

CASE NO.:
Appeal (crl.) 1672 of 2005

PETITIONER:
Rattanlal

RESPONDENT:
State of Jammu & Kashmir

DATE OF JUDGMENT: 10/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

This appeal is directed against a judgment and order dated 16.09.2005 passed by a Division Bench of the High Court of Jammu & Kashmir in Acquittal Appeal No. 41 of 1997 reversing an order of acquittal passed by the 2nd Additional Sessions Judge, Jammu in Sessions case No. 42 of 1993.

The occurrence took place on 09.02.1993 at Village Rakh Muthi, Tehsil Akhnoor. The first informant and his family were about to take their dinner. Allegedly, the complainant party and the accused persons were not in talking terms as the family was said to have been responsible for spreading a rumour in the village that Appellant was maintaining illicit relation with the wife of his brother Kaku Ram. Appellant, Kaku Ram and their father Sunderdas allegedly came to the house of the complainant at 08.30 p.m. on the fateful day. Allegedly, Rattanlal asked PW-Subhash Chander, son of the deceased Santosh Kumar, to come out stating that Kaku Ram was calling him. Subhash Chander thereupon came out followed by the complainant Pamma Ram, deceased Santosh Kumar and PW-Ramesh Chander. Allegedly, when Subhash Chander reached the lane, Kaku Ram asked him as to why he had been creating problems and inflicted a drat blow on his forehead. Santosh Kumar (deceased) allegedly came forward to rescue his son, whereupon Sunderdas exhorted Rattanlal (Appellant herein) to kill him who in turn was said to have given a khukhri blow on him. A lathi blow was also said to have been inflicted on Ramesh Chandra by Sunderdas. An oral report was made to the Police Post Jurian at about 09.30 p.m., which was recorded as DDR No. 16, copy of which was sent to Police Station Akhnoor, whereupon a First Information Report under Section 307/34 RPC and 4/27 LA.A. was lodged on 10.02.1993. The deceased and the injured were medically examined and were thereafter referred to Sub District Hospital Akhnoor, wherefrom the deceased and Subhash Chander were further referred to SMGS Hospital, Jammu for treatment. Santosh Kumar succumbed to his injuries at the said hospital.

The prosecution in support of its case examined a large number of witnesses. The learned Trial Judge, however, recorded a judgment of acquittal raising a number of doubts not only in regard to availability of sufficient light to identify the accused, but also having regard to the grave inconsistencies in the depositions of the witnesses, inconsistencies in the evidences of two medical experts in regard to number, nature and place of injuries, inconsistencies in regard to the place of occurrence and non-examination of the investigating officer.

The High Court on an appeal preferred thereagainst, as noticed hereinbefore, reversed the said judgment, opining that prosecution has led sufficient evidence establishing the charges against Appellant.

The High Court, however, while holding the appellant guilty under

Section 302 R.P.C., held accused Kaku Ram to be guilty only under Section 324 R.P.C. and sentenced him to undergo rigorous imprisonment for two years, whereas Sunderdas was found guilty under Section 323 R.P.C. for causing simple injury to PW-Ramesh Chander and sentenced him to undergo imprisonment for six months.

Sunderdas and Kaku Ram are not before us.

Mr. T.N. Razdan, the learned counsel appearing on behalf of Appellant, submitted that the High Court committed a manifest error in passing the impugned judgment insofar it failed to take into consideration all the findings of the learned Trial Judge and without arriving at a conclusion that its findings were perverse. The learned counsel would submit that it is now well-settled that if two views are possible, the judgment of acquittal should not be interfered with.

Mr. Anis Suhrawady, the learned counsel appearing on behalf of Respondent, on the other hand, would support the impugned judgment.

First Information Report, according to the prosecution, was recorded at 09.30 p.m. on the same day. The Investigating Officer, allegedly also recorded the statement of the first informant on the said day. There appears to be some inconsistencies in this behalf as PW-Dhano Devi stated :

"\005Police had come second day to inquire from me. Police took my statement at home. In my presence police recorded only my statement. Police on its own had received the information of occurrence. On second day police had come at around 11 o' clock. I do not know whether police had come on the day of occurrence\005"

The High Court, however, proceeded on the premise that it was the police personnel, who had referred the injured persons for treatment to Preliminary Health Centre, Jurian, which does not appear to be the prosecution case.

PW-Dhano Devi furthermore resiled from her own statements made under Section 161 of the Code of Criminal Procedure to state in her deposition :

"\005In my statement under section 161 Cr.PC where it is recorded that "my husband Pamma Ram went to police Jourian to give information" is wrong. Instead my husband went next day to police station to report\005"

However, PW-Ramesh Chander in his deposition stated :

"\005The Khairati Lal took me, my father and Subash on cart to Jurian hospital. We were treated there. On second day of occurrence my father Santosh Kumar breathed last. Accused family were not on talking terms with our family and had no ill will\005"

PW-Vijay Kumar also stated in his deposition that Kaku Ram and Khairati Lal witnessed the occurrence and were taken to hospital.

