

## **Betal Singh vs The State Of M.P on 19 March, 1996**

**Equivalent citations: JT 1996 (3), 591 1996 SCALE (3)16**

**Author: M.K Mukherjee**

**Bench: M.K Mukherjee**

PETITIONER:

BETAL SINGH

Vs.

RESPONDENT:

THE STATE OF M.P.

DATE OF JUDGMENT: 19/03/1996

BENCH:

G.B. PATTANAIK (J)

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MUKHERJEE M.K. (J)

CITATION:

JT 1996 (3) 591 1996 SCALE (3)16

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T** G.B. PATTANAIK,J.

The appellant who had been acquitted of the charges levelled against him having been convicted under Section 302 I.P.C. by the High Court of Madhya Pradesh in an appeal against the order of acquittal filed by the State has preferred this appeal.

Appellant along with four others stood their trial before the court of Additional Sessions Judge, Gwalior. The appellant was charged under Sections 302, 120 B and 332 I.P.C. for having caused the murder of Head Constable Rajendra Singh whereas other four persons stood charged under Sections 120B, 332, 201 and 225 I.P.C. for having agreed to commit the offence with the

appellant Betal Singh. The learned Trial Judge acquitted all the accused persons. In the appeal filed by the State against the said order of acquittal the High Court maintained the order of acquittal passed against other four persons but altered the order of acquittal so far as the appellant is concerned and convicted the appellant under Section 302 I.P.C. and sentenced him to the imprisonment of life.

The prosecution case in nutshell is that one Sukhawasi had lodged a report in Police Station, Dahat against co- accused namely Kishore Singh, Vir Singh and Kundan Singh which was recorded by the deceased Rajendra Singh, Head Constable of the Police Station. On the basis of the F.I.R. a criminal case had been registered under Section 451 of the Indian Penal Code. After completion of investigation necessary challan was to be filed in the court of Judicial Magistrate. Ist Class, Gwalior. Constable Prem Singh was on his way to Gwalior on 22. 9.1978. When the said Constable reached the Bus Stand near police Station n, Dahat, the deceased Head Constable also reached the Bus Stand for checking the Country Liquor Shop. At that point of time appellant - Betal Singh reached the spot with a gun flung on his shoulder and made some discussion with the deceased Head Constable. It appears that the appellant was requesting the Head Constable to persuade Constable Prem Singh to give another suitable date for the accused persons so that their agricultural operation will not suffer and finally Constable Prem Singh was persuaded to postpone the date of filing of challan. Said appellant Betal Singh then took some liquor and started abusing the deceased Head Constable as to why he had registered criminal case against his father and brothers on the purported reports of some chamars. Suddenly the appellant fired the gun and the bullet hit the left side of the chest of the deceased. The appellant thereafter rushed and boarded the standing bus and threatened the driver of the bus. The Constable Prem Singh wanted to snatch away the gun from the appellant but he was threatened. Then there was scuffle between the appellant and Prem Singh and in the meanwhile other accused persons came and surrounded Constable Prem Singh. The accused persons after snatching the gun from Constable Prem Singh fled away to the nearby jungle. Prem Singh, PW. 1 then lodged a report at the Police Station Behat and in the standing bus deceased Head Constable Rajendra Singh was sent to the hospital but he succumbed to his injuries. A criminal case on the basis of F.I.R. was registered and after investigation charge sheet was filed against the accused persons as already stated. The accused persons were then committed to the court of Session and were finally tried by the Additional Sessions Judge. The defence plea of accused 2 to 5 was one of denial but appellant took the plea that the gun which he was holding had been loaded and had been flung on his shoulder when Constable Prem Singh, PW. 1 tried to snatch it from him and there was a scuffle and during the said scuffle accidentally the trigger was on and bullet hit deceased Head Constable Rajendra Singh who was sitting at the Cot in Kalari Shop on his chest and ultimately he died.

