Supreme Court of India
Toran Singh vs State Of Madhya Pradesh on 1 August, 2002
Author: S V Patil
Bench: Doraiswamy Raju, Shivaraj V. Patil.

CASE NO.:
Appeal (crl.) 39 of 2002

PETITIONER:
TORAN SINGH

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 01/08/2002

BENCH:
DORAISWAMY RAJU, SHIVARAJ V. PATIL.

JUDGMENT:

Shivaraj V. Patil J.

The appellant was convicted for offence under Section 302 IPC and sentenced to imprisonment for life by the Sessions Court. The High Court dismissed the appeal confirming the conviction and sentence passed by the Sessions Court. Hence, this appeal by special leave.

The prosecution case as unfolded during trial is that the appellant had called deceased Hardas and his son Puran Singh to his village Haider for properly setting roof tiles. Hardas stayed in the house of the appellant. His son Puran Singh, PW-1, had gone to the house of Gyarasa, barber (PW-3) of village Haider. At about 11 o'clock on 24.6.1992 in the night, PW-1 came to the house of the appellant to sleep. He saw that the appellant was assaulting the deceased Hardas by axe. When asked as to why he was cutting his father, the appellant told him that the deceased Hardas had eloped with his wife and he was annoyed for the same. When PW-1 tried to save Hardas, the appellant rushed towards him; so he ran away to his village Miyan Khedi to save himself. He awakened his brothers Bhagwat and Seeta Ram and informed about the occurrence. PW-1 and his brothers went towards village Haider. On the way, PW-2 Kamla, Chowkidar of the said village met and told them that the appellant had murdered Hardas and asked them to go back and lodge report in the police station. Thereafter, PW-1 went to the house of Sarpanch of his village Miyan Khedi and lodged F.I.R. in the police station. After investigation, the police filed challan for the offence under Section 302 IPC against the appellant. After trial, the learned Sessions Judge, finding the appellant guilty for the offence under Section 302, convicted and sentenced him for imprisonment for life. As

already noticed above, the appellant unsuccessfully challenged the said order of the learned Sessions Judge before the High Court.

The learned counsel for the appellant contended that the High Court failed in its duty and committed manifest error in not appraising and re-appreciating the evidence as it ought to be as the first court of appeal; as is evident from the impugned judgment, there is narration of prosecution case and reference to the evidence of few prosecution witnesses without there being any consideration and appreciation of evidence; the High Court wrongly placing the burden on the defence and accepted the deposition of PW-1 Puran Singh as inspiring confidence. The learned counsel added that the appellant had only one hand as the other hand had been mutilated and it was not possible to assault the deceased that too in the presence of his son in the manner described. Except the interested testimony of PW-1 Puran Singh, the son of the deceased who was the only so-called eye-witness, there is no other evidence to support the version given by PW-1; even conduct of PW-1 was unnatural and improbable inasmuch as he runs away leaving the father when he was being assaulted and he does not try to secure help of others in the village either; he goes to his village Miyan Khedi; further according to the learned counsel, there is a material contradiction as to the time the PW-1 returning from the house of Gyarasa, PW-3 and Ghuman Singh (PW-9) who is alleged to have given information about the murder to Kamla (PW-2), did not support the case of the prosecution; PW-3 and PW-9 both were treated as hostile by the prosecution; unfortunately, the trial court also narrated the prosecution case and referred to the portions of prosecution witnesses but failed to objectively evaluate and scrutinize the evidence.

The learned counsel for the respondent argued supporting the impugned judgment and was not in a position to give satisfactory explanation to the infirmities and defects pointed out in the prosecution case.

We have carefully considered the submissions made by the learned counsel for the parties. Ordinarily this Court does not disturb or upset the concurrent findings recorded by the trial court as affirmed by the High Court, entering into the domain of appreciation of evidence. But in a case like this where there was no proper and objective appreciation of evidence by the trial court and the High Court, as a first court of appeal, fails in its duty of re-appreciating the evidence and reviewing the evidence objectively and simply endorses the conclusion arrived at by the trial court resulting in patent miscarriage of justice, not only this Court interferes but it becomes the duty of this Court to do so to prevent miscarriage of justice. In this case we have no hesitation to upset the order of conviction and sentence passed against the appellant for the reasons more than one given hereinbelow.

