

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.843 OF 2006

BADRILAL & ORS.

.... APPELLANTS

VERSUS

STATE OF MADHYA PRADESH

..... RESPONDENT

ORDER

1. Altogether seven persons were put on trial for offences under Sections 148, 323 and 302/149 of the Indian Penal Code. The trial court by its judgment and order dated 20th January, 1997 acquitted all the accused persons. Aggrieved by their acquittal, the State preferred an appeal and the High Court by the impugned judgment maintained the acquittal of the three accused persons but convicted the appellants under Sections 302/34 and 323/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and rigorous imprisonment for one year respectively.

2. Appellants have preferred this appeal against the aforesaid judgment of conviction and sentence.

3. According to the prosecution, on 29th January, 1994, the informant Madanlal (P.W.6) and his father Dhulji, the deceased, were sleeping in a room adjoining their field and his nephew P.W.1 Rameshwar was sleeping outside. According to the prosecution, at 12:15 in the night the appellants herein came on a motor cycle and threatened Rameshwar who was sleeping outside. Appellant no.2 also named Rameshwar was armed with knife, whereas other appellants were armed with lathis. P.W.1 Rameshwar raised an alarm and on hearing the same, the informant P.W.6 Madan Lal and deceased Dhulji came out of the room and all the appellants started beating them. Madan Lal got knife injury on the head and lathi injuries on hands and legs. It is the specific allegation of the prosecution that appellant No.2 Rameshwar stabbed Dhulji with knife which hit him in the chest and lathi injuries were inflicted on the head. In the occurrence, according to the prosecution, P.W.1 Rameshwar got injuries in his left arm

and knee and Dhulji died on account of the injuries sustained by him.

4. After usual investigation, charge-sheet was submitted and the appellants committed to the Court of Sessions to face trial. Appellants denied to have committed any offence and claimed to be tried.

5. Prosecution, in order to bring home the charge, had mainly relied on the evidence of P.W.1 Rameshwar and P.W.6 Madan Lal who claimed to be the eye witness to the occurrence. Prosecution had also examined P.W.7 Dr. M.K. Pancholi, who had conducted the post mortem examination on the dead body of the deceased. He had found four injuries on the person of the deceased and in his opinion the injuries caused on the head and injury No.4 caused on right parietal region were by hard and blunt substance, whereas injury nos. 2 and 3 by sharp cutting weapon. On appreciation of evidence, the trial court held that the deceased Dhulji died homicidal death. However, it found that the evidence of P.W.6 Madan Lal is not reliable on account of contradictions in vital particulars, omissions and further his

evidence is not corroborated by the medical evidence. In this connection the trial court has observed as follows:

“The version of P.W.1 Rameshwar is that accused Rameshwar stabbed knife in the chest and stomach and Ramesh, Badri and Shankar beat Dhulji with stick which was hit in the knees of both legs. Whereas PW – 6 Madan states that Ramesh, Badri and Shankar beat Dhulji with lathis. He states further that Ramesh hit lathi in the head which he saw. But the said statement of Madan (PW-6) is corroborated neither by PW-1 Rameshwar nor First Information Report Ex. P-21 and his police statement Ex. D-1. He does not mention any reason as to why this was not got written by him in his report and police statement. PW-6 Madan Lal states that he is telling this in the Court for the first time. Thus, the said statement of Madan Lal which is not corroborated by any other evidence cannot be considered to be trust worthy beyond doubt and this probability cannot be denied that since the report of Dr. M.K. Pancholi (PW-7) is mentioning death of Dhulji due to the head injury, therefore, Madan Lal (PW-6) improving his statement according to the said medical report and is trying to give his statement according to the medical report. In such situation, giving respect to the policy instances of “Ran Chhod Singh Versus State of M.P. 1983 JLJ 186” and “Ram Narayan and Jagar Singh & Others versus State of Punjab AIR 1975 SC 1727”. I arrive at this conclusion that the said statement of PW -6 Madan Lal cannot be considered trustworthy beyond doubt and except Madan Lal any other witness does not make such statement that at the time of the incident, accused Ramesh inflicted some injury by lathi on the head of Dhulji from which also, this conclusion comes out that no injury had come in the head of Dhulji at the time of the incident.”

6. Identification of the accused persons was also doubted by the trial court and it found that the claim made by the witnesses that they identified the accused persons is not fit to be relied. In this connection, trial court had observed as follows:

“I arrive at this conclusion that the prosecution had been unsuccessful in proving that the night of the incident was bright night or witness Madan Lal was having torch at that time and he recognized the accused in torch light. In such a situation, this probability cannot be denied that at 12 o'clock night, this encounter might have been made by some other persons whom witnesses could not recognize but as there was animosity with the accused, therefore, due to suspicion their names might have been got written in the report.”

