

CASE NO.:
Appeal (crl.) 117 of 2000

PETITIONER:
SHAMBHU

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 06/03/2002

BENCH:
R.P. Sethi & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Appellant-Shambhu and his wife Sadhna Bai were tried by the Court of Addl. Sessions Judge, Indore in Madhya Pradesh, for the offence punishable under Section 302 read with Section 34 IPC. Against the present appellant, there was also a charge under Section 376 IPC. The Sessions Judge found them 'not guilty' and acquitted of the charges framed against them. Aggrieved by the judgment of the Sessions Court, the State of Madhya Pradesh preferred an appeal before the High Court of Madhya Pradesh and the Division Bench of the Madhya Pradesh High Court found the present appellant guilty of offences punishable under Section 302 IPC, for having caused the death of one Sunder Bai and he was sentenced to imprisonment for life. The finding of the High Court is challenged before us.

The prosecution case is that on 28th June, 1986, deceased Sunder Bai went to the house of appellant Shambhu requesting him to repay the sum of Rs.1,000/- entrusted by her with the appellant. The further case of the prosecution is that the appellant committed rape on Sunder Bai and thereafter, the appellant's wife, Sadhna Bai poured kerosene oil on the body of Sunder Bai and the appellant set fire to her. PW-2, Amritlal, having reached Prianko colony on a bicycle, heard the sound of "bachao, bachao" (help, help) and went near the house of appellant-Shambhu. He saw the deceased Sunder Bai set on fire by appellant-Shambhu. Hearing the sounds, many other people collected there and some of them took Sunder Bai to hospital. In the meantime, the husband of the deceased Sunder Bai also reached the place of incident. PW-2, Amritlal, went to the Police Station and gave Ex. P-1 report. PW-10, Mohan Singh, S.H.O. Police Station Annapurna, visited the place of incident in the night of 26th June itself. He also visited the M.Y. Hospital where the deceased was admitted with burn injuries. PW-10 sent a requisition to the Executive Magistrate, PW-9, for recording dying declaration of the deceased. PW-9, Executive Magistrate, reached the hospital and recorded the dying declaration of deceased Sunder Bai. Subsequently, Sunder Bai died while undergoing treatment in the hospital and her body was subjected to post-mortem examination. Ten witnesses were examined on the side of the prosecution and the main items of evidence relied on by the prosecution were the evidence of PW-2 and the dying declaration allegedly made by deceased Sunder Bai, which was recorded by PW-9, the Executive Magistrate. The learned Sessions Judge acquitted the appellant for the reasons that the First Information Report was recorded belatedly and there were a series of discrepancies in Ex. P-1 F.I. Statement and that the dying declaration recorded by PW-9 was not reliable as there was no satisfactory evidence to show

that Sunder Bai was in a fit state to give the dying declaration. Learned Sessions Judge also disbelieved PW-9 on the ground that he was not in a position to state the percentage of the burn injuries on the body of the deceased Sunder Bai; he had not brought the memorandum received from the police station; and that he did not verify whether the doctor had given sedatives to the deceased. PW-9 was also disbelieved on the ground that he deposed that he reached the hospital in a scooter whereas the Police Inspector had deposed otherwise.

The High Court, in appeal, reversed the finding of the Sessions Judge and held that the prosecution had succeeded in proving that appellant-Shambhu had caused the death of deceased Sunder Bai. The High Court held that the dying declaration was reliable and that there was no reason to disbelieve the evidence of PW-9.

The counsel for the appellant contended that the High Court seriously erred in reversing the acquittal of the appellant, and as the trial court had taken a reasonable view of the evidence, the High Court should not have reversed the findings of the Sessions Judge.

This Court, in *Surjan & Ors. vs. State of Rajasthan* AIR 1956 SC 425, observed that in an appeal against acquittal while the High Court is free to appreciate the evidence for itself and to act on its own view thereof, it will not do so lightly and will be slow to reverse an acquittal, except for strong and compelling reasons, when it differs from that of the trial Court.

