

High Court of Judicature at Allahabad (Lucknow)

Neutral Citation No. - 2024:AHC-LKO:53328-DB

Court No. - 1

Case :- GOVERNMENT APPEAL No. - 1626 of 2004

Appellant :- State of U.P.

Respondent :- Shyam Sunder And Another

Counsel for Appellant :- Umesh Verma, Government Advocate

Counsel for Respondent :- Pradeep Kr. Singh, Amrendra Kumar, Neeraj Kumar Baghel, Piyush Pathak, Sanjay Verma, Sunil Kumar Srivastava, Vinay Prajapati, Vivek Kumar Pandey

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Oral)

1. We have heard learned A.G.A. for the State-appellant and Sri Neeraj Kumar Baghel, learned counsel for the surviving accused-respondent no.1.

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 15.11.2003, passed by the learned Additional Session Judge, Court No.4, Lakhimpur Kheri in Sessions Trial No.252 of 2002, arising out of Crime

No.182 of 2001, under Sections 302 and 302/34 I.P.C., Police Station, Pasgawan, District Kheri, insofar as the acquittal of the accused-respondents, Shyam Sunder and Mohan Lal for the offence under Sections 302/34 I.P.C. is concerned.

3. From a perusal of report of Chief Judicial Magistrate, Lakhimpur Kheri dated 12.01.2021, it reveals that the respondent no.2, Mohan Lal has passed away during the pendency of this appeal on 08.09.2006. The present appeal is abated insofar as the respondent no.2, Mohan Lal is concerned. **Therefore, the appeal survives only with regard to the respondent no. 1, Shyam Sunder.**

4. The prosecution case, in short conspectus, is that on 29.08.2001, at about 5:30 AM, the informant and his father were going to fetch water from a borewell in the field at Baripur. On the way, the informant stopped to attend nature call while his father continued ahead of him. When the informant's father reached Chakroad in the southwest of Barbar, near the grove of Sitaram, he encountered Shyam Sundar, son of Mohan Lal, Harishankar son of Mohan Lal, residents of Devisthan, Barbar Nagar, Police Station Pasgawan. These individuals, armed with bankas, confronted the informant's father, stating that they would not relinquish the land they had possessed for the past ten years, which was the subject of a complaint by the informant's father. This confrontation escalated into an altercation. Upon hearing his father's distress, the informant rushed to the scene

and saw three accused, Shyam Sundar, Harishankar, and Mohan Lal attacking his father with bankas. Sohan Lal Rathore, the informant's father fell on the ground. The informant then raised an alarm, prompting Baghwati Sharan, son of Puran Lal Rathore, and other neighbours to rush to the scene. The accused fled towards the grove of Sitaram. The informant's father, Sohan Lal Rathore, sustained fatal injuries on his head and other parts of his body from the attack and died instantaneously. The deceased's body was left at the spot. The informant then went to the police station and lodged a written report.

5. On the basis of aforesaid written report, Ext. Ka-1, a first information report as Crime No.182 of 2001, under Sections 302 and 302/34 I.P.C. came to be registered against three accused persons including the present accused-respondents at Police Station, Pasgawan, District Kheri.

6. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared site plan, Ext. Ka-6 and Ext. Ka-16 and inquest report, Ext. Ka-7 and upon completion of investigation, charge-sheet was submitted under Section 302 I.P.C. against the convicted accused, Harishankar only. The present accused-respondents were summoned by the learned trial Court under Section 319 Cr.P.C.

7. As per postmortem report of the deceased, Sohan Lal, Ext. Ka-3, which has been proved by Dr. Jai Singh, PW-4, following injuries were reported on the person of the deceased:-

1	Multiple incised wound in an area of 25.0 cm x 6 cm on front left side and back of neck.
2	Incised wound of 4.0 cm x 1.0 cm muscle deep over back head, 4.0 cm above hair line on left side.
3	Incised wound of 3.0 cm x 1.0 cm muscle deep on left side of skull, 6.0 cm above left ear.

The cause of death of the deceased, Sohan Lal, according to postmortem report, Ext. Ka-3, was reported to be shock and haemorrhage as a result of antemortem injuries.

