Hakeem Khan & Ors vs State Of M.P on 22 March, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1723, (2017) 11 SCALE 579, (2017) 2 CRILR(RAJ) 331, (2017) 5 MH LJ (CRI) 30, 2017 CRILR(SC&MP) 331

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Bench: Prafulla C. Pant, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.612/2007

HAKEEM KHAN & ORS. APPELLANT(S)

VERSUS

STATE OF M.P. RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.788/2008

J U D G M E N T

ROHINTON FALI NARIMAN, J.

The incident which occurred in the present case took place in the dark on 30th January, 1990. 30 January is a dark day in world history. Charles I of England lost both his crown and his head on this day in 1649. Hitler came to power on this day in 1933. And the Father of our Nation was assassinated on this day in 1948. The backdrop of this incident occurred when one Ajij Khan and Shabbir Khan, had contested a Panchayat election. Shabbir Khan was elected as Sarpanch resulting in bad blood between the complainant party and the accused/appellants. On the date of the incident, one Chhote Khan lodged an FIR of the said incident in which he stated that one Sayeed Khan had told him that when he was coming from village Shyampur to Mukhtyar Nagar, Hafiz Khan, Jafrudeen and three to four other persons came and questioned him as to why he had raised a shoe on the aforesaid Shabbir Khan, who was the Sarpanch in the town of Sehore. Chhote Khan with three others went to lodge a report to this effect in Shyampur. Further, when they came near the Culvert of Ganda Nala at about 06:30 p.m. to 07:00 p.m. then on the way to the Culvert eight persons, namely, Hafeez Khan, Rafiq Khan, Hakim Khan, Ayyub Khan, Jafrudeen, Israil Khan,

Munne Khan, and Salim khan together with 7-8 other unnamed persons armed with Lathis and Farsis started to beat five of them. This was done with the common object of causing death, because these persons were badly beaten and indeed one, namely, Ismail Khan, succumbed to his injuries. Based on the aforesaid incident an FIR was lodged. It needs to be noted at this juncture that seventeen persons were ultimately arrayed as accused in the case.

After examining the evidence before it, the trial court, being the order of the IInd Additional Sessions Judge, Sehore, arrived at the following conclusions:-

> 1. There were six eye-witnesses including the injured eyewitnesses in the case but only one of them could be said to be an independent witness who, however, turned hostile.
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> 2. Two other independent eye-witnesses were available but they were not examined by the prosecution.
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> 3. There were injuries on both sides. In fact, apart from the complainant party, the accused party also had three persons who were injured. Rafeez Khan had injuries which were deep in the skull and a swelling in the middle of the left hand and a swelling on the left leg; and Ismail also had a deep injury in the middle of the skull, and also had a swelling in the right arm, elbow of the right hand, and knee of the right leg; and Munne Khan also had a swelling on the back side of the elbow of the left hand and swelling on the left shoulder.

The trial court then went on to say that the incident allegedly occurred around 06:30 p.m. to 7:00 p.m. on 30th January, 1990 which was a dark winter day and, therefore, it would have been extremely difficult to identify the 17 persons who were supposedly the aggressors in the incident.

Apart from the three injured persons, namely Rafiq Khan, Israil and Munne Khan, the Trial Court stated that the presence of all the others at the scene of the crime was doubtful. The Trial Court also remarked on the enmity caused between the parties and subsequently went into the fact that the Sarpanch, Shabbir Khan, who was the lynchpin in this drama, and who was stated to be present by the injured eye-witnesses, was found, in fact, not to be present, and that he attended Court till 5 O'clock and reached Shyampur after 07:15 p.m. i.e. after the incident took place.

This being so, the presence of the very Sarpanch for whom this scuffle took place was stated to be doubtful. The trial court also went on to state that it appears that it was the complainant's party who was the aggressor in the incident and gave reasons for the same, and, accordingly, acquitted all the seventeen persons of the crime.

In appeal, the High Court reversed the finding of the trial court and convicted the entire seventeen accused of murder under Section 302 read with Section 149 of the Indian Penal Code, and sentenced them to life imprisonment.

