CASE NO.:
Appeal (crl.) 216 of 2002

PETITIONER:
PRITAM NATH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 01/08/2002

BENCH:
DORAISWAMY RAJU], SHIVARAJ V. PATIL.

JUDGMENT:

Shivaraj V. Patil J.

In this appeal, by special leave, the appellants have assailed the judgment of the High Court reversing the order of acquittal made in their favour by the trial court and convicting them under Section 304-II of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each.

The prosecution case, briefly stated, is that PW-2 Ram Charan and Vidya Rani, the deceased, had been married about 18 years prior to the incident. At about 6/7 P.M. on 4th August, 1989, Ram Charan took his wife to the dera of the appellants situated in village Sahera for getting her treated from the evil spirits, which had seized her. Kewal Nath, a co-accused, and Pritam Nath, appellant No. 1, claimed to be Sadhus in the said dera and the appellants Nos. 2 and 3, viz., Pritam Singh and Raghbir Singh, were their chelas, who were all present there. PW-2 Ram Charan told them that his wife had been seized by evil spirits and requested them to help and treat her, whereupon these appellants and Kewal Nath, the co-accused, tied Vidya Rani to a tree and started giving blows with iron rods, trishul and chimtas on various parts of her body. Witnessing the same for some time PW-2 got alarmed and tried to intervene telling them that the treatment might kill her. The accused, however, assured him that Vidya Rani would not die. However, she became unconscious during the night. The next day at about 1.00 P.M., PW-2 came to know that his wife had been died. Then he raised a roula, which attracted Bhagwan Singh, Balbir Singh, Bhola Ram and Surinder Singh. Then he left for the police station, Mulepur with Bhola Ram and Surinder Singh and reached there at about 2.00 P.M. In the police station his statement Ex. PD was recorded and further investigation was taken up. After completion of the investigation challan was filed. They were tried by the sessions court for the offences under Section 302 read with Section 34 IPC.

After trial the learned sessions judge, for the reasons recorded in the judgment, held that the prosecution failed in its efforts to prove the case against the accused beyond reasonable doubt and consequently acquitted them. The State filed appeal in the High Court challenging the order of acquittal passed by the trial court. The High Court found fault with the order of acquittal and held accused guilty of the offence under Section 304 Part-II read with Section 34 IPC. Hence they were convicted and sentenced as already stated above.

The learned counsel for the appellants strongly contended that the High Court was not right in reversing the order of acquittal adopting an approach contrary to well-settled position in law as expressed in various pronouncements of this Court. The order of acquittal did not call for interference as it was not based on a misreading of evidence or otherwise perverse. Merely because the High Court could perhaps take a different view was not a ground for disturbing the judgment of acquittal. The learned counsel further pointed out that there was delay of 18 hours in lodging the FIR for which there was no proper explanation although Ram Charan claimed to have been an eye witness to the incident; there were serious contradictions and omissions in the statements of witnesses; PW-2 was the only so called eye witness, whose evidence was unreliable and unsafe to convict the appellants as rightly recorded by the trial court giving various reasons for not relying on his evidence; the High Court lightly brushed aside the reasons given by the trial court for acquitting the appellants.

In opposition, the learned counsel for the State made submissions supporting the impugned judgment adopting the reasons given in the impugned judgment.

We have carefully considered the submissions made by the learned counsel for the parties. The sustainability of the impugned judgment is to be tested on the basis of crystalised judicial view and repeatedly pronounced principles as to the scope and ambit of disturbing or reversing an order of acquittal recorded by a trial court.

In this case, mainly the conviction of the appellants was sought on the basis of sole testimony of PW-2 Ram Charan, the husband of the deceased. The learned sessions Judge was aware that there was no legal bar for convicting an accused on the solitary testimony of an eye witness provided the same was unimpeachable and suffered from no infirmities and was corroborated by independent circumstances in the shape of medical evidence and other evidence. Judging by that standard after the scrutiny of statement of PW-2 the trial court held that his evidence was not reliable to act upon for the reasons recorded in its judgment, which read: -

"The witness states that the accused were lifting the weapons wielded by them, namely iron, trishul and chimta which have been heated up in the Dhooni but this part of the statement is an improvement upon the statement made by this witness under Section 61 of the Code of Civil Procedure which does not indicate that the weapons were being lifted from the Dhooni before giving

injuries to the deceased. While improvement on a non vital issue may be overlooked but when a prosecution witness makes an improvement on an aspect to which is material for the case, the courts are reluctant to rely upon such an improvement and normally reject the same. In the case in hand, the improved version was put forth to corroborate the medical evidence available in the postmortem report which indicated presence of a large number of burn wounds. As the improvement is on a very material aspect of the case, I am afraid that the same would have to be ruled out of consideration. Another portion of testimony of Ram Charan which does not stand closer scrutiny is the assertion regarding Vidya Rani being tied up with a rope to a sheesham tree. In the postmortem report, there are no marks on the dead body indicating that the deceased had been tied up and so this part of the story too has to be ruled out of consideration. Looked at from another angle too, the part of the testimony of Ram Charan which asserts that the injuries were caused to Vidya Rani with hot weapons is rendered unreliable because although there are burn injuries present on the dead body yet the clothes of the deceased do not have any corresponding burns and in this state of affairs the court cannot but infer that Ram Charan was either not present when injuries were caused to the wife or that he is withholding the details thereof which too would not help in any way to enhance the reliability of the testimony of this witness.

