Supreme Court of India
Mohd. Aslam Alias Kuyian vs State Of U.P on 18 March, 1993
Equivalent citations: 1993 SCR (2) 444, 1993 SCC (3) 10
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
MOHD. ASLAM ALIAS KUYIAN

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT18/03/1993

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1993 SCR (2) 444 1993 SCC (3) 10
JT 1993 (4) 175 1993 SCALE (2)69

ACT:
Code of Criminal Procedure, 1973 : Section 378-Appeal against acquittal-Interference by Appellate Court when.
Penal Code, 1860 : Section 302-Conviction under, by High Court Appreciation of evidence by Supreme Court-High Court's finding whether justified-Evidenices of eye-witnesses-Value of.

HEADNOTE:
The prosecution case was that there was long standing enmity between appellant's father and one Khan on one side and the complainant on the other, which rose out of rival claim in placing 'sawai' on the Akhara of Tajias. A Civil litigation was pending between the parties over the dispute. Criminal proceedings under section 107 read with section 117 of the Code of Criminal Procedure were also pending between them.
The nephew and son-in-law of the complainant was doing pairvi of the cases on behalf of the complainant and because of that the father of the appellant and one Khan became inimical to the son-in-law of the complainant.
At about 6.00 P.M. on the date of the occurrence namely 25.12.1975, the son-in-law of the complainant was sitting on a wooden bench in front of a hair cutting shop of his village. One Umar and P.W.1 were also sitting with him and

all the three were talking. P.Ws. 2 and 3 and the complainant were standing near a Gumti, at a short distance and were talking.

At the time, the appellant armed with a double barrel gun came there. He challenged the complainants son-in-law and threatened to kill anyone who would come forward. He fired two shots which hit the complainant's son-in-law add one Umar. Both of them fell down. Complainant's son-in-law

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died on the spot. P.W. 10 took Umar to Hospital.

The Complainant went to his home and got a report of the occurrence written by P.W.4 and taking the report to the Police Station, about 4 miles away, he lodged the F.I.R at 7.15 P.M. Investigation of the case was immediately commenced. Umar died on 4.1.1976, prior to his death on 1.1.1976, the Police had interrogated the deceased.

The case of accused appellant was that he was falsely implicated on account of enmity and party faction. He denied all the allegations of the prosecution.

The Sessions Court acquitted the accused-appellant, as it did not rind the prosecution case and the evidence acceptable.

Allowing the State's appeal against acquittal, the High Court convicted the appellant under section 302 I.P.C. and sentenced him to imprisonment for life.

In the appeal before this Court, the accused contended that the High Court did not appreciate the salutory principles governing the judgment of acquittal; that the Sessions Judge had taken pains in analysing in detail. the evidences adduced in the case and gave reasonings for each of the finding as to why the prosecution case could not be accepted and what were the intrinsic deficiency in the evidences adduced in the case in support of the prosecution; that the law was well settled that in a case of acquittal, the appellate Court should not interfere with the judgment of acquittal if such judgment was based on consideration of the evidences adduced in the case and there was no perversity in coming to the finding for passing the judgment of acquittal and in such a case of acquittal, the High Court in exercise of its appellate power should not endeavour to appreciate the evidence on its own in order to come to different finding Unlike in an appeal arising from the judgment of conviction: that it has been established convincingly that there was party faction between the two groups over a dispute to place Sawai on Tajias and both civil and criminal proceedings were instituted between the two groups: that the eye-witnesses were in the faction of the complainant and they were partition witnesses; that the Sessions Judge, therefore, after nothing the various discrepancies in the prosecution case, was not inclined to place reliance on the evidences adduced by the alleged eye-witnesses and acquitted the accused/appellant;

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and that such order of acquittal, in the facts of the case and the reasons indicated by the Sessions Judge, was not required to be interfered with in appeal by the High Court. Dismissing the appeal, this Court,