Power of the High Court, while considering the appeal against acquittal was considered by a Division Bench of this Court in *Harbans Singh & Anr. vs. State of Punjab* AIR 1962 SC 439 and it was held as under :

"It is clear that in emphasizing in many cases the necessity of "compelling reasons" to justify an interference with an order of acquittal, the Court did not in any way try to curtail the power bestowed on appellate courts under S.423 of the Code of Criminal Procedure when hearing appeals against acquittal; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the fact that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the Court was anxious to impress on the appellate courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. .. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittals the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

Of course, where two views are possible and the trial court has taken a reasonable view and acquitted the accused, the High Court in appeal cannot interfere with such finding, but when there is perverse finding based on erroneous appreciation of evidence and a serious miscarriage was caused, the High Court has ample power to reverse that finding.

The counsel for the appellant further contended that the evidence adduced by the prosecution was not sufficient to hold the appellant guilty.

We have carefully considered the evidence adduced by the prosecution. We do not think that the High Court has erred in finding the appellant guilty of murder. Even if the evidence of PW-2 is eschewed, there is convincing and satisfactory evidence to prove that the appellant was responsible for the murder of the deceased Sunder Bai. PW-9, the Executive Magistrate, got intimation from the Police that deceased Sunder Bai was admitted in the hospital and that her dying declaration was to be recorded. He reached the hospital and recorded the dying declaration of the deceased Sunder Bai. The evidence of PW-9 shows that when he recorded the dying declaration the doctor was present and he had certified that Sunder Bai was in a fit state to make the statement. The dying declaration was recorded in the form of question-answers. It was recorded at 10.45 PM on 28.6.1986. The translated version of the relevant portion of the dying declaration of deceased Sunder Bai is as follows:

"I had kept my money with Shambhu. When I went today to ask for my money, which was about RS. One thousand, then he called me in the evening. When I again went at about 7.00/8.00 P.M. then he asked me to sit at 'Charav' and then immediately the wife of Shambhu had sprinkled the kerosene oil at me and Shambhu had lit the match stick and said lighted match-stick was touched with my body. Shambhu had raped me (IZZAT LOOTI). Then I raise the alarm and I ran, thereafter the residents of that Mohalla had extinguished fire by tearing my clothes etc."

It is also mentioned in the dying declaration that it was recorded in ward no. 8 of M.Y. Hospital and the attestation by the doctor that the complainant was in a fit state to make the statement was taken prior to making the statement and that no other police officer or anybody else was present at the time of making such dying declaration.

The Sessions Judge disbelieved the dying declaration on flimsy grounds based on irrelevant considerations. Whether the Executive Magistrate reached the hospital in a scooter or any other conveyance or whether the Magistrate had noted the percentage of burn injuries on the body of the deceased are irrelevant matters which should not have weighed with the Sessions Judge in disbelieving the dying declaration.

It has been held by this Court that if the dying declaration is truthful and reliable, conviction can be based solely thereupon (1983) 2 SCC 14 [State of Assam vs. Mafizuddin Ahmed].

The counsel for the appellant, on the other hand, contended that the dying declaration should not have been accepted without there being further corroboration of material particulars. He relied on the decision in (1971) 3 SCC 767 [Lallubhai Devchand Shah and Ors. vs. State of Gujarat].

In the instant case, there has been material corroboration, in the sense that deceased Sunder Bai was found with burn injuries near the house of the appellant. PW-2 saw the deceased near the house of the appellant and it was from that place that the deceased was removed to the hospital. PW-1, husband of the deceased Sunder Bai, also deposed that on hearing about the incident, he rushed to the place of occurrence and saw the deceased with burn injuries. The High Court considered all this evidence and came to the conclusion that the appellant had committed the offence of murder.

The way in which the learned Sessions Judge appreciated the evidence in the instant case shows that the evidence was not viewed from the correct perspective. The High Court has rightly reversed the judgment of the Sessions Court. There is no merit in this appeal which is dismissed accordingly.

..J
[R.P. Sethi]

..J
[K.G. Balakrishnan]

March 6, 2002.

JUDIS