Lekha Yadav vs State Of Bihar on 3 May, 1973

Equivalent citations: AIR1973SC2241, (1973)2SCC424

Author: K.K. Mathew

Bench: K.K. Mathew

JUDGMENT

J.D. Dua, J.

1. In this appeal by special leave, Lekha Yadav appellant challenges his conviction by the High Court Under Section 302, I.P.C. for the murder of co-villager, Ramautar Mishra as per judgment and order dated October 9, 1960 after reversing his acquittal by the court of Third Additional Sessions Judge, Patna by its order dated October 12, 1966. In the trial court, there were nine accused persons including the appellant and the charge against the appellant was under Sections 148 and 302, I.P.C. whereas against the remaining accused persons, the charge was framed under Sections 302/149, I.P.C. Ram Pravash Singh, Suresh Yadav and Budhu Yadav three out of the other 8 accused persons were further charged under Section 147, I.P.C. whereas the remaining five were charged under Section 148, I.P.C.

2. The prosecution case broadly stated is that in village Supanchak in the jurisdiction of police station Fatwah there is some Raiyati land belonging to the family of Sheonandan Mishra, Surjug Mishra. Kamalnain Mishra, Ramasis Mishra and the deceased Ramautar Mishra. bearing plot No. 60 with an area of 9 decimals. Adjacent towards east of this plot is plot No. 50 with an area of 89 decimals which is Gairmazarua. A portion of this Gairmazarua land, adjacent to plot No. 60, is in the cultivating possession of the family of Mishras since a long time. There was, it appears, a proposal to give, as a reward, 5 acres of land to Chandeshwar Mishra, a brother of Sarjug Mishra, P.W. 12, who was in military services. On behalf of Chandeshwar Mishra a request was made to include in the aforesaid area of five acres proposed to be awarded to him, a portion of plot No. 50 which was already in possession of the family of Mishras. This greatly annoyed the accused persons. As a result, proceedings under Sections 144 and 107, Cr.P.C. were started at the instance of Sarjug Mishra, P.W. 12. In the proceedings under Section 107, notices were issued to the accused persons on September 3, 1965 to show cause by September 28, 1965 as to why they should not be directed to execute interim bonds to keep the peace. On 22nd September, 1965 the occurrence in question took place giving rise to the prosecution out of which the present appeal arises. On that day in the early hours of the morning, Ramautar Mishra was planting brinjals in the Raiyati land when the accused persons came there armed with various weapons and asked the deceased to stop planting brinjals, otherwise he would be killed. Ramautar insisted on planting brinjals whereupon the appellant gave a Bhala blow on his chest, Jaldhari gave a Bhala blow on the stomach of the deceased, and

Sheobalak accused hit the deceased on his leg with a Garasa. Some other accused are also stated to have assaulted the deceased on his leg. As a result, Ramautar fell down. Sarjug Mishra, P.W. 12, the brother of the deceased, who had just arrived from Barh saw the occurrence and raised alarm. Some of the villagers who were near about and had witnessed the occurrence, along with some others, also arrived at the place of occurrence, but seeing them the accused persons fled away. Ramautar, the deceased, who was gasping was given water by his brother Sarjug Mishra and a cot vas brought for taking Ramautar to Fatwah Hospital. Ramautar, however, expired on the way near village Somaru. Information with regard to this occurrence was lodged by Sarjug Mishra, P.W. 12 at 7.15 A.M. at the police station Fatwah.

3. The trial court in a relatively brief judgment came to the conclusion that the story put forward by the prosecution was incredible and unconvincing and the witnesses examined could not be believed. So holding, all the accused were acquitted.

4. On appeal by the State the High Court considered the relevant conclusions of the learned trial Judge on which the order of acquittal was based, and then dealt with the evidence led in the case at great length. After appraising the evidence in a rational, judicious and detailed manner, the High Court came to the conclusion that the evidence that the appellant Lekha Yadav had caused injury No. 1 which was in all probability sufficient to cause death in the ordinary course of nature, and that he was, therefore, guilty, of the offence under Section 302, I.P.C.. The order of the trial court acquitting the appellant of the charge of murder was, therefore, considered erroneous. Setting aside the order of his acquittal, the High Court convicted him of the offence under Section. 302, I.P.C. and sentenced him to rigorous imprisonment- for life. The lesser penalty was awarded to him because of his young age. It may be pointed out that the appellant is stated in the judgment of the trial court to be 22 years of age. So far as the other accused are concerned, the High Court observed that there was no charge of specific assault against them and that they were merely charged with the murder of Ramautar under Sections 302/149, I.P.C. and for being members of the unlawful assembly under Sections 147 and 148, I.P.C. From the evidence of Jagdish Yadav P.W. 15,the presence of some of the accused persons was considered doubtful. The charge under Sections 147 and 148, I.P.C. against them having thus been held to be unsubstantiated, the charge under Sections 302/149, I.P.C. was on this ground also held to be unsustainable. The order of acquittal against them was, therefore, affirmed.

