State Of U.P vs Babu And Ors on 24 September, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3408, 2003 AIR SCW 4841, 2003 ALL. L. J. 2483, 2003 (10) SRJ 160, (2003) 4 KHCACJ 239 (SC), 2003 (11) SCC 280, 2003 (6) SLT 271, (2003) 11 ALLINDCAS 737 (SC), 2003 (4) KHCACJ 239, 2003 (8) ACE 709, 2003 (11) ALLINDCAS 737, (2003) 4 ALLCRILR 555, (2003) 3 CHANDCRIC 106, (2003) 47 ALLCRIC 994, (2003) 4 CURCRIR 195, (2003) 4 RECCRIR 673, (2003) 11 INDLD 474, (2005) 2 ALLCRIR 1947, (2004) 1 MADLW(CRI) 473, (2004) 1 RAJ CRI C 160, 2004 SCC (CRI) 144, (2003) 26 OCR 787, 2003 ALLMR(CRI) 2356, (2003) 8 SCALE 48, (2003) 7 SUPREME 53, (2003) 4 CRIMES 203, (2004) 1 ALD(CRL) 15

Author: Arijit Pasayat

Bench: Dora1Swamy Raju, Arjjit Pasayat

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           CASE NO.:
Appeal (crl.)  1638-1639 of 1996

PETITIONER:
STATE OF U.P.

RESPONDENT:
BABU AND ORS.

DATE OF JUDGMENT: 24/09/2003

BENCH:
DORA1SWAMY RAJU & ARJJIT PASAYAT

JUDGMENT:
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JUDGMENT 2003 Supp(3) SCR 1079 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. : The four respondents were accused of having caused homicidal death of Munshi Lal (hereinafter referred to as 'the deceased'), committing dacoity and attempting to commit murder of Ramai (PW-1). Though the IV Additional Sessions Judge found them guilty of several offences and convicted and sentenced them, the High Court found them innocent by the impugned judgment and directed their acquittal.

Factual senario according to the prosecution is as follows :

> Around mid-night of 9.5.1978, dacoity was committed in the house of P.W.I, during which deceased was murdered. Along with accused persons, several others numbering 8-9 had forced into the house of Ramai. Accused Suraj Pal belongs to the

same village as that of the deceased and PW1. The others belong to the neighbouring village i.e. Gangupura. Four of them were identified by Ramai and other witnesses at the spot itself. Though dacoity was committed, the primary object was to commit murder of the deceased since he had once objected the marriage of Tarawati, the sister of accused- Suraj Pal with accused-Babu and this had caused bad blood between the two. Accused-Babu had even lodged the First Information Report against deceased charging him with theft soon after his marriage with Tarawati which took place despite opposition by the deceased. Accused-Babu and Lala Ram inflicted injuries with their respective firearms on the deceased and accused-Babu stabbed the deceased as a result of which injuries were sustained by him. The informant was sleeping near the main gate of the house and was awakened by cries of the deceased and entered the house. Accused-Suraj Pal shot at Ramai with the intention of causing his death. This resulted in gunshot wounds to Ramai who was also beaten by other victims. Thereafter they decamped with certain properties. Written report (Ex. Ka. 1) was lodged by Ramai regarding the occurrence, at 9.35 a.m. on 10.5.78. He was sent to the Public Health Center for medical examination and the investigating officer reached the village. He found the dead body of the deceased and sent it for post-mortem examination which was conducted at 3.00 p.m. on 11.5.1978. On completion of the investigation, charge sheet was placed and accused persons were sent for trial. They pleaded innocence, and false implication. To further the prosecution version 9 witnesses were examined. Apart from PW1 who claimed to be eyewitness, PW2, PW3, PW4, PW8 and PW9 also claimed to be eyewitnesses. But PWs 2, 4, 8 and 9 resiled from their statement during investigation while deposing in court. The Trial Court found the accused-Babu, Suraj Pal and Lala Ram guilty for offences punishable under Sections 302 read with Section 149, 148, Section 323 read with Section 149, and Section 395 of Indian Penal Code, 1860 (in short 'IPC'). Accused-Natthu was found guilty for offence punishable under Section 302 read with Section 149, 147, Section 323 read with Section 149 and Section 395 IPC. Accused-Suraj was acquitted of charge relating to the offence punishable under Section 307 IPC. They were sentenced to undergo imprisonment for life for the offence punishable under Section 302 read with Section 149 IPC but no custodial sentence was imposed for the rest of the offences. The accused persons preferred appeal before the High Court.

