

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2024:AHC-LKO:22428-DB

Court No. - 10

Case :- GOVERNMENT APPEAL No. - 216 of 1985

Appellant :- State of U.P.

Respondent :- Ram Sahai And 5 Others

Counsel for Appellant :- Govt. Advocate

Counsel for Respondent :- A.S. Chaudhary, Aatreya
Tripathi, Onkar Pandey, R.P. Shukla, Rama Pati Shukla

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(ORAL)

1. Heard Sri Pawan Kumar Mishra, learned A.G.A. for the appellant/ State, Sri Avanish Kumar Shukla, Advocate holding brief of Sri Rama Pati Shukla, learned counsel for the accused/ respondents No.5 and 6 and perused the record available before us.

2. The rest of the respondents are already dead and the appeal already stood abated insofar as the respondents No.1 to 4 are concerned. Thus, the present appeal survives in respect of respondents No.5 and 6, namely, Pravidh Kant and Harikant only.

3. Under challenge in this government appeal is the impugned judgment and order dated 05.01.1984

passed by the learned II Additional Sessions Judge, Sultanpur in Sessions Trial No.301 of 1981 titled as The State vs. Ram Sahai and others arising out of Case Crime No.128 of 1980, under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code¹, Police Station Dostpur, District Sultanpur, whereby the accused/ respondents No.1, 2, 4, 5 and 6, namely, Ram Sahai, Narsingh, Krishna Kant, Pravidh Kant and Hari Kant respectively were acquitted of the charges under Sections 147 and 307 read with Sections 149 I.P.C. and the accused/ respondent No.3, Kamla Prasad was acquitted of the charges under Sections 148 and 307 read with Section 149 I.P.C.

4. The prosecution story as mentioned in the first information report is of the complainant being attacked on 13.11.1980 at around 04:00 PM while he was returning from Gosaisinghpur Bazar by Ram Sahai and Kamla Prasad both sons of Dwarika Prasad and Krishna Kant, Hari Kant i.e. the respondents No.4 and 6 and Nar Singh Prasad. They beat him up by *lathis* and Kamla Prasad attacked his head with *pharsa*. However, the complainant was able to duck the attack and the *pharsa* landed on his left leg. The complainant tried to run away but Kamla Prasad exhorted the others to brick the head of the complainant and on his exhortation, Ram Sahai, Krishna Kant and Nar Singh Prasad all beat him up with *lathis* as a result, he fell down. He started shouting for help and Ram Achal S/o Gur Charan and

¹ hereinafter referred to as "I.P.C."

Raj Bahadur S/o Jantri Prasad and Gokul Prasad S/o Ram Kishore along with other persons had appeared and had seen Ram Sahai and Nar Singh Prasad and others beating him up and also catching hold of his legs and take it him to the well to throw him in it. Such persons intervened as a result whereof, the complainant was able to save his life and was not, in fact, thrown into the well as was being attempted by the accused. It has also been stated in the first information report that two of the accused ran away on a motorcycle whereas the rest ran away on foot.

5. On the basis of aforesaid written report, Ex. Ka-1, a first information report, Ex. Ka-7, came to be registered at Police Station Dostpur, District Sultanpur.

6. The Investigating Officer recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared a site plan thereof as Ex. Ka-4 during the course of investigation.

7. The injury report of the victim, P.W.-1, Lalta Prasad is available as Ex. Ka-3, which has been proved by P.W.-3, Dr. M.K. Gupta, which shows several injuries as described herein below:-

1.	Abraded contused traumatic swelling of 12 cm x 5 cm, with oozing of Blood over Right side of fore head colour of contusion red.
	Lacerated wound of 3½ cm x .2 cm x

² hereinafter referred to as “Cr.P.C.”

