Upendra Pradhan vs State Of Orissa on 28 April, 2015

Equivalent citations: 2015 AIR SCW 3074, 2015 (11) SCC 124, AIR 2015 SC(CRI) 1125, 2015 (3) AJR 533, AIR 2015 SC (SUPP) 1265, (2015) 3 CRILR(RAJ) 746, (2015) 3 DLT(CRL) 781, (2015) 2 ORISSA LR 203, (2015) 2 UC 896, (2015) 151 ALLINDCAS 259 (SC), (2015) 61 OCR 416, (2015) 3 ALLCRILR 274, (2015) 2 CURCRIR 437, (2015) 3 KCCR 289, (2015) 5 SCALE 634, 2015 CRILR(SC&MP) 746, (2015) 4 CRIMES 541, (2015) 4 CRIMES 225, 2015 CRILR(SC MAH GUJ) 746, (2015) 2 MAD LJ(CRI) 547, (2015) 90 ALLCRIC 345, (2015) 2 GUJ LH 387, 2015 ALLMR(CRI) 2444, (2016) 1 MADLW(CRI) 255, (2015) 2 RECCRIR 907, (2015) 2 ALD(CRL) 204

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Bench: R.K. Agrawal, Pinaki Chandra Ghose

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2174 OF 2009

Upendra Pradhan … … Appellant

:Versus:

State of Orissa … … Respondent

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal under Section 379 of the Code of Criminal Procedure, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, has been preferred against the judgment and order dated 17.9.2008 passed by the High Court of Orissa at Cuttack in Government Appeal No.18 of 1995, filed by the State against the acquittal of the appellant herein. The High Court by the impugned judgment allowed the Government appeal and convicted the

appellant for offence under Section 302/34 of the Indian Penal Code ("IPC") and sentenced him to imprisonment for life.

2. The facts pertinent to the present case, as unfolded by the prosecution, are that Upendra Pradhan, Debendra Pradhan and Rabindra Pradhan are sons of Sanatan Pradhan and Jamadevi is his wife. Sanatan Pradhan and his younger brother Brundaban are having title deeds of their lands standing in their names jointly. They possessed land on an amicable division. According to the prosecution story, a dispute arose between Sanatan Pradhan and his younger brother Brundaban when Brundaban did not yield to the request of Sanatan Pradhan to hand over the Patta of their lands to procure a loan as the Patta was with the mother. Thereafter, Panchayat meetings were held on 27.8.93 and 29.8.93 and it was decided that Brundaban shall collect the Patta from his mother and hand over the same to Sanatan Pradhan. Accused Sanatan Pradhan and his family members bore grudge against Brundaban for non- complying with the direction of the Panchayat. Sanatan Pradhan got angry and declared to ruin his family. Fearing for his life, Brundaban along with his family left his house and stayed in the house of Keshab Pradhan (P.W.10) of his village. At about 8 P.M. on 29.8.93, Brundaban along with his three children, Sanjib, Pravasini and Rajib and wife Radha Pradhan (P.W.1), returned to his house. On seeing them, the accused Sanatan and Jama Devi called out the other accused persons. No sooner did Brundaban enter his house and asked his children to sleep on cots, than the accused Rabindra, Debendra and Upendra, each armed with axe and lathi, rushed towards them. Accused Rabindra dealt two blows on his neck and head with axe. Accused Debendra dealt a blow with axe on Brundaban's head. Brundaban started bleeding profusely and groveled into the house of Kulamani Budhia nearby. He became unconscious. Thereafter, the three sons of the accused Sanatan Pradhan focused their attention on his children and Upendra and Debendra caught the eldest son Sanjib from both sides and accused Rabindra dealt axe blows causing injuries on the neck and other parts of the body. Then the accused Upendra caused injuries on the girl child Pravasini and killed her. Thereafter, accused Debendra and Upendra caught hold of Rajib, the second son of Brundaban Pradhan and accused Rabindra dealt axe blows and killed him. According to the prosecution version, the entire incident was witnessed by P.W.1-the mother of the deceased, and P.W.6 and P.W.12. When the villagers came out on hearing the shout of P.W.1, the accused persons decamped and P.W.1 brought all the three deceased children from inside the room to front-side of the house. Brundaban Pradhan in severely injured condition was lying senseless in a neighbour's house. The local Sarpanch informed the matter to Jujumura Police Station. On the basis of this information, investigation was made, charge-sheet was filed and after the case was committed to the Court of Sessions, charges were framed under Section 307 and 302 read with Section 34 of IPC.