We have heard the learned counsel for the parties. Mr. Fakhruddin, learned senior counsel and Mr. R.K. Das, learned senior counsel appearing for the appellants, submitted that the High Court has erred in over-turning the acquittal of seventeen persons and, therefore, unless it reached the conclusion that the order of the trial court was perverse, it could not do so. The trial court gave good reasons for acquitting them. The reasoning is at least a possible view and the High Court, in over-turning the order of the trial court, has fallen into a grave error and has, in fact, itself reached conclusions which were not reasonably possible in law.

Learned counsel for the respondent, on the other hand, supported the High Court judgment, and stated that the alleged incident was in two parts, and it is clear that there was no scuffle but a pre-meditated attack by the appellants i.e. the accused, three of whom were armed with sickles and the others with lathis. According to the learned counsel, many of the trial court's conclusions are perverse and are not sustainable in the eyes of law. For example, for the trial court to conclude that the accused party was the aggressor was nobody's case, and is a conclusion without any reason. The fact of the matter is that there is one death and several injured persons, who were eye-witnesses, and all that the trial court said about the incident was that it was tragic, without properly proceeding along that trajectory to finally come to the logical conclusion to convict the transgressors.

Learned counsel also stated that no right of private defence was pleaded and, that being the case, it is clear that as the injuries on the deceased were grievous and the injuries on the others were also not simple injuries, the High Court was right in convicting the seventeen accused. He also went on to argue that the three persons armed with sickles should, in any event, be convicted of culpable homicide not amounting to murder.

Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Indian Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 06:30 p.m. to 07:00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eye-witnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was pre-meditated and there was, in all probability, a scuffle that led to injuries on both sides. While learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch’s presence is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place.

The High Court has interfered with the trial court's Judgment on several counts. First it states that according to the complainant Chhote Khan, there was “some dark”, it was not stated that it was completely dark, and this being so, even in poor light all seventeen persons could have been

identified as they were known to the other side. The High Court seems to have reversed acquittal by substituting its view for that of the trial court. The High Court goes on to state that the presence of minor injuries on the persons of the members of the accused parties proves their presence at the incident. This is hardly the way to deal with a finding of the trial court that these unquestioned injuries could only lead to the conclusion that there was a scuffle without pre-meditation. Also, the High Court stated that merely because independent witnesses did not cooperate with the prosecution case, evidence of other eyewitness cannot be discarded. This does not deal with the trial court's reasoning that the only independent eye-witness turned hostile and two other independent witnesses were not examined, leading to the conclusion that the prosecution story, would, therefore, become doubtful.

Above all, when it came to the presence of the Sarpanch, the High Court stated "he must have been discharged by the Court before 5:00 P.M." so that he could have covered the distance from Shyampur, in half an hour and be at the scene of the incident by 6:00 P.M. This conclusion apart, from being conjectural, is hardly the way to deal with a finding on alibi given by the trial court. That the Sarpanch must have been discharged by the Court before 5:00 p.m. is not based on any evidence. Also, there is no evidence that the distance of Shyampur from the scene of the incident, being 28 Kms, can be traversed within half an hour. The actual evidence in the case shows that the bus would have arrived only between 7:00 p.m. and 7:30 p.m. As stated hereinabove, the incident did not take place at 6:00 p.m., as wrongly stated by the High Court. Even according to the FIR, the incident occurred between 6:30 and 7:00 p.m. For all these reasons, we are of the considered opinion that the High Court clearly fell in grave error in setting aside the acquittal in the present case. We have to remind ourselves that the law on reversal of acquittals is well settled and is stated in many judgments, but one of them needs to be quoted here. In Murugesan Vs. State (2012) 10 SCC this court went into the meaning of different expressions- "erroneous", "wrong" and "possible", and has stated the law as follows:-

> "33.The expressions "erroneous", "wrong" and "possible" are defined in Oxford English Dictionary in the following terms:
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> "erroneous.- wrong; incorrect. Wrong.- (1) not correct or true, mistaken.
>
> (2)unjust, dishonest, or immoral.

Possible.-(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority

perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court." Having regard to the above, the appeals are allowed and the judgment of the High Court is set aside.

We have been informed that Ayub Khan is in jail for the last about 11 years. He shall be released, if not required in any other case, within a period of one week from today.

.....J. [ROHINTON FALI NARIMAN] .....J. [PRAFULLA C. PANT] NEW DELHI;

MARCH 22, 2017