The prosecution examined several witnesses to establish the charge against the accused persons of whom PWs 1, 2, 4, 5 and 10 are the eye witnesses to the occurrence. PW. 9 is the Head constable at the Police Station who had recorded the First Information Report. PW-13 said seized the rifle and empty cartridges which were produced by the appellant Betal Singh while in custody. PW-14 had also investigated into the offence and made some seizure of incriminating articles. PW. 8 is the doctor who had conducted autopsy of the dead body of deceased Rajendra Singh. The other witnesses are formal witnesses. Though PWs 1, 2, 5 and 10 were examined by the prosecution as the

occurrence witnesses but except PW. 1 the rest did not support the prosecution during trial and were accordingly cross-examined in accordance with Section 154 of the Evidence Act. The learned Trial Judge on discussion of the entire materials on record and more particularly the evidence of Constable Prem Singh, PW. 1 as well as on account of certain other suspicious circumstances in the matter of investigation came to the conclusion that the prosecution has failed to establish the charges against the accused persons beyond reasonable doubt and under the circumstances the defence story put forth by the appellant Betal Singh appears to be correct and true and thus acquitted the accused persons. In the appeal against the said order the High Court examined the reasons given by the Trial Court and came to the conclusion that the said reasons are wholly unsustainable in law. The High Court then re-appreciated the evidence of PW. 1 and came to the conclusion that his evidence with regard to substratum of the prosecution case gets corroboration from the medical evidence and there is not an iota of material in support of the plea of appellant Betal Singh that it was a case of accidental firing while Betal Singh and PW. 1 were having a scuffle among themselves. The High Court ultimately came to the conclusion that the prosecution case so far as appellant Betal Singh is concerned has been proved beyond reasonable doubt and accordingly he was convicted under Section 302 I.P.C. So far as other accused persons are concerned the High Court, however, agreed with the learned Trial Judge. maintained their order of acquittal.

Mr. Gambhir, the learned Senior Counsel appearing for the appellant contended that though the power of the High Court in an appeal against the order of acquittal is the same as in an appeal from conviction but without disturbing the sound reasonings of the Trial Court for according an order of acquittal the High Court could not have altered an acquittal to a conviction. The learned counsel further urged that the High Court in disposing of the appeal has failed to notice various infirmities which create doubt about the prosecution case and as such the impugned order convicting the appellant is vitiated. The learned counsel lastly urged that the sole testimony of PW.1 could no. have formed the basis for conviction in view of inherent inconsistencies and absurdity in his evidence and on this ground the conviction of the appellant cannot be sustained.

On examining the material on record for the grounds to be indicated hereunder we do not find any substance in any of the contentions raised by Mr. Gambhir, the learned counsel appearing for the appellant.

It is well settled that the High Court's power in disposing of appeals from conviction or acquittal are essentially the same. It is equally well settled that where the credibility of the evidence depends upon factors other than the demeanor of witnesses, the appellate Court is free to come to its own conclusions as to the credibility. But at the same time if the view taken by the Trial Court in acquitting the accused is not palpably wrong there would be no occasion for reversal of the order of acquittal. Further the High Court should also consider the reasons advanced by the Trial Court before altering the order of acquittal to order of conviction. Bearing in mind these principles let us now examine the reasons advanced by the learned Trial Judge in. according order of acquittal. Let it be stated that the controversy centers around a very narrow compass namely whether the appellant fired at the deceased Head Constable as deposed by PW. 1 or it was a case of accident as suggested by defence while there was a scuffle between the appellant and PW. 1. The learned Trial Judge appears to have focussed his attention to several irrelevant factors which occurred in the course of