2.	scalp deep Bleeding present over top of the skull 13 cm above left ear.
3.	Lacerated wound of 4 cm x .2 cm x scalp deep 2 cm below injury No.(2) Bleeding present.
4.	contused swelling of 2 cm x 1½ cm 3 cm Back to left ear on skull colour of contusion red.
5.	Lacerated wound of 2 cm x .2 cm x muscle deep Bleeding Present over Rt. little finger (on Palmer Aspect).
6.	Lacerated wound of 3 cm x .2 cm x muscle deep over Thenar muscle of the Rt Palm. Bleeding Present.
7.	Lacerated wound 2 cm x .1 cm muscle deep over Base of the Lateral side of Palm of Rt Hand Bleeding Present.
8.	Abraded contusion of 4 cm x 1½ cm over Back of the chest at level of T.9 vertebrae (in middle).
9.	Abrasion 4 cm x 1½ cm on Back of left chest 7 cm below left Scapula inferior angle.
10.	Traumatic swelling of 10 cm x 6 cm over Back of the Rt Scapula.
11.	Swelling of 7 cm x 4 cm over Back of the left Scapula over inferior angle.
12.	Contusion 7 cm x 1 cm red in colour 3 cm below left shoulder joint over left upper arm.
13.	Contusion of 5 cm x 1 cm over Back of the left fore Arm colour red 4 cm below left elbow joint.
14.	Abrasion of 1½ cm x 1 cm over Back of the Rt fore Arm. 5 cm. above the Rt wrist joint, oozing of Blood Present.
15.	Lacerated wound of 8 cm x 1½ cm x Bone deep over middle Part of the Anterior aspect of the Rt leg. Bleeding Present.
16.	Abraded contusion with oozing of Blood 4 cm x 3½ cm over Anterior aspect of the Rt leg 1½ cm above the injury No. (15).
17.	Abrasion in Area of 1½ cm x 1 cm over Anterior aspect of the Rt knee joint.

18.	Contusion red in colour of 8 cm x 1½ cm over Rt. gluteal muscle.
19.	Contusion red in colour of 6 cm x 1 cm over front of the middle Part of the Rt thigh.
20.	incised wound of 1½ cm x .3 cm x muscle deep Frank Bleeding over Anterior aspect of the left leg 10 cm below left knee joint lying vertical.
21.	Contused traumatic swelling red in colour of 12 cm x 4 cm over front of middle part of Anterior aspect left leg.
22.	Abrasion of 1 cm x 1/2 cm over front of the left Thigh. (Anterior aspect).
23.	Contusion of 10 cm x 2 cm over upper Part of the left Thigh Posterior aspect lying oblique colour red.
24.	Contusion of 10 cm x 1½ cm red in colour on Lateral aspect of the left Thigh in middle part.
25.	Contusion 5 cm x 1 cm just below & Parallel to injury No.(24) over lateral aspect of the left Thigh. Colour red.

8. The investigation resulted in filing of charge sheet, Ex. Ka-6, against six of the accused persons. The order of committal by the learned Additional Chief Judicial Magistrate is dated 30.09.1981, which resulted in committal of this case to the learned Sessions Judge for trial.

9. The prosecution has examined seven witnesses in order to prove its case whereas six witnesses appeared for defence.

10. Learned A.G.A. for the State/ appellant has submitted that the impugned judgment and order dated 05.01.1984, insofar as it relates to acquittal of

accused/ respondents including the surviving accused/ respondents No.5 and 6, is against the weight of evidence. The finding of acquittal being perverse deserves to be set aside. He has also submitted that the learned trial court has failed to appreciate the testimonies of witnesses of fact in its correct perspective, which led to wrong finding of acquittal of the accused/ respondents. Therefore, he submits that the impugned judgment and order dated 05.01.1984 deserves to be set aside and the surviving accused/ respondents No.5 and 6 deserve to be convicted for the offence under Sections 147 and 307 read with Section 149 I.P.C.

11. Learned counsel appearing for the surviving accused/ respondents No.5 and 6 has vehemently opposed the aforesaid contentions of learned A.G.A. for the State/ appellant by submitting that the learned trial court, while acquitting the surviving accused/ respondents No.5 and 6, has duly appreciated the testimonies of prosecution witnesses. The finding of fact recorded by the learned trial court is a plausible view, which could have been taken on the basis of evidence available before the learned trial court, therefore, the same cannot be said to be perverse. He has also submitted that the finding of acquittal has strengthened the presumption of innocence in favor of the surviving accused/respondents No. 5 and 6. Therefore, no interference by this Court is warranted in the facts of this case.