HELD: 1. In an appeal arising from an order of acquittal, the appellate Court is not precluded from appreciating the evidences on its own if the reasons given by the learned trial Judge in passing the order of acquittal, do not stand scrutiny and are against the weight of the evidences adduced in the trial. The appellate Court, will be quite justified in setting aside the order of acquittal if it appears to the court of appeal that improper consideration of the materials and evidences on record was made and the reasonings of the trial Judge are wholly unjustified. It is only necessary that the court of appeal should weigh the reasonings of the learned trial Judge with care and caution in the light of the evidences adduced in the case by giving cogent reasons as to why such findings are unreasonable and against the evidence. [451B-C]

2.01. In the instant case, the High Court has taken care in analysing each and every finding of the learned Sessions Judge in the light of the evidences adduced in the case and has given cogent reasons as to why such findings were unreasonable and not acceptable. It is an admitted position that two persons suffered gun shot injuries and one of the enjured persons died on the spot and the other was removed to hospital. He got serious injuries and later on sccummbed to such injuries. The mere fact that there was enmity and bitterness between the two groups, by itself, does not establish that the eye-witnesses falsely implicated the accused/appellant. [451D-E]

2.02. There are no intrinsic discrepancies in the evidences of the eye-witnesses. Even if it is assumed that such eye-witnesses belong to the group of the complainant, their evidences are not liable to be discarded on that score if such evidences otherwise inspire confidence and get corroborated by other evidences and from the nature of injuries, sustained by the deceased persons. [452E]

2.03. All the findings made by the Sessions Judge were considered in detail by the High Court and the findings of the learned Sessions judge were not accepted by the High Court by indicating that such findings were

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against the weight of the evidences and the same were wholly unreasonable. In the circumstances, there is no reason to take a contrary view in this appeal. [452H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 554 of 1984.

From the Judgment and Order dated 27.9.1984 of the Allahabad High Court in Government Appeal No. 1634 of 1977 M.R. Sharma, Ms. Anjana Sharma and R.D. Upadhayaya for the Appellant.

Arvind K. Nigam, Ms. Kamini Jaiswal and A.S. Pundir for the Respondent.

The Judgment of the Court was delivered by G.N. RAY, J. This appeal is directed against the Judgment dated September 27, 1984 passed by the Division Bench of the Allahabad High Court setting aside the judgment dated April 30, 1977 passed by the learned Additional Sessions Judge, Second Court, Kanpur (Dehat). By the impugned Judgment, the Division Bench of the Allahabad High Court allowed the appeal preferred by the State of Uttar Pradesh against the judgment of acquittal. in Sessions Trial No. 235 of 1976 and convicted the accused/appellant Mohd. Aslam under Section 302 I.P.C. and sentenced him to imprisonment for life. The prosecution story in short is that there is long standing enmity between Abdul Salem and Abdul Hamid Kham Pradhan on one side and the complainant Abdul Hamid on the other. Such enmity arose out of rival claim in placing'sawai'on the Akbara of Tajias at the time of Moharram. Sawai is a kind of flag which is put on Tajias at the time of Moharram. Over such dispute a civil litigation was going on between the said parties and there were also criminal proceedings under Section 107 read with Section 117 of the Code of Criminal Procedure between the said parties. Shamim Raza was nephew and son-in-law of Abdul Hamid, the complainant and the said Shamim Raza was doing pairvi of the said cases on behalf of Abdul Hamid. For the aforesaid reasons, Abdul Salem and Abdul Hamid Khan Pradhan, became inimical towards Shamim Raza and Abdul Hamid. Mohd. Aslam, the accused/appellant is the son of Abdul Salem. Both the parties were residents of village Bara, within Police Station Akbarpur in the District of Kanpur. On December 25, 1975 at about 6.00 P.M. Shamim Raza was sitting on a wooden bench in front of a hair cutting shop of Iiyas in village Raza. Mohd. Umar and Abdul Khaliq (P.W.1) were also sitting with him and the said three persons were talking. The Gumti of one Mohd. Laiq was at a short distance towards the east of that place. Bhurey (P.W.2), Qamruddin (P.W.3) and Abdul Hamid were standing near the said Gumit and had also been talking. There was light coming from electric bulbs at that place. At that time, the accused/appellant, Mohd. Aslam came there armed with a double barrel gun. He challenged Shamim Raza and threatened to kill anyone who would come forward. Thereafter, he fired two shots. By said shots, Shamim Raza and Mohd. Umar sustained gun-shot injuries and both of them fell down. Shamim Raza died on the spot and the condition of Mohd. Umar also became serious. Such occurrence was seen by Mohd. Umar, Abdul Hamid, Bhurey and Qamruddin. Peer Mohammed (P.W.10) took Mohd. Umar to Lala Lajpatrai Hospital at Kanpur for treatment and at 7.50 PM. Dr.R.C. Asthana (P.W.8) examined Mohd. Umar. Abdul Hamid went to his house and got a report of the occurrence written by Mohd. Raizwan (P.W.4) and took the said report to Akbarpur Police Station which was about 4 miles away and lodged the F.I.R. at 7.15 P.M. Station Officer incharge of the Akbarpur Police Station, Mr. Jagdamba Prasad Misra, took up the investigation of the case and he interrogated Abdul Hamid at the Police Station and thereafter reached the scene of occurrence at about 7.55 P.M. He found the dead body of Shamim Raza lying at the scene of occurrence and he prepared inquest report and other connected papers. He also interrogated Bhurey, Qamruddin and Abdul Khaliq who were the eye-witnesses, He, also prepared the site plan and found blood on the wooden bench and also on the ground and collected portion of the blood stained wooden bench and blood stained bricks. The injured Mohd. Umar was interrogated in the hospital on January, 1976. The post mortem

