

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.22 of 1996

State of Bihar

... .. Appellant/s

Versus

Gyandeo Singh @ Subodh Singh, son of Chhote Lal Singh, resident of Village Shahpur, P.S. Nath Nagar, District- Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Bala Verma
For the Respondent/s : Mr. Ajit Kr.Singh-2

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 01-10 -2020

Heard Mrs. Shashi Bala Verma, learned counsel for the appellant and Ms. Surya Nilambari, who was requested to assist the Court as amicus curiae since the counsel for the respondent on record Mr. Amit Kumar Singh and Kumud Kumar Roy, though have entered appearance but they failed to appear on several dates.

The present appeal has been preferred by the State of Bihar against the judgment dated 24.8.1995 passed in S.T. No. 675 of 1994 arising out of G.R. Case No. 204 of 1993 by the learned 2nd Additional Sessions Judge, Bhagalpur whereby the sole respondent has been acquitted of the charge under Section



302 of the IPC and Section 27 of the Arms Act

The prosecution case is that on 16.10.1993 at about 6 A.M., the daughter of Govind Sah was attending the nature's call by the side of a wall of her house which was protested by the sole respondent Gyandeo Singh alias Subodh Singh and started abusing her. The informant's brother Lakhan Mandal, Kamleshwari Mandal, Bhotal Mandal, Ramsharan Mandal and Keshav Mandal tried to pacify the issue, whereupon respondent Subodh fired, aiming at Lakhan Mandal who sustained injury on the chest and fell down near the temple. Thereafter, the respondent Subodh escaped from the scene. Lakhan Mandal while being taken to the police station on a cot, died on the way. On the basis of the same, Nathnagar P.S. case No. 99 of 1993 was registered under Section 302 of the IPC and Section 27 of the Arms Act.

On conclusion of investigation, charge sheet was submitted. Thereafter, the learned Chief Judicial Magistrate, Bhagalpur after taking cognizance, committed the case to the Court of Sessions vide order dated 4.4.1994. Consequently, the charges were framed.

The prosecution, in order to prove the charges, examined 14 witnesses whereas the defence examined two



witnesses.

On meticulous examination of the witnesses, the learned trial court came to a finding that consistent evidence of all prosecution witnesses is that respondent Subodh fired only one shot whereas the postmortem report reflects that the victim Lakhan Mandal received two gun shot injuries and no explanation was brought forward by the prosecution.

Learned counsel for the appellant submits that there is consistent evidence that one fire was resorted to by the sole respondent and by analyzing the evidence to that extent, the prosecution case gets proved. Hence, the judgment of acquittal is against the weight of evidence.

Ms. Surya Nilambari, learned Amicus Curiae appearing for the sole respondent submits that the consistent case of all the prosecution witnesses is that only one shot was fired, whereas the postmortem report suggests that one fire arm injury was found on the chest, while the other injury was found on the left palm but the prosecution witnesses have failed to prove as to how the injury has been caused on the palm. This shows that the prosecution witnesses have not seen the occurrence.

The learned trial court has rightly recorded in



paragraph 16 of the impugned judgment that P.W 5 Kamleshwari Mandal, P.W. 7 Pramod Mandal and the I.O. P.W. 14 Ashok Kumar Singh have given three places of occurrence. Hence, the prosecution has failed to prove the place of occurrence. The prosecution has also failed to proved the genesis of the occurrence. Learned counsel for the respondent has relied upon the judgment of Ram Narain Vs. State of Punjab and other analogous cases, reported in AIR 1975 SC 1727, where it has been held that where the evidence of the prosecution is totally inconsistent with the medical evidence or the ballistic expert evidence, then it is a fundamental defect in the prosecution case unless it is sufficiently explained by the prosecution. Paragraph 14 of the judgment reads as follows:

“14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In *Mohinder Singh v. State* [AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

“In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to



prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle.”

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case.”

After having heard learned counsels for the parties and analyzing the materials on record it appears from perusal of the FIR, that while the informant was getting his 15 years-old-daughter eased by the side of the wall, the respondent Subodh started abusing, when brother of the informant and others tried



to pacify, then Subodh resorted to fire causing injury on the chest of Lakhan Mandal who subsequently succumbed to the injury. The prosecution has examined 14 witnesses out of which, P.W. 2 Ramawtar Mandal, P.W. 3 Dhuri Mandal and P.W. 4 Tanik Lal Mandal were present at the place of occurrence but they have not stated anything about the occurrence and they have been examined as formal witnesses. P.W. 13 is doctor, P.W. 14 is I.O. P.W. 8 has been tendered for the cross-examination. However, P.W. 1, 5,6,7,9,10,11 and 12 have claimed to be the eye witnesses and their consistent evidence is that only one shot was fired. P.W. 13 the doctor who conducted autopsy, found the following injuries -

“(I) Fire arm wound entry obliquely oval in shape size 1” x1” x ½ chest cavity deep with black and inverted margin, the blackening was more in the upper part. The wound was about 1 1/4” below the right clavicle.