Having come to the conclusion that the statement of Ram Charan regarding the manner in which the injuries were caused to Vidya Rani is unreliable, I may turn to another aspect of the case in which the conduct of the witness at the time when his wife being caused injuries has to be gone into. Ram Charan asserts that after taking Vidya Rani to the Dera of Kewal Nath for treatment of evil spirits she tied with sheesham tree and beaten up with hot chimta, trishul and iron rod. He also asserted that when the accused started causing injuries to the deceased he called upon them to desist from doing so as though may endanger the life of Vidya Rani. He also asserted that he was unable to interfere because of a threat which has been held out by the accused to him. This conduct of the husband to say the least appears to be highly unnatural for once he apprehended danger to the life of his wife he would have raised a hue and cry and either

intervened to prevent the causing of further injuries to her or at least would have gone to the neighbouring village and sought assistance for rescuing the lady. Ram Charan did not respond in this manner and this part of his conduct when scrutinized in the light of the fact that his statement regarding the actual incident has already been held by me to be unreliable renders this part of his testimony also untrustworthy. We thus have a case in which the testimony of the solitary eye witness does not come up to the mark and is replete with infirmities which cannot be overlooked. Taken in its entirety it has to be held that Ram Charan is not a witness of truth and his statement regarding the circumstances in which his wife is alleged to have met her end is totally unreliable."

Referring to the recoveries, which were stated to have been made at the instance of Kewal Nath, the co-accused, who is not before this Court in this appeal, the learned sessions Judge observed that the recovery of iron rod, chimta and trishul by themselves would not in any way help the court to fasten criminal liability on the accused. It may be added that weapons were not even recovered from these appellants.

The High Court in the impugned judgment has opined that the findings recorded by the trial court were palpably erroneous and could not have been given on the evidence that has been led by the prosecution, that too without re-appreciating and objectively evaluating or scrutinizing the evidence of witnesses. The High Court states, "It is true that in the FIR Ram Charan did not mention that the weapons wielded by the accused had first been heated before Vidya Rani had been beaten but the basic fact remains that he had clearly stated that she had been given a severe beating with the weapons. The omission to state that the weapons had been heated, to our mind, is of little consequence in the light of the fact that Ram Charan could not possibly have anticipated that what he believed to be a simple treatment for his wife’s problem would end in her tragic death. It is also true that the FIR had been lodged after a delay of 18 hours but in the background of the case, this fact by itself pales into insignificance."

A perusal of the judgment of the High Court shows that there is no reference to the statements of the witnesses at least on material aspects of the prosecution case. The judgment contains narration as to prosecution story, arguments of the learned counsel and reproduction of injuries found on the deceased running into four pages, the reasons and discussion is only found in one paragraph and portion from the said paragraph is already extracted above. In the penultimate paragraph the High Court only states that the case of murder was not spelt out as there was no intention on the part of the accused to cause death but they could be safely attributed with the knowledge that death could be caused in such a situation and as such convicted them for offence punishable under Section 304-II, IPC.

In our view the approach of the High Court and consideration of the case that too for reversal of the order of acquittal has been unsatisfactory and if we may say so it has been casual. The High Court did not consider the case before it, as it ought to have been by a court of first appeal on facts. The High Court did not dislodge the reasons given by trial court for acquittal. Further the evidence was neither discussed nor scrutinized nor analysed to show how the trial court was wrong in appreciating the evidence, considering the probabilities of the case and recording findings.

There was delay of 18 hours in lodging the FIR, no ligature marks were found on the body of the deceased as against the prosecution story that the deceased was tied to a tree with rope and that was the position through out the night; no burn marks were found on the clothes of the deceased as is evident from the statement of PW-8, the Investigating Officer, though there were several burn injuries on the body of the deceased as per the prosecution; the body was not identified by PW-2 Ram Charan, the husband of the deceased at the place of the occurrence or at inquest raising serious doubts about his presence itself. PW-1, the doctor, in his evidence has stated that when he gave opinion on 6.8.1989, the weapons stated to have been seized were not shown to him by the police; the weapons when produced were not sealed; on them the name of the accused, case number and name of the deceased were not mentioned. PW-2, the sole eye witness, in his evidence has stated that when police went to the spot with him all these weapons were lying at the spot and were taken into possession. PW-8, the Investigating Officer, has deposed that the weapons were recovered on 12.8.1989 at the instance of co-accused Kewal Nath, who is not before us in this appeal. The rope with which the deceased was alleged to have been tied to the tree was also not recovered. These infirmities gave rise to serious doubts as to the prosecution case and involvement of the appellants in the commission of the offence. When the material contradictions and omissions and improvements in the evidence of PW-2 were found and there was no corroboration to his evidence by other independent witnesses, it was fatal to the prosecution case. The trial court was right in not relying on his evidence.

No interference by the High Court in such an appeal was called for or warranted when the reasons given by the trial court for recording acquittal are good and sturdy. The trial court had the advantage and benefit of observing during the trial the demur and conduct of the witnesses from its commencement to completion and with that background on proper and objective appreciation of the evidence as a whole recorded a finding of acquittal supported by reasons. The High Court could not upset an order of acquittal as if it was another trial court to record conviction forgetting that it was sitting in first appeal against an order of acquittal. The High Court failed to keep in its mind the well-settled principles in the matter of reversing an order of acquittal.

Assuming one other view was possible to be taken by the High Court, that was not enough in the light of well-settled position in law. In this case, having regard to the discussion made and reasons given by the

trial court, extracted above, it cannot be said that the appreciation of evidence was perverse or arbitrary or findings recorded were based on no evidence or material evidence was not considered. The High Court, in our view, committed a grave error in convicting and sentencing the accused, reversing the order of acquittal merely because it could take a different view. In a case like this it is the duty of this Court to interfere with the impugned judgment and order so as to do substantial justice.

In the result for the reasons stated above the impugned judgment of the High Court is set aside, that of the trial court is restored and the appellants be set at liberty forthwith, if they are not required in any other case. The appeal is ordered accordingly.