3. In the Court of Additional Sessions Judge, to bring charges home to the accused persons, the prosecution examined 15 witnesses of whom, P.W.1 is the wife of the injured P.W.7 and mother of the deceased, P.Ws.6, 8, 9, 11, 12 are local persons, P.W.3 to P.W.5 are doctors, P.W.10 and P.W.13 are police constables, P.W.14 is the I.O. and P.W.15 is the Judicial Magistrate, First Class, Sambalpur. The defence examined one witness D.W.1 Damodar Pradhan. The Sessions Court, on analysis of the evidence adduced by the parties, decided that there were little contradictions and discrepancies in the evidence of P.Ws.1,7,6,9,11 and 12 on the aspect of presence of P.W.1 at the spot, and threats given by the accused Sanatan or other male accused persons to P.W.7. The defence

witness (D.W.1) has excluded the presence of accused Sanatan at the place of occurrence as both of them went home from Fuljijaran and accused Sanatan was with him from 7 P.M. to 9 or 10 P.M. The Additional Sessions Judge held that the three male persons were guilty. The female accused had been falsely implicated in this case on exaggerated version of P.W.1, not supported by independent corroboration. However, the evidence of P.W.12 preparing Biri on the verandah of Kulamani Budhia has not been challenged by the prosecution to the extent of her finding the accused Upendra absent from the spot. The Statements of P.W.1 and P.W.6, stating that the part played by Upendra in catching deceased Pravasini, are not in conformity with each other. On these ground the Additional Sessions Judge gave the benefit of doubt to the Upendra Pradhan (appellant herein) and Jema Devi and did not find them guilty under Sections 307 and 302/34 of IPC.

4. The High Court pointed out that the prosecution allegation against the accused Jema Devi was relating to the instigation whereas against the accused Upendra in making active participation in the murder of three children. In view of the death sentence imposed against the Sanatan and Rabindra, the Trial Court made a reference under Section 366 of the Code of Criminal Procedure (Cr.P.C.) and that was registered as Death Sentence Reference No.1 of 1994. Accused Sanatan, Debendra and Rabindra also preferred appeals from jail in 1994.

5. A Division Bench of the High Court analogously heard the Reference and Jail Criminal appeals and disposed of the same on 27.03.1995. The High Court held that the accusation against each of the appellants had been proved beyond all reasonable doubt. Therefore, the order of the Trial Court in recording the conviction of the appellants was sustained. However, in the matter of death sentence, the High Court was of the view that the circumstances behind the crime were good enough to take a lenient view and accordingly it awarded sentence of imprisonment for life. The State thereafter filed leave application under Section 378(1) Cr.P.C. as against the judgment and leave was granted on 15.05.1995 and the Government appeal was registered in the High Court. In the meantime, by virtue of the High Court's order accused Upendra Pradhan was on bail. However, the High Court reversed the decision taken by the Additional Sessions Judge, and held that when accused Upendra is a party to the murder of three innocent children, he is guilty like other accused persons for offence punishable under Section 302/34 I.P.C. The High Court recorded that the accused should be awarded appropriate punishment instead of taking any other view, and convicted Upendra under Section 302/34 I.P.C. and sentenced him to imprisonment for life, because that is the alternative and lesser punishment as provided in Section 302 I.P.C. The High Court ordered the appellant Upendra Pradhan to be taken into custody to serve the sentence.

6. In this Court the Counsel for the appellant contended that after the incident took place, the local Sarpanch informed the matter to the Police Station and after investigation, charges were framed under Sections 307 and 302 read with Section 34 of I.P.C. There was, however, no specific finding against the present appellant. It was further contended that the Additional Sessions Judge, after trial, acquitted the appellant along with his mother and held that the female accused had been implicated on an exaggerated version of P.W.1 not supported by independent corroboration. The Additional Sessions Judge also noted that the evidence of P.W.12 preparing Biri on the verandah of Kulamani Budhia, had not been challenged by the prosecution to the extent of her finding accused Upendra absent from the place of occurrence. The Court has given benefit of doubt to the appellant

as the statements of P.W.1 to P.W.6 about the part played by Upendra in catching the deceased Pravasini, are not in conformity with each other. The learned counsel further contended that the Additional Sessions Judge has held that P.W.1 has stated that P.W.2, P.W.6, P.W.8 and P.W.12 had only seen the dead bodies of the children. It was further pointed out by the appellant before us, that P.W.6 is the Aunt of P.W.1 and P.W. 12 had fled out of fear and, therefore, the High Court was wrong in reversing the acquittal order of the appellant on certain wrong presumption and interpretation. The appellant has further taken the plea of being a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000, and accordingly under Section 7(a) raised the claim of juvenility before the Court and stated that the High Court had recorded this aspect but did not act upon it. It was brought to our notice that the appellant has already undergone the sentence for a period of about 8 years in jail.