(ii) Fire arm wound of exit on right side back of chest size 1/2” x 1/2” with everted lacerated margin, which was 1” right from the mid spine.

(iii) Fire arm wound of entry on left thinner area of the palm 1 cm in diameter with inverted margin.

(iv) Fire arm wound of exit at the base of



left, thumb on dorsal surface size 3/4" x 1/2" with fracture of carpal bone."

Injury No. 1 is of oval shape on the chest which is wound of entry and injury no. 2 is wound of exit on the right side of back. Similarly, injury no. 3 is wound of entry near the left palm and its exit injury is injury no. 4. But the prosecution has failed to prove the injury on the palm of the deceased which creates doubt with regard to the credibility of the witnesses.

The consistent evidence of P.W. 1 Dilip Kumar in paragraph 7 and that of P.W. 12 Makhan Mandal in paragraph 14 is that Subodh fired from close range from the distant of two cubit. In injury no. 1 on the chest blackening has been found when with such close range the charring and scorching tattooing is imperative, but on the injury on palm of the deceased there is no blackening whereas the doctor has opined that the injury appears to have been caused by three shots. This further creates doubt that the victim was killed in the manner other than the manner claimed by the eye witnesses.

As a result, the learned trial court has given benefit of doubt to the accused respondent.

The wife of the deceased who has got a son Kiso



Mandal and three daughters, namely, Babiya, Chamki and Leela and they were present there when the occurrence took place but they have been withheld, hence, it appears that the material witnesses have been withheld.

P.W. 5 Kamleshwari Mandal in his evidence described the place of occurrence as follows – South – Hari Lal Tanti, North – House of Govind, East – Road and West – Hare Ram Singh's house. In his cross examination, he has stated that after hearing the halla he reached the temple of Bajrangbali and in his cross examination he has given the description of temple whereas as per the informant, the occurrence took place north to the house of Harilal Tanti and in south is the house of accused, in the east is the house of Kamleshwari and in the west is the house of Harihar Master. P.W. 7 in paragraph 8 of his evidence stated that Lakhan fell down in the field, 1 and 1/2 cubit east of the road. The I.O. PW. 14 has described the place of occurrence as road which is situated south west corner of the Bajrangbali temple from where three roads emerge. He has described in his evidence the place of occurrence as follows – East – village road, West – House of Hare Ram, North – Ditch – house of Hari Tanti and in the South – Kachha road.

The above description of the place of occurrence given



by three witnesses in three different manner, shows that the place of occurrence has not been proved.

So far as genesis of the occurrence that the daughter of P.W. 10 Nirjala Devi was easing out near the wall out of the house is concerned, P.W. 10 in paragraph 5 and 11 of her cross-examination has admitted that she has a big house consisting of 10-12 rooms which has the facilities of adequate bathroom. Similar is the admission of P.W. 12 in paragraph 14 of the evidence. In such circumstances, allowing a fifteen-years-old-girl to ease out, outside the house inspires no confidence. In fact, the informant's side has enmity with the brother of Binod and no dispute with the deceased Lakhan.

On careful perusal of the judgment under appeal, it appears that the learned trial court has examined the evidence on record very meticulously and has, with cogent reasoning, been able to impeach the credibility of the prosecution witnesses. The prosecution has, thus, miserably failed to prove the case beyond reasonable doubt.

The cardinal principle of criminal jurisprudence pertaining to burden of proof is that the same is on the prosecution. The guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is



only to establish his case beyond reasonable doubt and not all doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302. Paragraph 25 of the judgment reads as follows:

“25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: “The Mathematics of Proof-II” : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from



the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal



process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.”

It is well settled law that in an appeal against acquittal, if two views are reasonably possible on the basis of evidence on record, then the view supporting the acquittal of the accused should be inferred as has been held in the case of Dwarka Dass and Ors. Vs. State of Haryana reported in (2003) 1 SCC 204. Paragraph 2 of the judgement reads as follows:

“2. While there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong



appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice — so said Pattanaik, J. in *Hari Ram v. State of Rajasthan* [(2000) 9 SCC 136 : 2000 SCC (Cri) 1178] .”

It is trite view that the judgement of acquittal further re-enforces the innocence of the accused.

In view of the discussions made above, we do not find any infirmity in the judgment impugned.

Accordingly, this appeal is dismissed.

This Court appreciates the valuable assistance rendered by the learned counsel Ms. Surya Nilambari. The Joint Registrar, Legal Services Authority, is requested to facilitate the payment of prescribed fee to the learned counsel Ms. Surya Nilambari.

(Dinesh Kumar Singh, J)

Ashwini/- Anil/-

(Prabhat Kumar Singh, J)

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