investigation instead of focussing its attention to find out the narrow controversy as stated earlier. In this context the finding of the Trial Judge that the entry) No. 401 appears to be suspicious and the further finding that there has been exaggeration to the occurrence is absolutely of no significance. Then again learned Trial Judge committed serious error in impeaching the evidence of Prem Singh, PW. 1 by examining the same with reference to 161 statement of PW.5 and PW. 10 which is hit by Section 162 of the Code of Criminal Procedure. The learned Trial Judge also committed an error in recording a finding that either Betal Singh was not present at the time of discussion to give another date before the Head Constable Rajendra Singh or he had left towards the Bus not on the basis of evidence of PW. 1 but on the basis of the statement recorded by police under Section 161 of the Code of Criminal Procedure of PW. 5 and PW. 10. The dying declaration said to have been made by deceased to PW. 1 have been discarded by the Trial Judge and also affirmed by the High Court and in our view rightly. But the Trial Judge again committed an error in appreciating the medical evidence and even while analyzing the evidence of Prem Singh, PW. 1 in the context of narrow compass as to whether appellant Betal Singh fired the gun which hit the deceased or it was a case of accidental firing in the course of scuffle between the appellant and PW. 1. The Trial Court has looked into insignificant particulars and failed to notice the basic prosecution case. The ultimate conclusion that the defence of the accused appeals to be correct and true is not on the basis of any materials on record but because of the finding that the police had caused suspicion in respect of certain circumstances which resulted in exaggeration of the prosecution case. On examining the grounds advanced by the learned Trial Judge to discard the it relates to the prosecution case question whether Betal Singh fired the gun at the deceased Head Constable we have no hesitation to come to the conclusion that the reasons are wholly unsustainable and the ultimate order of acquittal is vitiated.

The High Court on the other hand, keeping in mind the parameters of the court for interference with an order of acquittal has examined the grounds and reasons advanced by the learned Trial Judge and on elaborate discussion has found how those grounds are fallacious and thereupon after analyzing the evidence of PW. 1 has accepted the same and ultimately convicted the appellant Under Section 302 I.P.C. The High Court has broadly held that PW. 1 had no axe to grind against the accused appellant and he narrated the main incident of shooting by Betal Singh. The High Court has rightly held that non mentioning of the detailed particulars in the F.I.R. cannot create any doubt and the basic prosecution case remains the same in the trial as was mentioned in the F.I.R. On analysis of evidence of PW, 1 and the doctor PW. 8 the High Court also has come to the conclusion that the medical evidence corroborated the evidence of PW. 1 so far as the manner in which the incident occurred. The High Court also examined Ex.P-7 which indicates the course of movement of bullet inside the dead body of deceased Head Constable and rightly came to the conclusion that the said diagram completely belies the defence theory of scuffle between the appellant Betal Singh and witness PW. 1 and in the course of scuffle accidentally the gun was fired and on the other hand it proves the prosecution case that Betal Singh fired at the deceased while the deceased was sitting on the cot. The High Court rightly came to the conclusion that the evidence of PW. 1 cannot be impeached with reference to the statement of PWs 5 and 10 recorded under 161 Cr.P.C. The High Court also rightly observed that even if the F. I .R. was not immediately sent to the court of the Magistrate, but it is of no consequence, since the F.I.R. had been lodged within 30 minutes of the occurrence and the said F. I .R. clearly described the basic prosecution case. The High Court has

then analyzed the evidence of PW. 1 and has held the same to be unimpeachable and established the charge against appellant Betal Singh. We find no infirmity with the judgment of the High Court. We have also ourselves scrutinized the evidence of PW. not immediately sent to the Court and in our view, the same evidence can be safely relied upon in establishing the charge against the appellant notwithstanding some minor inconsistency in the evidence here and there. There is not an iota of materials on record excepting the bold suggestion to PW. 1 which he denied in support of the defence theory that while there was a scuffle between the appellant Betal Singh and Prem Singh, PW. 1, the loaded gun was fired. In the premises as aforesaid and for the reasons advanced by us we do not find any merit in this appeal and the same is accordingly dismissed. The appellant who is on bail will now surrender to his bail bonds to serve out the sentence.