5. Before us, Shri Mookerjee, the learned Counsel for the appellant, has addressed elaborate arguments and has very forcefully and eloquently argued that the judgment of the trial court is reasonable and if that court had on appraisal of the entire evidence disbelieved the prosecution story, the High Court was incompetent, on appeal against acquittal, to reverse those conclusions and to convict the appellant for the offence of murder. Shri Mookerjee took us through the judgments of the two courts below as also through the evidence of some of the witnesses for the purpose of showing, that the prosecution witnesses are all partisan witnesses and there were feelings of animosity amongst the members of these rival groups, between whom there was no love lost, and that therefore the trial court's assessment of the evidence should have been accepted, and differed from by the High Court. The counsel very strongly submitted that the High Court had resorted to speculation rather than to rational and judicious appraisal of the evidence actually led in the case.

Our attention was drawn to the legal position laid down by this Court in Sanwat Singh v. State of Rajasthan and it was contended that the High Court had ignored the legal position enunciated therein.

6. On behalf of the respondent, it was submitted that the High Court was fully justified under the law to re-appraise the evidence for itself and come to its own conclusion, there being no restriction placed by the statute on its power to do so when disposing of State appeal from an order of acquittal The High Court, according to Shri U.P. Singh did not transgress the limits of its statutory power and the rule laid down in Sanwat Singh's case AIR 1961 SC 715 (supra) was fully adhered to. The respondent's counsel brought to our notice the recent decision of this Court in Ramabhupala Reddv v. State of Andhra Pradesh where the summary of the legal position as enunciated in Sanwat Singh's case (supra) was stated thus:

> 1. An appellate court, has full powers to review the evidence upon which the order of acquittal is founded.
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> 2. The principles laid down in Sheo Swarup's case afforded a correct guide for the appellate court's approach to a case disposing of such an appeal.
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> 3. The different phraseology used in the judgments of this Court such as-
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> (a) substantial and compelling reasons:
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> (b) good and sufficiently cogent reasons;
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> (c) strong reasons.

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.

The counsel also drew our attention to Gopi Nath Ganga Ram Surve v. State of Maharashtra where it was reiterated that the power of the Appellate Court in an appeal against acquittal is not different from that it has in appeal against conviction and that the difference lies merely in the manner of approach and perspective rather than in the content of the power. In that case, this Court, after examining the judgments of the High Court and of the Sessions Judge and after hearing the counsel, felt satisfied that, the High Court had approached the evidence from a correct perspective and had given definite findings on a consideration of the entire evidence and had, therefore, not departed from any principle laid down by this Court. The learned Counsel then took us through the salient features of the case in hand and submitted that the trial court had approached several aspects of the case from erroneous point of view and had also wrongly excluded some relevant evidence. P.W. 12. according to the learned Counsel, was a trustworthy witness and had actually lodged the F.I.R.

expeditiously stating therein details which could not have reasonably been concocted during such a short time. According to the submission the testimony of this witness is corroborated by that of P.W. 9. The other witnesses, according to Shri Singh, have also fully supported the prosecution version. The judgment of the High Court, said the counsel, does not suffer from any legal infirmity and there is no cogent ground for interference under Article 136 of the Constitution.

7. Shri Mookherjee, in his reply, strongly contended that this Court under Article 136 does not assess the evidence as if it is trying the case. Its only duty is to see if the High Court was right in reversing the conclusions of the trial court. this Court, he added, should not proceed to examine the evidence for itself so as to uphold the order of conviction on its own appraisal.

8. The legal position is so well settled that we consider it unnecessary to deal with it at great length. It has been reiterated by this Court in innumerable cases, a large number of which are reported in the law reports. To put in a nutshell, once again, the High Court has full power on appeal from acquittal to appraise the evidence for itself just as it is empowered to do on appeal against conviction. The statute, as has repeatedly been said, creates no distinction between the two kinds of appeals. All that the High Court is expected to do in appeals against orders of acquittal, is, that it should bear in mind that there is an initial presumption in favour of innocence of an accused person and that the trial court having acquitted Mm, this initial presumption should be considered to have been further strengthened to some extent, but certainly not weakened, as a result of the trial court's conclusion. The correctness or otherwise of the conclusions of the trial court, it is true, is the subject of the appeal and is, therefore, open to examination by the High Court. But- while appraising the evidence, the High Court should not ignore the importance of the opinion of the trial court which has to be dislodged before reversing the order under appeal. This, in our opinion, is the broad approach required of the High Court when hearing appeals against orders of acquittal.