Non-compliance of Section 157 of the Code of Criminal Procedure was also considered to give benefit of doubt to the accused persons. Relevant portion of the judgment of the trial court in this regard reads as follows:

“As far as the question of complying with the provisions of Section 157 of Criminal Procedure Code, in this regard, it is the responsibility of the prosecution to prove beyond doubt that the copy of the First Information Report was sent to the concerned Magistrate at once. The purpose of this provision is only this that later on any change of any nature could not be done in the First Information Report. The first Information Report is

an important document on which foundation stone of the prosecution story rests. Mandatory provision of Section 157 of Criminal Procedure Code is in respect of such document which if not complied with, then the state of suspicion is created. In this case, such is not the clear statement of PW-9 Chandra Pal Singh that he sent the copy of First Information Report to the concerned Magistrate and nor has produced any document in connection with sending the copy. In such situation, only this conclusion comes out that provisions of Section 157 Criminal Procedure Code were not complied with.”

Cumulative effect of the aforesaid infirmities and various other infirmities pointed out by the trial court led it to conclude that the prosecution has not been able to prove its case beyond all reasonable doubt, and accordingly, acquitted all the accused persons of the charges levelled against them.

7. However, the High Court in appeal maintained the acquittal of three accused persons but convicted the appellants herein as above and while doing so, observed a follows:

“Learned trial court, while discussing the prosecution evidence, came to the conclusion that it appears to be doubtful with regard to the involvement of the respondents in this incident. In the case where the eye witnesses Rameshwar (PW-1) and Madanlal (PW-6) were also sustained injuries in the same incident, their presence on the spot could not be disputed and one Dhulji died due to grievous

injuries sustained to him by the respondents/accused persons. In such a situation, the approach of the learned trial court appears to be erroneous and there cannot be two opinions that it is the respondents/accused who caused grievous injuries in furtherance with the common intention to the deceased which resulted in his death also caused simple injuries to witnesses Rameshwar (PW-1) and Madanlal (PW.6).”

8. Mr. Mandeep Singh Vinaik, learned Counsel appearing on behalf of the appellants submits that the view taken by the trial court was one of the possible views and that ought not to have been interfered with by the High Court in appeal. He submits that the trial court rightly discarded the evidence of P.W.1 Rameshwar and P.W. 6 Madanlal, notwithstanding the fact that they were injured witnesses. Ms. Aishwarya Bhati, learned counsel appearing for the respondent-State, however, contends that the High Court while hearing the appeal against the judgment of the acquittal is not precluded from appreciating the evidence and come to its own conclusion. She points out that the trial court ought not to have discarded the evidence of P.W.1 Rameshwar and P.W.6 Madan Lal, who are injured witnesses.

9. It is trite that the High Court in an appeal from judgment of acquittal does not interfere with the same when it is found that the view taken by the lower court is one of the possible views. It is further trite that the High Court in appeal from a judgment of acquittal can appraise evidence and come to its own conclusion. However, while coming to its own conclusion, it is expected to give due weight to the reasoning given by the trial court for acquittal. High Court interferes with the same only when it is found that the view taken is not possible to be taken in the state of evidence.

10. Bearing in mind the aforesaid principle when we proceed to examine the facts of the present case, we find that the view taken by the trial court is a possible view. While granting the benefit of doubt to the accused persons, it took into consideration the contradictions and omissions in the evidence of prosecution witnesses namely P.W. 1 Rameshwar and P.W. 6 Madan Lal. Not only this, it found total non-compliance of the provisions of Section 157 of the Code of Criminal Procedure. Not only that the witnesses claim of identification of the accused persons was also doubted. If all

these considerations are taken collectively, there is no escape from the conclusion that the view taken by the trial court is one of the possible views. Injuries to a witness do indicate his presence at the time of incident, but from that it does not flow that his evidence is to be accepted automatically. From what we have observed above it cannot be said that view taken by the trial court is perverse and therefore, we are of the opinion that in the facts and circumstances of the case, the High Court erred in interfering with the order of acquittal.

11. In the result, the appeal is allowed, the impugned judgment of conviction and sentence is set aside. Appellants are in jail, they be set at liberty forthwith, unless required in any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
JULY 29, 2010.

[PART-I]

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STATE OF M.P. RESPONDENT

O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed this appeal. As per the counsel, the appellants are stated to be in jail. The appellants shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[C.K. PRASAD]

NEW DELHI
JULY 29, 2010.