Sher Singh & Ors vs State Of Uttar Pradesh on 23 February, 1967

Equivalent citations: 1967 AIR 1412, 1967 SCR (2) 727, AIR 1967 SUPREME COURT 1412, 1967 (1) SCWR 795, 1967 SCD 686, 1967 2 SCR 727, ILR 1967 2 ALL 293

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.M. Shelat, G.K. Mitter

PETITIONER:
SHER SINGH & ORS.

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
23/02/1967

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SHELAT, J.M.
MITTER, G.K.

CITATION:
1967 AIR 1412 1967 SCR (2) 727

ACT:
Criminal law-Acquittal-If High Court in appeal can reverse-Value of inter-relationship between witness and victim.

HEADNOTE:
The appellants were charged for murder under s. 302/34 I.P.C.. and were:acquitted by the Sessions Judge. On appeal the High Court reversed the acquittal and convicted the appellants under s. 302/34 I.P.C. In appeal to this Court the appellants contended that (i) since an acquittal. "reinforces" the presumption of innocence, it was not a fit case for reversal of an acquittal, and (ii) the testimony of the eye witnesses in the case was found by the Sessions Judge to be unsatisfactory.

HELD:The High Court rightly convicted the appellants.
(i)The powers of the High Court in an appeal from an acquittal are m no way different from those in an appeal from a conviction. The High Court can consider the evidence and weigh the probabilities. It can accept evidence rejected by the Sessions Judge and reject evidence accepted by him, unless the Sessions Judge relied upon his observation of the demeanour of a particular witness. In departing from the conclusions of the Sessions Judge the High Court must pay due attention to the grounds on which the acquittal is based on repeal those grounds satisfaction torily, bearing in mind always that an accuse starts with a presumption of innonce in his favour and this presumption cannot certainly be less strong after the acquittal. If these matters are properly kept in view and the acquittal is reversed, there can no objection because the High Court. is empowered to reverse an acquittal. [729 E-G]
Sanwat Singh v. State of Rajasthan [1961] 3 S.C.R. 120, referred to.
(ii)The evidence of the eye witnesses was consistent, convincing and credible The Sessions Judge lost sight of the main issue, namely, whether what the eye witnesses said was credible, in an attempt to examine the inter-relation of the witnesses. This is an inquiry of value up to a point but is not conclusive because there is no crime proved in small village communities where some kind of relationship cannot be established between witnesses and the victim and some petty quarrel shown to have taken place in the past between some of the witnesses and the accused. To decide a case on the basis of such circumstances, unless they are of great or significant magnitude, is to place reliance on collateral circumstances at the expense of direct evidence of guilt which really matters. The first serves as a check upon the latter but no more. [731 B-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 191 of 1964.

Appeal by special leave from the judgment and order dated May 20, 1964 of the Allahabad High Court in Government Appeal No. 1386 of 1962.

A. S. R. Chari and A. K. Nag, for the appellants. O. P. Rana, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, J. The three appellants have been convicted by the High Court of Allahabad under s. 302/34 of the Indian' Penal Code for the murder of one Harpal and sentenced to rigorous imprisonment for life, after reversing their acquittal by the Sessions Judge, Meerut. Originally five persons were tried for this offence. All of them were acquitted by the Sessions Court. On appeal, the acquittal of the other two (Shanker and Tarif) was

maintained but the three appellants (Shersingh, Baljor and Vijaipal) were convicted. They now appeal by special leave granted by this Court.

The appellants are brothers and sons of Narayansingh. Tarif and Shanker are brothers of Narayansingh. The deceased Harpal was the brother of Naharsingh (P. W. 1) and Amichand (P. W. 5). The house of Amichand and his brothers is in front of that of the appellants, in Mauza Amanullahpur, Police Station Jani, District Meerut, where the offence was committed, As frequently happens this murder was the result of a petty quarrel earlier over the taking of carts through fields. It is hardly necessary to recount in detail what had then happened. Suffice it to say that Shersingh took his cart through Harpal's field and there was a wordy quarrel. Next Shersingh stopped a cart in which Harpal was carrying sugarcane and Harpal kicked Shersingh and beat him with fist blows. Nahar Singh (P. W. 1) and Khazan (P. W. 7) separated them. The murder followed close upon the heels of the second incident.

The case of the prosecution is that a fortnight later on the morning of November, 26, 1961 at about 7 a.m. Harpal left his ghair (compound) to answer a call of nature. Near the gate of his house the appellants and the two accused (since acquitted) fell upon him. Sher Singh and Vijaipal had spears and Shanker and Baljor had lathis. They beat Harpal with their weapons. Tarif, who also had a stick, took no part in the beating but exhorted the others to kill Harpal. Harpal was pierced in the chest and abdomen with spears and struck with sticks. On his shout for help his brothers Naharsingh and Amichand, who were working in the back portion of their house came running and three or four witnesses Bhupal (P. W. 2), Tara (P. W. 3), Katara (P. W.

