them started running but the accused persons succeeded in overpowering the deceased and while Imam Ali attacked with Ballam, Nayeem, Nizam and Farid attacked with lathis and caused injuries to him. The complainant raised alarm which led to arrival of Mohd. Hanif son of Hasan Mohammad, Badrun Nisa wife of Mukhtar, Mushtaq son of Asisur Rahman, Mohd. Liaqat son of Sher Mohd. and several other persons at the spot who rebuked the accused persons. The accused persons fled away towards east leaving Mohammad Ali lying injured at the spot. The accused committed this crime on account of old subsisting animosity. Mohammad Ali died within a few minutes of the occurrence and soon thereafter his dead body was taken to the police station by the complainant and others and written report of the incident was given by complainant Mohd. Hanif on the same day at the police station, Jethwara which is situated at a distance of seven kilometres.

5. On the basis of aforesaid written report, Ext. Ka-1, a first information report as Crime No.98 of 1980, under Sections 147, 148, 149 & 302 I.P.C.

came to be registered against all the accused-respondents at Police Station, Jethwara, District Pratapgarh.

6. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared the site plan, Ext. Ka-11 and inquest report, Ext. Ka-5 and upon completion of investigation, charge-sheet was also submitted against accused-respondents.

7. As per postmortem report of the deceased, Mohammad Ali, Ext. Ka-4, which has been proved by Dr. D.C. Srivastava, PW-7, following injuries were reported on the person of the deceased:-

1	Lacerated wound 1" x 1/4" x 1/4" on right side of head 3 1/2" above and just behind the right ear.
2	Multiple abraded contusions overlapping each other on back and outer surface of right upper arm in an area of 4" x 4" just above the elbow. The humerus bone is fractured.
3	Abraded contusions 2" x 1/4" on back of left fore arm 3" below elbow.
4	Contusion 2" x 1" on back of right wrist.
5	Abraded contusion 3" x 1" on top of left shoulder.
6	Abraded contusion 2" x 1" on outer side (L) upper arm 4" below shoulder.
7	Contusion 3" x 1" on outer side of (L) upper arm just below injury no.6.
8	Contusion 3" x 1" on back of left forearm 2" above wrist. There was fracture of radius bone of left forearm.
9	Abrasion 3/4" x 1/2 on inner side of left leg just above ankle.

10	Abrasion 1" x 1/4" on inner side of left foot 3" in front of ankle.
11	Lacerated wound 1/2" x 1/4" x 1/2" on outer side of right leg 2" above ankle.
12	Contusion 4" on outer side of right ankle.
13	Contusion 3" x 1" on left lower scapular region.
14	Contusion 2" x 1" on right half of back just below lower angle of scapula.
15	Contusion 4" x 1" on back across midline 2 1/2" below injury no.14
16	Contusion 5" x 1" on right half of back lower third

The cause of death of the deceased, Mohammad Ali, according to postmortem report, Ext. Ka-4, was reported to be coma on account of head injury.

8. In order to prove its case, the prosecution has examined eight prosecution witnesses. P.W.-1, Mohd. Tareef, P.W.-2, Mustaq Ahmad, P.W.-3, Badrulnisha, P.W.-4, Shyam Karan Tiwari, P.W.-5, Kunwar Bahadur, P.W.-6, Subhash Chandra, P.W.-7, Dr. D.C. Srivastava and PW-8, G.R. Malviya.

9. The accused-respondents, Nayeem, Farid, Nizam, Hanif and Basant were charged of the offence under Sections 147 and 302/149 I.P.C. and accused-respondents, Ilyas and Imam Ali were charged of the offence under Sections 148 and 302/149 I.P.C., who denied the charges and claimed to be tried.

10. After conclusion of prosecution evidence, statements of accused-respondents were recorded under Section 313 Cr.P.C., wherein they have stated the prosecution story to be false and concocted and also stated themselves to be innocent and claimed to have been falsely implicated in this case.

11. No evidence in defence was adduced by the accused-respondents.

12. The learned trial court vide impugned judgment and order dated 21.05.1982 has acquitted the respondents of all the charges.

13. Aggrieved by the aforesaid impugned judgment and order dated 21.05.1982, whereby the respondents were acquitted, the State has preferred the instant appeal.

14. It is submitted by learned Additional Government Advocate that the impugned judgment and order dated 21.05.1982 is against the weight of evidence. In order to prove its case, the prosecution adduced three prosecution witnesses, namely, P.W.-1, Mohd. Tareef, P.W.-2, Mustaq Ahmad, P.W.-3, Badrulnisha, who were eyewitnesses of this incident, however, the learned trial Court disbelieved their testimonies for reasons which are far from being convincing. Thus, she submits that the learned trial court fell in error in acquitting the surviving accused-respondents by over looking the material placed on record. Therefore, the impugned judgment and order dated 21.05.1982 is liable to be set aside.

15. Per contra, learned counsel for the surviving respondent nos.4 & 5 has stated that the finding of acquittal of surviving respondents is based on proper appreciation and analysis of prosecution evidence and as a result thereof, the surviving accused-respondents have rightly been acquitted of the charges under Sections 147 and 302/149 I.P.C. He also submits that the view taken by the learned trial Court is a possible view, which can be formed on the basis of evidence adduced before the learned trial Court, therefore, also no interference with the impugned judgment and order dated 21.05.1982 is warranted. He has, thus, submitted that the instant appeal being devoid of merit, deserves to be dismissed.