To the same extent is the evidence of PW-Subash Chander, which is in the following terms :

"\005Thereafter Dundu Ram and Khairati Lal came on spot who lifted us all and took to home. And took me and my father to hospital Jourian. Me and my father were admitted in hospital. I was stitched. Jourian hospital sent us to Akhnoor Hospital and Akhnoor hospital referred us to Jammu hospital. I remained in Jammu

hospital for one and quarter month\005"

The Assistant Sub Inspector Mohan Lal, in his deposition stated that the injured had already reached hospital 10-15 minutes prior to his arrival there.

In regard to the arrest of the accused also, there appears to be some inconsistencies. Whereas the High Court proceeded on the basis that Sunderdas and Appellant were arrested on 11.02.1993 and Kaku Ram could not be arrested as he had gone back to his unit, ASI Mohan Lal in his evidence stated that he not only reached the place of occurrence and preserved blood at the place of occurrence, but also interrogated the accused; whereas according to Constable Kewal Krishan all the accused were in their house at 02.30 p.m. next day and they were in four in number. The prosecution has not been able to establish as to who the fourth accused was.

The learned Trial Judge had raised doubts in regard to the recovery of weapons of the offence. According to the prosecution, witnesses Ramesh Chander and Vijay Kumar the police had come to the spot on the next day and seized the weapons of offence, whereas the recovery was shown to have taken place on the next day i.e. only after the accused were taken in custody. Even no nexus was shown as to whether the weapons seized had been used for commission of the crime or not.

The learned Trial Judge disbelieved Vijay Kumar and Dhano Devi as being eye-witnesses to the occurrence. The High Court held them to be so. According to Vijay Kumar, the occurrence was witnessed by Kaku Ram and Khairatilal. According to him, they came to the place of occurrence at a later stage. If their evidence is taken at its face value, they came to the place of occurrence even before PW-Subash Chander came out from his house. The learned Trial Judge laid emphasis on the fact that there was total darkness. It was so said also by Khairatilal. He also said that electricity light was only in his house and not outside. According to Subhash Chander, he became unconscious on receiving the assault. The High Court did not rely on that part of his evidence as the said witness categorically stated that he did not know as to how the occurrence took place.

It is unfortunate that the High Court in its judgment has considered only the statements made by the witnesses Subhash Chander, Vijay Kumar, Ramesh Chander and Dhano Devi and the statements of Khairati Lal and Dundu Ram in their examination-in-chief and their cross-examination. The glaring inconsistencies between the evidences of the witnesses, as has been recorded by the learned Trial Judge, had also not been taken note of by the High Court. The High Court also did not meet the reasonings of the learned Trial Judge.

Presence of Vijay Kumar and Dhano Devi at the place of occurrence was found to be doubtful by the learned Trial Judge, inter alia, on the premise that their names had not figured in the oral report lodged by Pamma Ram. Whereas PW-Subhash Chander posed himself to be an eye-witness to the alleged assault on his brother Ramesh Chander, according to the latter only after hearing hue and cry raised by his mother and brother, he came to the place of occurrence.

Khairatilal, who was to said to be the first person to arrive at the place of occurrence, was declared hostile. Although Kaku Ram was not declared hostile but the prosecution had only put questions in regard to the seizure of the blood stained earth and nothing more. According to Dhano Devi apart from Khairatilal, Suraj Prakash and Gopal came on the spot. Why they had not been examined remained unexplained. In regard to PW-Dhonda Ram, the High Court recorded :

"PW Dhonda Ram is another eye witnesses who was living in the same vicinity where the occurrence

took place, has stated that at 8 p.m. he was in his house, accused Rattan had gone to the house of Subash Chander and told him that he was being called by Kaku foji. When Subhash reached near the gate, Sunderdas and Kaku accused were standing in front of them. When Subash reached there accused sunder declared as to what they were looking for, whereupon accused Kaku inflicted a Drat blow on the heath of Santosh and Rattan inflicted a blow with khokhri on Subash causing injury on his forehead. On being cross-examined he reiterated that the accused Kaku had inflicted the injury with a Dah upon Santosh Kumar and while standing in front of Santosh Kumar he and Pamma Ram were first to reach the spot. From the evidence of PW Dhonda Ram it is thus manifest that he has given a description contrary to the case of the prosecution."