8. In order to prove its case, the prosecution has examined five witnesses i.e. P.W.-1, Rajesh Kumar Rathore, P.W.-2, Bhagwati Saran, P.W.-3, Sant Ram, P.W.-4, Dr. Jai Singh and P.W.-5, S.I. Devendra Pandey.

9. The accused-respondents, Shyam Sunder and Mohan Lal were charged of the offence under Sections 302/34 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 15.11.2003 has acquitted

the respondents for the offence under Section 302/34 I.P.C. and has convicted the accused, Harishanker for the offence under Section 302 I.P.C., who has instituted a Criminal Appeal No.1862 of 2003, which is pending for consideration.

13. Aggrieved by the aforesaid impugned judgment and order dated 15.11.2003, 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 15.11.2003 is against the weight of evidence. In order to prove its case, the prosecution adduced three witnesses, namely, P.W.-1, Rajesh Kumar Rathore, P.W.-2, Bhagwati Saren, P.W.-3, Sant Ram, however, the learned trial Court disbelieved their testimonies insofar as the same relates to the sole surviving respondent herein for reasons which are far from being convincing. Thus, he submits that the learned trial court fell in error in acquitting the surviving accused-respondent by over looking the material placed on record. Therefore, the impugned judgment and order dated 15.11.2003 is liable to be set aside.

15. Per contra, learned counsel for the surviving respondent no.1 has stated that the finding of acquittal of surviving respondent is based on proper appreciation and analysis of prosecution evidence and as a result thereof, the surviving accused-respondent has rightly been acquitted of the charges under

Sections 302/34 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 15.11.2003 is warranted. He has, thus, submitted that the instant appeal being devoid of merit deserves to be dismissed.

16. Having heard the learned Additional Government Advocate and learned counsel for the surviving respondent 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, P.W.-1, Rajesh Kumar Rathore, P.W.-2, Bhagwati Saren, P.W.-3, Sant Ram, have been examined by the prosecution. No charge sheet was initially submitted against the present accused-respondents. However, they were summoned by the learned trial Court under Section 319 Cr.P.C. After appreciating the evidence available on record, learned trial Court recorded the finding of guilt of accused, Harishankar under Section 302 I.P.C. and sentenced him to life imprisonment. It has been brought to the notice of this Court that the said convict has also instituted an appeal bearing Criminal Appeal No.1862 of 2003, which is pending consideration. The present accused-respondents have been acquitted by the learned trial Court for the charge under Section 302/34 I.P.C.

17. Upon close scrutiny of prosecution witnesses of fact, namely, P.W.-1, Rajesh Kumar

Rathore, P.W.-2, Bhagwati Saren, P.W.-3, Sant Ram, we find that the recovery of weapon of assault, Banka has been made on the pointing out of the convicted accused, Harishankar. This fact appears to have been duly proved by the prosecution. The sole surviving respondent, Shyam Sunder, in his statement recorded under Section 313 Cr.P.C., claimed to be in service as a Gram Panchayat Vikas Adhikari and stated that he was not present at the place of occurrence. The other respondent, Mohan Lal, who died during the pendency of this appeal, stated in his statement recorded under Section 313 Cr.P.C. that he was suffering from filaria (Peelpaw), which caused undue swelling in his legs, thereby disabling him from swift movement. The learned trial Court has also appreciated the plea of the present surviving accused-respondent to the effect that he was not present at the spot on the date of the incident. We have also been able to notice that the only surviving respondent, Shyam Sunder has been charged with the aid of Section 34 I.P.C.. In want of any cogent evidence to establish and prove that the sole surviving respondent herein was sharing common intention of the convicted accused, Harishankar to kill the deceased on the date of incident. The learned trial Court has given benefit of doubt to the sole surviving respondent herein by means of impugned judgment and order dated 15.11.2003.

18. 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.

19. 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.**

20. 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.

21. 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/respondent no.1 Shyam Sunder 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 respondent, Shyam Sunder on the face of evidence appears to be probable view which does not suffer from any infirmity.

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

23. In compliance with the provision contained in Section 437-A Cr.P.C. the surviving respondent no.1, Shyam Sunder is directed to furnish personal bond and two sureties each to the satisfaction of the court concerned within a period of six weeks from today.

24. Let a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J) (Attai Rahman Masoodi,J)

Order Date :- 05.08.2024

A.Dewal