

CASE NO.:
Appeal (crl.) 508 of 1997

PETITIONER:
State of Rajasthan

RESPONDENT:
Bhanwar Singh & Others

DATE OF JUDGMENT: 06/05/2004

BENCH:
Y.K.SABHARWAL & B.N.AGRAWAL.

JUDGMENT:
J U D G M E N T

WITH

CRIMINAL APPEAL NO. 578 OF 2004
(@ SLP (Crl.) No. 2247 of 2004)
(@ Crl. M.P. No. 219 OF 1995)

Rajesh Solanki & Anr. \005\005Appellant

Versus

Bhanwar Singh & Ors. \005\005\005.Respondent (s)

B.N.AGRAWAL, J.

Application for permission to file SLP is allowed.

Leave granted.

Respondents Bhanwar Singh and Dharma Ram along with accused Vishnu were tried and by judgment rendered by trial court, accused Vishnu was acquitted of the charges whereas Bhanwar Singh (respondent No. 1) was convicted under Section 302 of the Penal Code and sentenced to undergo imprisonment for life. He was further convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for the period of one year and to pay a fine of Rs. 200/-, in default to undergo further rigorous imprisonment for a period of two months. Dharma Ram (respondent No. 2) was convicted under Section 302/109 of the Penal Code and sentenced to undergo imprisonment for life. Apart from the sentence awarded against them, respondent Nos.1 & 2 were directed to pay a sum of Rs. 75,000/- and Rs. 25,000/- respectively by way of compensation to wife and children of deceased Arjun Singh. The gun belonging to accused Bhanwar Singh \026 respondent No. 1 was ordered to be forfeited to the State. Against the order of acquittal of accused Vishnu, no appeal was preferred but on appeal being preferred by the respondents, their convictions have been set aside by the High Court and they have been acquitted of all the charges.

Prosecution case as disclosed in the first information report, in short, was that in the heart of town of Jodhpur, there was a building known as Sainla House wherein Rajesh Solanki (PW 1) had taken a shop on rent and was running a cycle shop therein. After the induction of PW 1 as tenant in the said shop, accused Bhanwar Singh purchased the said shop along with another shop which was adjacent to it and after purchase, PW 1 became tenant of Bhanwar Singh. In another shop, Bhanwar Singh was carrying on business in the name and style of Chamunda Traders. Roofs of both the aforesaid shops were in use of PW 1 for which there was a dispute between him and accused Bhanwar Singh leading to filing of several cases. On Ist June, 1989 between

6.30 and 7.30 in the evening, when PW 1 was going on the roof top of the said shops, he was stopped by Bhanwar Singh and abused. At that time, accused Dharma Ram and Vishnu were also present there. Thereupon, PW 1 went to his uncle Arjun Singh who was running a provisional store in the same very building, called him and when he came, he told Bhanwar Singh that the roofs of the shops were always in the use of PW 1. Thereupon when PW 1 again wanted to go to the roof, Bhanwar Singh asked him not to go failing which he would be shot. Then accused Dharma Ram and Vishnu shouted that PW1 should be shot. Bhanwar Singh thereafter went to his room, brought his gun and told Arjun Singh that he would give full right of use of the roofs to PW 1 and by uttering these words, he fired at Arjun Singh which hit him on the right thigh as a result of which Arjun Singh fell down. The occurrence is said to have been witnessed by Md. Sabir (PW 4), Achal Dass (PW 7), Mst. Ummid Kumari (PW 9) and Mst. Chandrakanta (PW 18) apart from the complainant Rajesh Solanki (PW 1). After the occurrence, PW 1 went to the police outpost where he narrated the occurrence before a constable who telephonically informed the police control room about the same and asked PW 1 to go to the control room whereupon PW 1 went to the police control room where he came to know that the police had already left for the place of occurrence. Thereupon, PW 1 came back to the place of occurrence and reported the matter to the police on the basis of which a case was registered at the police station under Section 307 of the Penal Code and the injured was shifted to hospital where later on he succumbed to the injuries, as such case was converted into one under Section 302 of the Penal Code.