9. this Court is not, as a general rule, expected to examine the entire evidence for itself under Article 136 of the Constitution in cases where the High Court has, on appeal, reversed the order of acquittal and convicted the accused persons. this Court only examines so much of the evidence as is necessary for the purpose of determining whether the High Court has kept in view the guidelines laid down by the Privy Council in Sheo Swarup's case and later in numerous cases heard and disposed of by this Court. Those guidelines are well known and have already been adverted to.

10. Turning to the case in hand, it is obvious that the trial court had committed several errors in appraising the evidence led in the case. It not only ignored but appears even to have misread part of the evidence in certain respects and as a result thereof arrived at conclusions which on a proper appraisal and reading of the evidence would be clearly erroneous and unsustainable. The trial court's approach in evaluating the evidence appears to us to be unfair and irrational. For example, it has condemned the prosecution by imputing to it attempt to falsely implicate Suresh accused. This is how the trial court has dealt with this matter.

One of the important circumstances is that one Suresh had accompanied the dead body to the police station. Accused Suresh claims that it was he who had gone with the dead body and at the police station P.W. 12 Sarjug Missir asked him to go away and he returned home. For the first time it was

P.W. 9 who introduced the presence of one Suresh at the place of occurrence and she said that he was her sister's son and in paragraph 12 she denied that it was accused Suresh who had accompanied the dead body of her son. P.W. 3 has stated in paragraph 6 that in the village except accused Suresh there is no other of that name and he had stated before the police that Suresh had carried the dead body of Ramautar to Fatwah. P.W. 15 has stated in paragraph 8 that he does not know any Suresh except the accused Suresh. According to P.W. 12 his cousin Suresh is aged about nine or ten and it was he who had gone to the police station along with them. But P.W. 19 the investigating officer does not say that he examined any Suresh at the police station or any where thereafter. If actually there had been another Suresh, the prosecution could not have failed to produce him just to disprove the claim of accused Suresh that he had gone with the dead body to Fatwah. Having failed to do so and it being admitted by P.Ws. 3 and 15 that they do not know of any other Suresh, the only natural inference would be that it is this accused Suresh who had accompanied the dead body to Fatuwa and his statement under Section 342, Cr.P.C. that it was at the Thana that P.W. 12 asked him to return home explains as to why he was not examined by the Police." Now P.W. 3, Parmeshwar Gope was tendered for cross-examination., In his cross-examination on behalf of the accused persons it was extracted that on that day no man named Suresh carried the injured person to hospital and that there was no other Suresh in the village except accused Suresh. It was further extracted that the witness had not made a statement before the police that Suresh and others carried Ramautar to Fatwah and that when Ramautar was lifted and was being carried, there was none else besides the witnesses. This statement was recorded on September 21, 1966. Gaya Devi, P.W. 9 examined on September 26, 1966 denied in cross-examination that accused Suresh had gone to the hospital with her son and that it was not a fact that her sister's son Suresh had not come there. She added that her sister's son Suresh had actually come to her place one day before. P.W. 12, Sarjug Mishra in cross-examination stated that in addition to the witnesses his Mausera brother Suresh had come there after the occurrence. This statement was recorded on September 27, 1966. Jagdish Yadav, P.W. 15 in his cross-examination stated that accused Suresh was not his brother by village relation and that he did not know any other Suresh except this one. Suresh accused was examined in the court of Committing Magistrate on March 4, 1966. In his examination as an accused in that court he gave his age to be 14 years and merely denied the prosecution allegations as false, adding that he had not committed the offence. He did not say anything else. in the court of the Third Additional1 Sessions Judge, he was examined as an accused on October 4, 1966 when he gave his age as 18 years and after denying all the allegations, when he was asked generally if he had any thing more to say, he replied:

> People were carrying the dead body of Ramautar in the night by the west of my house. I went there and accompanied them up to P.S. Sarjug sent me back from there.
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> When asked if he would cite (defence) witness, he replied in the negative. Now on the basis of this material, in our opinion, it is somewhat surprising for the trial court to have observed that the prosecution could have produced Suresh, the cousin of P.W. 12, to disprove the claim of the accused. This claim was not made by the accused Suresh in the committing court. It was only made in clear terms at the trial after the prosecution evidence had concluded. The trial court was, therefore, not justified in

> concluding on this basis that there was any attempt on the part of the prosecution to falsely implicate innocent persons., It is inconceivable that Suresh accused could have dared, as claimed, in the circumstances of this case, to accompany the dead body upto the police station. Bearing in mind the feelings of hostility between the two groups, the presence of Suresh accused amongst those carrying the dead body to the hospital seems to be a highly unrealistic suggestion which should have been rejected by the trial court without, any serious notice.

11. In our view, the appraisal of the evidence by the High Court is fair and just and in coming to its conclusion the High Court has not gone against the decisions of this Court. The impugned judgment and order is not open to any serious challenge and must, therefore, be upheld. The High Court has not out-stepped its statutory jurisdiction and has not acted beyond its competence as a court of appeal from the order of acquittal. This appeal accordingly must fail and is dismissed.