By the impugned judgment, the High Court directed acquittal. The primary reason for doing so was that the evidence of Ramai (PW1) could not be relied upon. Widow and daughter of the deceased had not supported the prosecution case. Additionally, it was observed that there was no material to show as to how the prosecution witness could identify the accused persons, as there was great doubt about the source of light. High Court noticed that in the site plan, the place where the gaslight was found had not been indicated though same was stated by prosecution to be the source of light.

Learned counsel for the appellant-State submitted that the High Court has proceeded on mere surmises and conjectures and has not considered the evidence on record. It was specifically stated by the witnesses that the identification was possible because of the torchlight used by the witnesses

and the gaslight. In any event, accused persons are known to the witnesses and, therefore, even with minimal light identification is possible. The conclusions were termed to be arbitrary. In response, learned counsel for the accused-respondent submitted that the evidence was elaborately scanned by the High Court and it was noted about the improbability of identifying the accused persons. Further the prosecution verson is rendered unreliable particularly when the widow and the daughter did not support the prosecution version. A bare perusal of the High Court's judgment goes to show that its approach was rather casual and no effort was made to analyse the evidence. It is to be noted that the High Court did not examine the evidence of PWs 1 and 3 with the required care. Great emphasis was laid by the High Court on the fact that in the site plan place where gaslilght was found had not been indicated. The site plan is not substantive evidence. The High Court seems to have proceeded on the basis that omission to indicate the location gaslight in the site plan was fatal. This Court in Shakti Patra and Anr. v. State of West Bengal, AIR (1981) SC 1217 held that where prosecution witness testified that he had identified the accused in the light of the torch held by him, the presence of torch would not be said to be not proved on the ground that there was no mention of the torch in the FIR or in the statement of the witness before the police, when there was testimony of other witnesses that when they reached the spot they found the torch burning. To similar effect is the conclusion in Aher Pitha Vajshi and Ors. v. State of Gujarat, AIR (1983) SC 599. It would be proper to take note of what was stated by this Court in George and Ors. v. State of Kerala and Anr., [1998] 4 SCC 605 regarding statements contained in an inquest report. The statements contained in an inquest report, to the extent they relate to what the Investigating Officer saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). The position is no different in case of site plan.

It is to be noted that the identification by torch was clearly indicated. Merely because the location of the gaslight was not mentioned in the sketch, that cannot be a suspicious circumstance since the first information report was lodged without unreasonable delay, as noticed by the Trial Court. The High Court has also not disturbed the finding in that aspect.

Apart from the mention about the torchlight, one important aspect which cannot be lost sight of and which is of relevance and great significance is that the accsed persons are known to the witnesses. When the persons are known, identification is possible from the manner of speech, manner of walking and gesticulating and special features of a person like the physical attributes. The reason indicated to discard PWs 1 and 3 is to the effect that PWs 2 and 9, though they were closely related to the deceased, did not support the prosecution version. That cannot per se be a ground to discard the evidence of other witnesses, one of whom was also a relative, and the other an independent witness. As noted above, the High Court has not discussed the evidence of PWs 1 and 3 to point out any vulnerability. The conclusion arrived at is without reason. Since the High Court has acted on surmises and conjectures, the judgment is indefensible.

Learned counsel for the accused persons-respondents submitted that order under challenge being one of acquittal, it is not a fit case for exercise of jurisdiction under Article 136 of the Constitution of India, 1950 (for short 'the Constitution').

Recently in State of Punjab v. Karnail Singh, (2003) AIR SCW 4065 it was observed that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. 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 view 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 re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not . (See Bhagwan Singh and Ors. v. State of Madhya Pradesh, JT (2002) 3 SC 387. The principle to be followed by 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. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra, [1973] 2 SCC 793, Ramesh Babulal Doshi v. State of Gujarat, [1996] 9 SCC 225 and A Jaswant Singh v. State of Haryana, JT (2000) 4 SC 114.

In view of the above, the impugned judgment of the High Court, deserves to be set aside, which we direct. Judgment of the Trial Court is restored. The appeals are allowed. The accused-respondents who are on B bail shall surrender to custody to serve the remainder of their sentence.