Supreme Court of India Allarakha K. Mansuri vs State Of Gujarat on 14 February, 2002 Author: Sethi Bench: R.P. Sethi, K.G. Balakrishnan CASE NO.: Appeal (crl.) 1285 of 1998

PETITIONER: ALLARAKHA K. MANSURI

Vs.

RESPONDENT: STATE OF GUJARAT

DATE OF JUDGMENT: 14/02/2002

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

JUDGMENT: SETHI,J. The appellant was charged for the offences punishable under Sections 302 and 504 read with Section 114 of the Indian Penal Code in Sessions Case No.57 of 1989 and after trial was acquitted by the learned Sessions Judge on 11.9.1990. The appeal filed against the judgment of acquittal was allowed by the High Court vide judgment impugned in this appeal holding the appellant guilty for the commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- In default of payment of fine, the appellant has to undergo further rigorous imprisonment for three years. The facts of the case are that on 27th March, 1989 at about 7.30 p.m., the appellant along with Ramji Khamisa Mansuri went to the Tea Stall of the deceased armed with Dharia. He inflicted four blows to the deceased with that Dharia, as a result of which deceased Abdul Karim Ali Mohamed sustained serious injuries on head and other portions of his body. He was shifted to the Hospital but he succumbed to the injuries. At about 7.45 p.m. a message was received at Police Station Bhachau from the Medical Hospital stating that Abdul Karim Ali Mohamed who has been brought to the Hospital had sustained serious injuries and was being shifted to Bhuj Civil Hospital. The intimation was recorded as Crime Entry No.20 of 1989 in the Police Station diary. Thereafter the statement of Ali Mohmed was recorded in the police station and the FIR registered which was marked as Exhibit 30. On completion of the investigation, charge sheet was filed against the accused persons. The prosecution examined 10 witnesses. Ali Mohdmed Husein (PW4), complainant, Rajesh Velji (PW5), Shashikant (PW6) and Mamudo @ Abdulla (PW9)were cited eye-witnesses. As Rajesh Velji (PW5) did not fully support the case of the prosecution, he was declared hostile. The trial court discarded the testimony of the eye-witnesses and acquitted the accused. It appears that the trial court mainly relied upon the following aspects for acquitting the accused persons: "i) That Exh.36, entry No.20/1989 in the police station diary which came to be recorded on the information given by the medical officer of Bhachau Hospital is the first information report under Section 154 of the Code and not the complaint-FIR lodged by the complainant Ali Mohmed at exh.30. ii) That the time of death of the deceased Abdul is not established, hence, prosecution story is doubtful. iii) Identity of the Muddamal articles is doubtful as the witnesses have not been shown such items and have not identified; iv) Identity of one more witness Manudo is also doubtful and

in his place somebody is placed as Manudo in view of the evidence led by the accused persons. v) The investigation carried out by the investigating officer Mr.Makwana is not truthful but is shaky and, therefore, it creates cloud of doubt. vi) Statement of some of the witnesses by the police under section 162 are recorded late and, therefore, there was chance for manipulation. vii) Non-cognizable complaint lodged by A-1 and produced at exh.33 is not admissible in evidence as it was given to the police officer-investigating officer during the course of investigation; viii) the contradictions in the evidence of witnesses are also creating doubt on the veracity of the prosecution case. In appeal, the High Court relied upon the testimony of the eye-witnesses and convicted the appellant vide impugned judgment. The High Court held:"We have no hesitation in finding that the contradictions and the deficiencies and discrepancies highlighted by the trial court in rejecting the evidence of 3 eye witnesses supported by medical evidence and also F.S.L. report are in our opinion quite at micro level and some of them are factually not correctly stated and even if they are factually correct, would not in reality influence or affect the evidence of 3 eye witnesses and other circumstances corroborating the evidence of eye witnesses. The trial court has committed thus serious error of law in placing unnecessary reliance on such insignificant, unsustainable and micro level discrepancies and contradictions which as such do not affect the main core of the prosecution story and has failed to rely on the evidence of 3 eye witnesses whose evidence has remained unimpeachable on the main story of the prosecution that it was none else but only A-1 Allarakha who did commit murder of deceased Abdul Karim by giving him successive blows with dhaia in a public place near the tea stall of the deceased and that too for a motive for pecuniary gain. The trial court has committed also serious error in giving benefit of doubt to the appellant A-1 Allarakha. We may mention at this stage that benefit of doubt if any arising from the record of the case on the main story of the prosecution which is reasonable and just in the circumstances could be given to the accused which is one of the fundamental principle of Criminal Jurisprudence. However, it must be strictly noted that the benefit of doubt should be a reasonable average person and not of a person who is afraid of legal consequences. Before we conclude, we should also like to highlight one more important aspect which also significantly corroborates and supports the prosecution case and the evidence of 3 eye witnesses and it is the recovery of Muddamal article No.9 dharia from A-1. We have found while examining the impugned judgment that the trial court has made certain observations and has raised certain conjuctures that the accused in such a situation would not always carry incriminating dharia all the time during the period of abscondance after the incident (it may be noted that the accused persons were found from village Madi and came to be arrested and at the time when the crime weapon article No.9-dharia was recovered in presence of panches and the Muddamal dharia -article No.9 had human blood stains on the blade portion of it). It is also supported by the report of the serologist. It is clearly found by the expert in the serological examination that it did contain the blood stains of human blood group “B” which was of the deceased Abdul Karim as the clothes found from the dead body contained the same blood group. The