4) and one Atarsingh (who was not examined) came from different sides.' The assailants then fled. Harpal who had fallen down was lifted, placed on a cot and covered with a quilt. He was however dead The autopsy later disclosed two penetrating wounds in his chest each of which had torn through his heart, a penetrating wound transfixing the stomach and some contusions. He must have died in a matter of minutes. The five accused were tried for his murder but were acquitted. On appeal the three appellants were convicted and sentenced. The learned Sessions Judge in a long judgment exhaustively discussed the evidence but lost himself in the details of family relationship and other irrelevant matters sedulously brought out in a desultory cross-,examination. He found 'it difficult to accept any part of the testimony of the eye- witnesses. The High Court on a reappraisal of the evidence came to a contrary conclusion although it maintained the acquittal of Shanker and Tarif by giving them the benefit of the doubt. In this appeal Mr. Chari, learned counsel for the appellants, drew our attention to the evidence of the eye-witnesses and contended that their testimony was unsatisfactory. He submitted that this was not a fit case for the reversal of an acquittal regard being had to the observations of this Court in Sanwat Sinah & Others v. State of Rajasthan(1) since an acquittal "reinforces" the presumption of innocence. We shall deal with both the aspects of his argument.

It has been pointed out before by this Court as also the Judicial Committee that the powers of the High Court in an appeal from an acquittal are in no way different from those in an appeal from a conviction. The High Court can consider the evidence and weigh the probabilities. It can accept evidence rejected by the Sessions Judge and reject evidence accepted by him, unless the Sessions

Judge relied upon his observation of the demeanour of a particular witness. In departing from the conclusions of the Sessions Judge the High Court must pay due attention to the grounds or) which the acquittal is based and those grounds satisfactorily, bearing in mind always that an accused starts with a presumption of innocence in his favour and this presumption cannot certainly be less strong after the acquittal. If these matters are properly kept in view and the acquittal is reversed, there can be no objection because our Criminal. jurisdiction empowers the High Court to reverse an acquittal.

In this case the High Court reassessed the evidence and considered the grounds for its rejection by. the Sessions Judge. Mr. Chari contended that the High Court ignored several factors. His argument was that the High Court ought to have seen that the medical evidence contradicted the oral testimony, the evidence clearly showed that the attack must have taken place elsewhere and that the eye-witnesses were interested in the victim and hostile to the accused. We shall now consider these objections.

(1) [1961]3 S.C.R. 120.

Harpal had three penetrating injuries on his chest and abdomen One, was a stab wound chest cavity deep and the direction was medially downwards. The second was a stab wound 3 1/2" below the left nipple in the 7th inter coastal space near stomach. The wound was partially medial and upward and chest deep. The third was a stab wound on the, mid part of the epigastric region in the midline and it was up to the back from the front and abdominal deep. The other injuries may be. ignored.' The first two injuries had punctured the heart and, the third the stomach. There was 8 oz. of clotted blood in the pleura, 3 oz. of clotted blood in the peritoneum and 1 lb. semi-clotted blood in the pericardium. The largeintestines contained faecal matter and the bladder was empty.

M.Chari said that the description of the injuries shows that Harpal must be lying down and not standing when the first and second blows were given because one stab was downwards and the upwards. , This is not conclusive. Much depends upon the perspective heights of the assailants in relation to that of the victim, the lie of the land and the moves to avoid the blows by the latter. There is nothing inherently improbable in the situation and direction of the injuries which can be said to contradict flatly the evidence of the eye-witnesses. The injuries were such as the gate of the house or elsewhere and no inference against the testimony of the eye-witnesses can be drawn. Mr. Chari sought to strengthen this argument from the circumstance that no blood was found at the spot, or in the tidri where the cot was spread or on the clothes. The Sub- Inspector Chauhal (P. W. 10) said that the place of the attack was sandy and blood had probably been trampled upon. We have shown that the body contained 1 lb. and 11 ounces of blood in its various parts and this showed considerable internal bleeding. It must be remembered that Harpal had worn a kurta, a dhoti and a khes. It is likely that these between them absorbed the external bleeding which appears to be comparatively small. At least one witness described that the clothes. were drenched in blood which they must have been wherever the murder took place. It is a pity that the clothes wore not sent to the serologist but we do not think that an adverse inference can be drawn from this circumstance. The evidence of the eyewitnesses is consistent. That the incident took place at the very door step of Harpal makes the presence of his brothers probable because they were in the house. The offence took place in day light and there could be no mistake. The report was made almost at once and the names of the assailants

and eye- witness were mentioned in it. Although it said that many other villagers saw the attack, it is perhaps because the maker presumed that this must have been so. The emptiness of the bladder showed that the victim had voided but the fullness of the larger intestines supported the prosecution version that he was going out to ease himself.

We have had the evidence of the eye-witnesses read to us and after careful consideration we are satisfied that it is consistent, convincing and credible. "The Sessions Judge lost sight of the main issue, namely, whether what the eye- witnesses said was credible, in an attempt to examine the interrelation of the witnesses. This is an inquiry of value 'up to a point but is not conclusive because there is no crime proved in small village communities where some kind of relationship cannot be established between witnesses and the victim and some petty quarrel shown to have taken place in the past between some of the witnesses and the accused. To decide a case on the basis of such circumstances, unless they are of great or significant magnitude, is to place reliance on collateral circumstances at the expense of direct evidence of guilt which really matters. The first serves as a check upon the latter but no more, The evidence' of the eye-witnesses here is clear. We accept the findings of the High Court which are supported by evidence of sufficient probative force to satisfy us. The appeal fails and will be dismissed.

Y.P. Appeal dismissed.