The police after registering the case took up investigation, during the course of which, witnesses stated that after the occurrence, PW 1 was chased by accused Bhanwar Singh and while so chasing, the villagers who had already assembled there, apprehended and assaulted him by his gun after snatching the same from him as a result of which butt of the gun was broken. Upon completion of investigation, the police submitted charge sheet and on completion thereof, the learned Magistrate took cognizance and committed the aforesaid three accused persons to the court of session to face trial.

Defence of the accused, in short, was that no occurrence as alleged had taken place. The dispute between the parties over user of the roofs of the shops by PW 1 has been, however, admitted. PW 1 wanted to make some construction over the roof which was objected to by accused Bhanwar Singh. On the date and time of occurrence, PW 1 came along with PW 4 and PW 7 in the room belonging to accused Bhanwar Singh, beat him and had broken the wooden bed, table, telephone and glasses of almirah which were kept there. At that time, Arjun Singh, uncle of PW 1 came there and took out gun belonging to accused Bhanwar Singh which was kept in the room and tried to break that gun on the cemented floor in front of the room in order to save members of the prosecution party, as a result of which, one live cartridge which was embedded in the gun went off and hit Arjun Singh.

During trial, both the parties adduced oral as well as documentary evidence and the trial court upon conclusion of trial while acquitting accused Vishnu, convicted the respondents as stated above and the same having been reversed by the High Court, two appeals by special leave have been preferred before this Court, one by the State of Rajasthan and another by the complainant.

Ms. Sandhya Goswami, learned counsel appearing on behalf of the State of Rajasthan as well as Mr. Rakesh K. Khanna, learned counsel appearing on behalf of the complainant submitted in support of the appeal that order of acquittal rendered by the High Court was perverse one as view taken by it was not possible one, and accordingly, the same calls for interference by this Court. On the other hand, Mr. Sushil Kumar, learned Senior Counsel appearing on behalf of the respondents submitted that view taken by the High Court was not only possible one but the same was a reasonable view and the order of acquittal cannot be said to be perverse in any manner. Alternatively, it was submitted that even if this Court comes to the conclusion that in the case on hand, two views were possible, the order of acquittal should not be

interfered with as it is well settled that if two views are possible, the appellate court should not interfere with the order of acquittal.

The question that falls for our consideration is as to whether the judgment of acquittal rendered by the High Court is perverse one? In the present case, five persons, namely, Rajesh Solanki (PW 1), Md. Sabir (PW 4), Achal Dass (PW 7), Mst. Ummed Kumari (PW 9) and Mst. Chandrakanta (PW 18) are said to be eye witnesses of the occurrence. Out of these witnesses, PW 4, PW7 and PW 9 have been declared hostile as they did not support the prosecution case in material particulars. PW 18 though claimed to be an eye witness and has supported the prosecution case but her name was not mentioned in the first information report and she was examined by the police after 22 days of the occurrence and no explanation whatsoever has been furnished by the prosecution for such an inordinate delay in her examination by the police. In view of the aforesaid facts, the High Court did not place reliance on the evidence of PW4, PW7, PW9 and PW 18 and learned counsel appearing on behalf of the appellants could not point out any infirmity in the impugned judgment on this count. They, however, contended that the High Court should have upheld conviction of the respondents on the basis of sole testimony of PW 1 who has supported the prosecution case in all material particulars. From the impugned judgment, it would appear that the High Court doubted the prosecution case and refused to place reliance upon the evidence of PW 1 as it was of the view that defence version may be reasonably possible and has recorded following reasons for its conclusion :-

(a) According to the evidence of complainant-PW1 after the occurrence, he went to the police outpost and narrated the occurrence to the constable Awardan posted there who telephonically informed the control room and asked the complainant to go to the control room. The constable could have been the best person to show as to what was the first version of the occurrence disclosed by the complainant before him. But for the reasons best known to the prosecution, he has been withheld from the witness box for which no explanation is forthcoming.

(b) PW 1 stated that when Arjun Singh was taken to the hospital, he was conscious. PW 3 admitted that after the occurrence, when wife and children of Arjun Singh came to the place of occurrence, he was conscious. It is not known what was narrated by Arjun Singh about the present occurrence to his wife and children.