panchnama prepared in this behalf is also supporting the case of the prosecution." On the basis of the evidence, the High Court found that the appellant was the prime accused being responsible for the murder of Abdul Karil Ali Mohmed. He gave four successive dharia blows on the vital organs of the deceased which resulted in his death. The weapon of offence, Article No.9 recovered from the appellant was stained with blood Group "B" which was the blood group of the deceased. The statement of three eye-witnesses, namely, Ali Mohmed Husein (PW4), Shashikant (PW6) and Mamdu @ Abdulla (PW9) proved the version of the prosecution leading to the unerring conclusion that it was the appellant alone who had committed the murder of the deceased by inflicting four successive blows with the weapon of offence- Exh.9. The evidence of the eye-witnesses stood corroborated by medical evidence of Dr.C.M. Acharya (PW3) and Dr.N.R. Jadeja (PW2). Learned counsel for the appellant assailed the impugned judgment on the ground that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of fact of the trial court even if it was of the opinion that the view taken by the trial court was not proper. It is submitted that where two views are possible, the one favourable to the accused resulting in his acquittal should be accepted and not interfered with lightly. The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. In our country it is not a jurisdictional limitation on the appeal court but a judge made guideline of circumspection. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra [AIR 1973 SC 2622] this Court held: "This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full powers to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The Privy Council in Sheo Swarup v. King Emperor 61 Ind App. 398 = (AIR 1934 P.C. 227(2), negatived the legal basis for the limitation which the several decisions of the High Courts had placed on the right of the State to appeal under Section 417 of the Code. Lord Russel delivering the judgment of the Board pointed out that there was"no indication in the Code of any limitation or restriction on the High Court in the exercise of its powers as an appellate tribunal," that no distinction was drawn "between an appeal from an order of acquittal and an appeal from a conviction," and that "no limitation should be placed upon that power unless it be found expressly stated in the Code." He further pointed out at p.404 that, "the High Court should an dwill always given proper weight and consideration to such matters

as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." In Sanwat Singh vs. State of Rajasthan (1961) 3 SCR 12- = (AIR 1961 SC 715) after an exhaustive review of cases decided by the Privy Council as well as by this Court, this Court considered the principles laid down in Sheo Swarup's case and held that they afforded a correct guide for the appellate court's approach to a case against an order of acquittal. It was again pointed out by Das Gupta, J. delivering the judgment of five judges in Harbans Singh v. State of Punjab (1962) suppl. 1 SCR 104 = (AIR 1962 SC 439). "In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on 'compelling and substantial reasons' and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal (vide Suraj Pal Singh v. The State, (1952 SCR 193 = (AIR 1952 SC 52) Ajmer Singh v. State of Punjab, (1953) SCR 418 = (AIR 1953 SC 76), Puran v. State of Punjab, AIR 1953 SC, 459). The use of the words 'compelling reasons' embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable." The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding. In the instant case the trial court relied upon certain aspects of the case as noticed earlier for passing an order of acquittal. Examined critically, none of the aforesaid circumstances or aspects can be held to be based upon legal evidence. Whether Exhibit 36 or Entry No.20/89 is the First Information Report would not change the nature of the allegation made against the accused as no discrepancy is pointed out in the aforesaid entries. Entry No.20 is recorded on the basis of report received from the Hospital and Exhibit 36 is on the basis

of statement of the complainant Ali Mohmed. In the absence of any discrepancy in the aforesaid two documents, the accused-appellant could not be acquitted. The two entries did not make the so-called two versions possible. The only inference of the two entries is that occurrence had taken place in which Abdul Karim Ali Mohmed had died and the appellant had inflicted injuries. Similarly the time of death in no way proves the appellant to be innocent. In presence of the ocular testimony of eye-witnesses that occurrence had taken place on 27th March, 1989 at about 7.30 p.m. in which the injuries found on the person of the deceased were caused by the appellant, the time of death of the deceased ascertained on the basis of opinion of the Doctor was in no way helpful to the appellant. We also find that the trial court had no reason to hold that the identity of the weapon of offence was doubtful or Mamudu @ Abdulla (PW9) was not the prosecution witness whose statement had been recorded under Section 161 of the Code of Criminal Procedure. The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also defective investigation by itself cannot be made a ground for acquitting the accused. The trial court was also not justified in holding that the statement of the witnesses under Section 161 Cr.P.C. were recorded late by the police and that there was any chance of manipulation. The FIR is proved to have been recorded within 15 minutes of the occurrence and its copy furnished to the Magistrate within 24 hours, which rules out the possibility of manipulation. The contradictions in the evidence of the witnesses, referred to in the judgment of the trial court, are of very minor nature which instead of discarding their testimony strengthens the case of the prosecution of the witnesses being truthful as they were not shown to have made parrot like statements. A critical examination of the judgment of the trial court shows that the view taken by it was uncalled for, not based upon the facts of the case or the legal evidence tendered in the case and was the result of conjectures, imagination and hypothesis. The High Court rightly held that the conclusions arrived at by the trial court were factually and legally incorrect. The High Court was, therefore, justified in re-examining the whole evidence produced in the case and to hold that the accused-appellant was proved to have committed the offence of murder beyond all reasonable doubt. He has rightly been convicted and sentenced for the commission of the aforesaid offence. We do not find any illegality or error of jurisdiction in the judgment of the High Court requiring our interference. There being no merit in this appeal, the same is dismissed. .....J. (R.P. Sethi) .....J. (K.G. Balakrishnan) February 14, 2002