12. We find that the learned trial court, while discussing the statements and the cross-examination of the prosecution witnesses, found the prosecution story in respect of surviving accused/ respondents No.5 and 6 to be improbable having regard to the injuries shown to be caused on the hands and legs of the complainant. According to the learned Sessions Judge, Pravidh Kant and Harikant were aged 13 years and 14 years respectively and the complainant, Lalta Prasad was a full grown man of average built. The learned trial court, while giving its finding with regard to accused/ respondents No.5 and 6, namely, Pravidh Kant and Hari Kant, has observed as follows:-

"According to the prosecution case, the complainant also dragged by accused Pravidh Kant and Hari Kant for throwing him into the well. Pravidh Kant was admittedly aged about 14 years and Hari Kant was aged only 13 years at the time of the incident. It is difficult to comprehend that these minors will drag the complainant for throwing him into the well while the other accused persons including their father will remain as a silent spectators. Besides this, the manner in which the complainant was alleged to have been dragged is also not worth convincing. According to the prosecution witnesses, accused Pravidh Kant and Hari Kant were holding the legs of the complainant and the complainant was lifting himself from the ground by the help of his hands and his face was downwards. The complainant has admitted that due to dragging, he had received injuries in his palm. It is also admitted that the road was full of small pieces of bricks. Under the circumstance, the complainant ought to have received a

number of abrasions in both of his palms. Injury nos. 5, 6 and 7 of ext. Ka 3 are not possible by dragging. The complainant must have received other injuries in both of his hands when he was dragged for about 8 to 9 steps. Thus, the story of dragging of the complainant for throwing him in the well appears a concocted one because since all the injuries of the complainant were simple that is why perhaps the complainant has planted this version in order to bring the case under the ambit of section 307 IPC to wreck vengeance with the accused persons."

13. It is pertinent to mention that the role assigned to the surviving respondents No.5 and 6, namely, Pravidh Kant and Harikant, who were admittedly aged about 13 years and 14 years on the date of incident i.e. on 13.11.1980, was that they lifted the victim by holding their legs and ultimately tried to throw the victim in the well. We find that P.W.-1, Lalta Prasad, P.W.-2, Gokul Prasad and P.W.-4, Raj Bahadur have, in their testimonies, deposed that the surviving accused/ respondents No.5 and 6 had caught hold of the victim, dragged him and tried to throw him in the well, whereas in the first information report, Ex. Ka-7, such role of catching hold and dragging the victim towards the well was assigned to all the accused persons. It is, thus, an improved and different prosecution story, which emerges from the testimonies of P.W.-1, Lalta Prasad, P.W.-2, Gokul Prasad and P.W.-4, Raj Bahadur. Thus, we find the prosecution story insofar as it relates to the surviving respondents No.5 and 6 to be highly improbable particularly having

regard to their tender age *viz-a-viz* the age and built of the deceased.

14. The law with respect to jurisdiction of the High Court while dealing with an appeal against acquittal of accused person is no more *res-integra*. In **R. Sreenivasa vs. State of Karnataka**³, the Hon'ble Supreme Court in paragraphs No.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 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.***

³ 2023 SCC OnLine SC 1132

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)"

15. Having gone through the statements of the prosecution witnesses and the entire record as available in the paper book and having scanned the evidence including the medico legal examination report of Lalta Prasad, which was relied upon by the prosecution in charging the accused, we do not find any perversity in the findings of fact recorded by the learned trial court. We also do not find any infirmity in the law as appreciated by the learned trial court regarding acquittal of respondents No.5 and 6. The learned trial court after appreciating evidence available before it appears to have taken a view which, in the facts of this case, appears to be a plausible view wherein no interference by this Court is warranted. We are supported in our conclusion by a recent judgment of Hon'ble the Supreme Court rendered in the case of **H.D. Sundara and others vs. State of Karnataka**⁴. Paragraph No.8 of which is quoted herein below:-

⁴ (2023) 9 SCC 581

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

(emphasis supplied by us)

16. 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**.

17. The surviving accused/ respondents No.5 and 6, namely, Pravidh Kant and Hari Kant are on bail. Their bail bonds are cancelled. Sureties are discharged. They need not surrender in this case.

18. In compliance with the provision contained in Section 437-A Cr.P.C., the surviving accused/ respondents No.5 and 6, namely, Pravidh Kant and Hari Kant are directed to furnish the personal bonds and two sureties each to the satisfaction of the court concerned within a period of six weeks from today.

19. 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.

Order Date :- 14.3.2024
cks/-