7. Learned counsel for the respondent, on the other hand, contended before us that while modifying the sentence and maintaining conviction, the Trial Court and the High Court have believed the testimony of all the prosecution witnesses and have opined that the prosecution has fully proved the case by leading credible evidences of credible witnesses. Thus, there is no occasion for the Trial Court to disbelieve the same set of witnesses. The witnesses have unrebuttably deposed that the present appellant was not only present but was armed with stick. The eyewitness in the present case is P.W.1, who is the mother of the deceased and Brundaban's wife, has stated facts in her testimonies which have been corroborated by the testimonies of other witnesses, thus is unrebuttable. P.Ws.1, 6, 7 & 12 have narrated the incident unequivocally and the defence could not derive much in the cross-examination. The learned counsel thus submitted that the prosecution had proved the case beyond reasonable doubt. The learned counsel finally submitted that the Trial Court had formed the conclusion that the prosecution had proved its case beyond reasonable doubt, but abruptly mentioned that the testimonies of P.W.6 and P.W.12 created a doubt regarding the part played by Upendra. This view taken by the Trial Court is erroneous and the High Court has rightly taken the correct view.

8. We have heard the learned counsel for the parties.

9. There are mainly three questions for our consideration. First being, whether the presence of a view favouring the accused appellant should be considered. Second being, whether the prosecution witnesses P.W.1 and P.W.7 being interested witnesses, should be relied upon. The third being the juvenility of the accused appellant.

10. Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

> "30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

> 31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution.

Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mistery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld." (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

> "Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views 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. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference." (Emphasis Supplied) Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the

> concurrent finding of acquittal of the accused merely because on re- appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.

12. The Second ground pleaded before us by the counsel for the accused appellant, that the testimonies of P.W. 1 and P.W.7 should not have been considered, as they were interested witnesses, holds no teeth. We are of the opinion that the testimonies of interested witnesses are of great importance and weightage. No man would be willing to spare the real culprit and frame an innocent person. This view has been supplemented by the decision of this Court in Mohd. Ishaque v. State of West Bengal, (2013) 14 SCC 581.

13. The Third and last ground pleaded before us was the plea of juvenility of the accused appellant. The accused appellant has submitted before us, true copy of the certificate issued by the Basiapara Nodal U.P. School which shows that the accused appellant was less than 18 years on the date of the occurrence. As per the School Certificate, the date of birth of the appellant is 08.07.1976. The age of the appellant on the date of occurrence i.e. 28.8.1993, was 17 years, 1 month & 20 days. The learned counsel for the appellant raises the plea of juvenility under Section 7(A) of the Juvenile Justice (Care and Protection) Act, 2000. The plea can be raised before any Court and at any point of time. We feel that the stand taken by the counsel is correct and we will look into the present lis keeping in mind the juvenility of the accused appellant at the time of commission of the crime. As stated earlier, the age of the accused appellant was less than 18 years at the time of the incident. It has been brought to our notice that the appellant has undergone about 8 years in jail. The appellant falls within the definition of "juvenile" under Section 2(k) of the Juvenile Justice (Care and Protection of children) Act, 2000. He can raise the plea of juvenility at any time and before any court as per the mandate of Section 7(a) and has rightly done so. It has been proved before us, as per the procedure given in the Rule 12 of the Juvenile Justice Model Rules, 2007, and the age of the accused appellant has been determined following the correct procedure and there is no doubt regarding it.

14. On the question of sentencing, we believe that the accused appellant is to be released. In the present matter, in addition to the fact that he was a juvenile at the time of commission of offence, the accused appellant is entitled to benefit of doubt. Therefore, the conviction order passed by the High Court is not sustainable in law. Assuming without conceding, that even if the conviction is upheld, Upendra Pradhan has undergone almost 8 years of sentence, which is more than the maximum period of three years prescribed under Section 15 of the Juvenile Justice Act of 2000. Thus, giving him the benefit under the Act, we strike down the decision of the High Court. This Court has time and again held in a plethora of judgments on the benefit of the Act of 2000 and on the question of sentencing.

15. In Ajay Kumar v State of M.P., (2010) 15 SCC 83, this Court observed as follows:

> "In the light of the aforesaid provisions, the maximum period for which a juvenile could be kept in a special home is for three years. In the instant case, we are informed

> that the appellant who is proved to be a juvenile has undergone detention for a period of about approximately 14 years. In that view of the matter, since the appellant herein was a minor on the date of commission of the offence and has already undergone more than the maximum period of detention as provided for under section 15 of the Juvenile Justice Act, by following the provisions of Rule 98 of Juvenile Justice Rules, 2007 read with Section 15 of the Juvenile Justice Act, we allow the appeal with a direction that the appellant be released forthwith." (Emphasis Supplied) The same view was followed on the question of sentencing in Hakim v.

State, (2014) 13 SCC 427, and Lakhan Lal v. State of Bihar, (2011) 2 SCC 251.

16. Therefore, in the light of the above discussion, we allow this appeal and set aside the impugned judgment and order passed by the High Court. The appellant has been released on bail vide this Court's order dated 15.04.2014. His bail bonds are discharged.

.....J (Pinaki Chandra Ghose) .....J (R.K. Agrawal) New Delhi;

April 28, 2015.