(i) The motive for the alleged offence is that the deceased had eloped with the wife of the appellant. If that be so, it was improbable that the appellant would have gone from his village Haider to other village Miyan Khedi of the deceased and PW-1 to call them for properly setting the roof of his house as if no one else could do the job in his village itself. In the background of ill-will and enmity, he could not have chosen to call the deceased and his son to his house and the deceased and his son could not have gone to the house of the appellant and that too to stay there overnight. There is no evidence on record to speak about the deceased and his son reaching the house of the appellant or

their stay in that house.

(ii) PW-1 was the only eye-witness according to the prosecution. He being the son of the deceased is obviously an interested witness. His evidence ought to have been scrutinized with greater care and caution. Even otherwise, his evidence is not corroborated on material aspects by the evidence of other witnesses. According to the prosecution, PW-1 had gone to the house of Gyarasa (PW-3) on the date of incident and returned to the house of the appellant at 11.00 p.m. but PW-3 in his evidence has stated that PW-1 left his house at the time of sunset in the evening. It may also be noted here that PW-3 did not support the prosecution case and he was treated hostile.

(iii)PW-2, Kamla, Chowkidar of the village, stated that when PW-1 and his brothers were coming to village Haider, he met them on the way and told them that the appellant had killed the deceased and they need not go further and should return and go to police station to lodge the complaint. PW-2 has stated that he was told by PW-9 Ghuman Singh about the appellant killing the deceased but PW-9 Ghuman Singh does not support the case of the prosecution and the statement of PW-2. He too was treated as hostile.

(iv) The axe alleged to have been used in the commission of offence, said to have been recovered at the instance of the appellant, was not produced before the Court and there was no occasion for the doctor to confirm whether injuries of the nature found on the deceased could be caused by such an axe.

(v) The conduct of PW-1, the only eye-witness, that too to the part of the incident is highly unnatural and improbable. When his father was being assaulted with axe on the neck and other parts of the body, he does not make hue and cry; he does not try to rescue; the appellant has only one hand; the PW-1 and his father in the ordinary course would have over-powered him and it appears doubtful whether the appellant could assault with his one hand causing so many injuries on the body of the deceased in the manner stated; PW-1 does not try to take the help of the people in village Haider around the house of appellant; he ran to his village Miyan Khedi and thereafter goes back with his brothers to Haider and returns to his village again after PW-2, Kamla, told them about the murder of their father. There was delay in lodging the complaint also. These factors would render the very presence claimed of PW-1 at the place and time of occurrence itself doubtful and incredible.

Apart from material contradictions and omissions in the statements of witnesses, these factors clearly indicate the serious infirmities and improbabilities of the prosecution case giving rise to grave doubts as to the involvement of the appellant in the commission of the offence.

The substantial portion of the judgment of the trial court is contained in the narration of prosecution story and referring to the prosecution witnesses. We hardly find evaluation, analysis or scrutiny of evidence in a proper perspective objectively. With regard to serious infirmities pointed out by the defence raising doubt of the prosecution case, the learned Sessions Judge has simply stated that he did not agree with such contentions. The trial court, in our view, was not right and justified in lightly brushing aside the infirmities and improbabilities brought out from the prosecution case, that too when the entire prosecution case rested on sole eye-witness, who was

interested being the son of the deceased; more so in the absence of any corroboration of his evidence by other independent evidence on material aspects of the prosecution case. It is unfortunate that the High Court has simply endorsed the conviction and sentence passed by the trial court without objectively and satisfactorily scrutinizing and examining the evidence as a first court of appeal except narrating the prosecution case and referring briefly to the evidence of few prosecution witness. The reason recorded by the High Court is to be seen in para 10 of the judgment which reads:-

"Thus in the absence of plausible defence by the appellant and the fact that the deceased had stayed in the house of appellant and in the absence of the explanation as to the cause of death, the appellant is liable to be convicted. Deposition of PW-1 Puran inspires confidence and finds support from the medical evidence."

In the light of what we have stated above, we find it difficult to agree with the High Court as to how deposition of PW-1 Puran Singh inspires confidence. As is evident from the above para, the High Court instead of giving benefit of doubt to the appellant, placed the burden on the defence and found that there was absence of plausible defence and explanation by the appellant. The case of the prosecution should rest on its strength not on the absence of explanation or plausible defence by the accused.

Thus, we find it difficult to sustain the impugned judgment. In the result, the impugned judgment affirming the judgment of the trial court is set aside. The appellant is acquitted giving benefit of doubt. He be set at liberty forthwith if he is not required in any other case. The appeal is allowed accordingly.