(c) The prosecution version that after the occurrence, while Bhanwar Singh was chasing PW1, he was apprehended by the villagers who snatched gun from him and assaulted him with the same and while doing so, butt of the gun was broken, was not disclosed in the first information report although, PW1 admitted that when he came back from the police control room, he came to know from villagers that Bhanwar Singh was assaulted by them and the first information report was lodged thereafter with the police at the place of occurrence itself. This version of the prosecution case has seen light of the day after several days of the occurrence when Saleem (PW 2) and Ramesh Sanwala (PW 5) were examined by the police and before that there is absolutely no whisper about the same.

(d) On the question of snatching of the gun from accused Bhanwar Singh, PW 2 stated that the gun was snatched by PW 5 but this fact has not been supported by PW 5 as he candidly stated in his evidence that he did not snatch the gun from accused Bhanwar Singh.

(e) Mangoo Singh (PW 22), the investigating officer stated that upon receipt of information from the outpost, when he went to the place of occurrence and arrested accused Bhanwar Singh from his room, he produced the broken gun before him and the same was seized. If prosecution case of snatching of gun by the villagers from the accused is true, it is not understandable how the accused was able to produce the same before the police.

(f) Hira Ram (PW 13), a police constable stated that in his presence, room of accused Bhanwar Singh was searched and he found that wooden bed and almirah were in a broken condition. Station House officer \026 Ashok Kumar Trivedi (PW 15) stated that when he inspected the room of accused Bhanwar Singh, he found tables, wooden bed and telephone in

broken condition and glass pieces of almirah were found scattered on the floor of the room. Ram Chandra (PW 19) who was Inspector of Police attached to the police control room stated that when he inspected room of accused Bhanwar Singh, he found the above articles lying scattered in a broken condition. He further stated that he found blood stains on the floor of the said room belonging to accused Bhanwar Singh where articles were lying scattered in a damaged condition.

(g) PW-22, the investigating officer stated that when he inspected the place of occurrence, PW1 told him that gun was fired by accused Bhanwar Singh from point 'B' shown in the site plan and at that time, Arjun Singh was standing at point 'A'. According to PW1, distance between Arjun Singh and Bhanwar Singh was 9' feet. According to the evidence of PW22, distance between point 'A' and point 'B' was 25-30 feet. PW 1 stated that gun was fired by accused Bhanwar Singh by keeping its butt on his shoulder and it was at 90° angle. The portion of body of Arjun Singh which has been hit by this gun fire is mid portion of his right thigh and according to the evidence of Dr. Jagdish (PW 17), the wound was 8.5 c.m. x 8 cm with multiple punctured wound at the margin of the wound. Wound of such dimension was possible only if firing is from a distance of 3' to 4'.

(h) PW 17- the doctor has stated that direction of the wound may be from downward to upward which could be possible only when the gun went off accidentally because a cartridge was loaded inside the gun and it was so loaded that it cannot be taken out and, therefore, when the gun was hit on the cemented floor in front of the room of Bhanwar Singh for breaking the gun by holding from barrel side, it went off accidentally. In the process of breaking the gun, the direction of the wound would also be from downwards to upwards which supports the case of accidental firing as disclosed by the defence.

Learned counsel appearing on behalf of the appellants placed before us oral as well as documentary evidence adduced by the prosecution in order to show that view taken by the High Court was perverse. Having given our anxious considerations, we are of the view that the High Court cannot be said to be unjustified in doubting veracity of the prosecution case as defence version is probable one and accordingly impugned judgment of acquittal rendered by it cannot be said to be perverse in any manner so as to be interfered with by this Court more so when in the present case, it cannot be said that only one view is possible but here is a case where two views are possible. It is well settled that in a case where two views are possible, one of acquittal and the other of conviction, the higher court should not interfere with the order of acquittal impugned before it. This being the position, we are of the opinion that the High Court has not committed any error in acquitting the respondents of the charges.

In the result, both the appeals fail and the same are accordingly dismissed.