16. At the outset, it is relevant to mention here that S.I., G.R. Malviya has been examined as PW-8, who has proved the panchayatnama as Ext. Ka-5 and CMO's letter as Ext. Ka-9. This witness has also proved site plan as Ext. Ka-11. He has also proved challan of the deceased as Ext. Ka-7 and photo of cadaver and specimen of seal as Ext. Ka-6 and Ka-8. Constable, Subhash Chandra has been examined as PW-6, who has proved the first information report, Ext. Ka-2. Dr. D.C. Srivastava has been examined as PW-7, who had conducted the postmortem of the deceased and he had reported the cause of death of the deceased to be coma on account of head injury. He has proved the postmortem report as Ext. Ka-4.

17. Having heard the learned Additional Government Advocate and learned counsel for the surviving respondents, and upon perusal of the material available on record, it transpires that in order to prove the prosecution case beyond reasonable doubt, three witnesses of fact, namely, Mohd. Tareef, P.W.-1, Mustaq Ahmad, P.W.-2, and Badrulnisha, P.W.-3, have been examined, who claimed to be eyewitnesses of this incident. Mohd. Tareef, P.W.-1, is admittedly the nephew of the deceased and is said to have accompanied the deceased, who were engaged in reaping Sanai (Flex) crop when they were attacked by the respondents on the date of the incident. We also find that P.W.-2, Mustaq Ahmad, is not a resident of Village Sarai Bhimsen; rather, he lives in the adjoining village of Uapur, which is situated at a distance of two and a half furlongs. P.W.-3, Smt. Badarun Nisha, is the married daughter of the deceased.

18. The learned trial Court, while evaluating the testimony of P.W.-2 Mustaq Ahmad, has found him to be a chance witness for convincing reasons. He himself admitted not to be a resident of Village Sarai Bhimsen, which is situated at a distance of two and a half furlongs, and he stated that he came to Village Sarai Bhimsen to arrange for labourers.

19. P.W.-1, Mohd. Tarif, in his testimony, had stated that he wrote the written report while he was taking the dead body of the deceased on a Horse Cart

(Ekka) to the police station. However, upon careful reading of his actual statement and having regard to the language used by the first informant in the written report, Ext. Ka-1, it rather conveys the meaning that infact he reached the police station first and thereafter he requested to get the first information report lodged. To lend support to our aforesaid conclusion, we would like to quote the language uttered by P.W.-1, Mohd. Tarif, in this regard, which is as follows:

*"चाचा की लाश एक्का पर लादकर थाने लाया हूँ।
रिपोर्ट लिखने की कृपा करें"*

Therefore, having regard to the aforesaid statement of P.W.-1, Mohd. Tarif, we are of the view that the learned trial court's finding, that perhaps the written report was prepared at the police station itself, cannot be said to be perverse.

20. A careful perusal of the postmortem report shows the presence of faecal matter in the large intestine, which leads us to understand that the deceased had not relieved himself until his death. According to the prosecution story, the incident occurred at about 8:30 A.M. Thus, the factum of the presence of faecal matter in the large intestine, coupled with the fact that Dr. D.C. Srivastava, P.W.-7, has himself admitted that the death could have occurred even six hours earlier than 8:30 A.M., lends support to the contention of learned counsel for the surviving respondents that the incident could have

occurred much prior in time to which has been portrayed by the prosecution.

21. We are oblivious of the fact that it is the prerogative of the prosecution to produce any particular witness; however, in the facts of this case, we notice that according to the written report, Ext. Ka-1, several persons had gathered at the spot who had rebuked the accused persons, and only thereafter did the accused persons flee away from the scene of the occurrence. However, the statement of none of such witnesses other than the related witnesses, P.W.-1 Mohd. Tareef and P.W.-3 Badrulnisha, was not recorded under Section 161 Cr.P.C., nor were they examined so that the statements of related witnesses may have got corroborated in order to place reliance upon statements of such related witnesses.

22. Hon'ble Supreme Court in the case of **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415** 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.

23. The principles laid down by Hon'ble Apex Court in **Chandrappa (Supra)** have been quoted with approval by Hon'ble Supreme Court in **Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471.**

24. In **Ramphubala Reddy and Others vs. State of Andhra Pradesh** reported in **AIR 1971 SC 460, 463, 464,** the Hon'ble Supreme Court has held that if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the findings of trial court.

25. Thus, having considered the matter in its entirety in the light of evidence adduced by the prosecution and in view of the aforesaid settled legal position, we find that the learned trial court's findings regarding acquittal of surviving accused/respondents herein are based on proper appreciation and analysis of evidence available on record which do not, in any manner, appear to be improbable or perverse. The order of acquittal of the surviving respondents on the face of evidence appears to be probable view which does not suffer from any infirmity.

26. We are, thus, of the considered view that instant appeal lacks merit which is, accordingly, **dismissed.**

27. In compliance with the provision contained in Section 437-A Cr.P.C. the surviving respondent

nos.4 & 5, namely, Farid & Nizam, respectively are directed to furnish personal bond and two sureties each to the satisfaction of the court concerned within a period of six weeks from today.

28. 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 :- 04.03.2024

A.Dewal