According to the said witness, it was Kaku Ram who inflicted the 'drat' blow on the deceased and not the Appellant. He has, thus, changed the name of the assailant as also the weapon of offence. The findings of the High Court are without any reason. There is no discussion as to why the defence would not be entitled to take the benefit of his statement, who was not even declared hostile.

Dhano Devi also in her evidence alleged that Appellant had hit Santosh Kumar (deceased) with khukhri, whereas accused Sunderdas inflicted a lathi blow on him.

The learned Trial Judge in his judgment opined that :

- (i) the evidence of the prosecution witnesses that they were witnesses to the occurrence is not correct and, thus, it would be unsafe to believe any of them. Even Ramesh Chander had not supported the case that the accused persons had made a joint assault upon deceased Santosh Kumar and PW Subash Chander.
- (ii) It remained unexplained as to how deceased Santosh Kumar reached the spot earlier than PW-Ramesh Chander or during the occurrence;
- (iii) Ramesh Chander did not make any attempt to rescue his brother Subash Chander, which was unnatural;
- (iv) If PW-Vijay Kuamr is to be believed, the same stands contradicted by Ramesh Chander. Both of them contradicted each other in the manner in which the assault took place. PW-Vijay Kumar nowhere stated that that PW-Ramesh Chander, Dhano Devi or Pushpa Devi were present at the spot. On the other hand, they stated that they had come thereafter.

The learned Trial Judge also raised a doubt in regard to the availability of sufficient light at the place of occurrence. A great deal of emphasis was laid in regard to the major contradictions on materials brought on record between the ocular and medical evidence. The learned Trial Judge relied upon evidence of Dr. R.K. Gupta. The contradictions in the medical report are evident from the following observations of the learned Trial Judge :

"PW Dr. R.K. Gupta has stated that on 9.2.1993 he examined deceased Santosh Kumar at 9.30 p.m. at PHC Jordian and found the following injury :

- 1) An incised wound on the head parietal region 4'x3x1/2' bleeding present vertically placed. Oozing of blood from parietal region multiple lacerations.

Whereas PW Dr. Anayat Ullah Sheikh Assistant

Professor Medical College, who conducted the autopsy on the dead body of Santosh Kumar found the following injuries :

1. A 2cm abrasion with fresh scab on the nose in its upper third region with fracture of the bones underneath;
2. A lacerated wound on the occipital region with extra vacation of blood on the occipital region of scalp. = ' diameter depressed fracture of occipital bone."

In the post-mortem certificate, Injury No. 2 was shown to be 1=" depressed fracture of bones. Dr. R.K. Gupta had not given any opinion to the police in regard thereto. He could not say as to the said injury could have been caused by the assailant upon the deceased with what type of weapon. The 'Khukhri' was shown to him to which he stated that injury could be caused by it, whereas Dr. Inayat Ullah Sheikh categorically stated that injury no. 2 could only be possible by using a blunt object with a striking surface in the measurement of =" in diameter e.g. hammer. In regard to injury no. 1, his opinion was that the same could be possible by a fall or striking on hard surface.

The learned Trial Judge also took serious note of the fact that report of the X-Ray taken by the Radiologist had not been brought on records. Even the sky-gram of the deceased had not been produced. The court, thus, was deprived of an opportunity from considering a part of the medical evidence. An adverse inference was rightly drawn by the learned judge as no explanation was therefor was offered. The learned Trial Judge furthermore wondered as regards the truth in the prosecution case as disclosed by one of the prosecution witnesses, namely, Harbans Lal, who had stated that son of deceased had informed him that he was assaulted by someone. If the prosecution case is to be accepted, the names of the assailants were known to the deceased as also his son. No independent witnesses like Numberdar and Chowkidar was examined to prove disclosure statement of the accused persons and consequent recovery of the weapons of the offence. The learned Trial Judge furthermore noticed that non-examination of the Investigating Officer had seriously prejudiced the defence.

In Samghaji Hariba Patil v. State of Karnataka [(2006) 10 SCC 494], this Court held :

"We have noticed hereinbefore that the High Court has taken a contrary view. Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible\005"

[See also Kallu alias Masih and Others v. State of M.P. (2006) 10 SCC 313; Chandrappa & Others v. State of Karnataka 2007 (3) SCALE 90; and Swami Prasad v. State of Madhya Pradesh \026 2007 (4) SCALE 181- Paras 26 and 27].

We, therefore, are of the opinion that the judgment of the learned Judge cannot be said to be a view which was not possible to be taken.

Unfortunately, all these aspects of the matter had not been considered by the High Court in their proper perspective.

We, therefore, are of the opinion that the impugned judgment cannot be

sustained, which is set aside accordingly. The appeal is allowed. Appellant shall be released forthwith, if not required in any other case.

JUDIS