examination on the body of Shamim Raza was performed by Dr. Prakash (P.W.6). Mohd. Umar died in the hospital on January 4, 1976 and his post mortem examination was performed by Dr. B.D. Misra at Kanpur on January 5,1976. The accused/appellant Mohd. Aslam- denied the prosecution allegations against him and alleged that he was falsely implicated on account of enmity and party faction. He also denied that he had been absconding from the village and he examined two witnesses in defence. The learned Additional Sessions Judge did not find the prosecution case and the evidences acceptable. Accordingly, he acquitted the accused/appellant. The State thereafter preferred an appeal before the Allahabad High Court and as aforesaid, the Allahabad High Court allowed the said appeal, set aside the judgment of acquittal passed by the learned Sessions Judge and convicted the accused/appellant under Section 302 I.P.C. and sentenced him to suffer rigorous imprisonment for life.

Learned counsel appearing for the accused/appellant has strenuously contended that the High Court did not appreciate the salutory principles governing the judgment of acquittal. He has contended that the learned Sessions Judge had taken pains in analysing in detail the evidences adduced in the case and gave reasonings for each of the findings as to why the prosecution case could not be accepted and what were the intrinsic deficiency in the evidences adduced in the case in support of the prosecution. The learned counsel has contended that the law is well settled that in a case of acquittal, the appellate Court should not interfere with the judgment of acquittal if such judgment is based on consideration of the evidences adduced in the case and there is no perversity in coming to the finding for passing the judgment of acquittal. In such a case of acquittal, the High Court in exercise of its appellate power should not endeavour to appreciate the evidence on its own in order to come to different finding unlike in an appeal arising from the judgment of conviction. The learned counsel has contended that it has been established convincingly that there was party faction between the two groups over a dispute to place Sawai on Tajias and both civil and criminal proceedings were instituted between the two groups. The learned counsel has contended that Abdul Hamid, the father-in-law of the deceased, Shamim Raza, was the principal man with whom Abdul Salem and Abdul Hamid Khan Pradhan had disputes and differences. There was no earthly reason to bear malice and grudge against Shamim Raza who was only a son-in-law of Abdul Hamid Khan Pradhan. Accordingly, there was no reason to kill him particularly in the presence of eye-witnesses as alleged. Such fact was taken note of by the learned Sessions Judge in analysing the acceptability of the prosecution case and credibility of the witnesses examined in support of the prosecution case. The learned counsel for the appellant has also submitted that there was no reason for injuring Mohd. Umar by the accused/appellant. He has contended that the alleged incident of gun shot injuries had not happened in the manner alleged by the prosecution but after such incident, the complainant and the other alleged eve-witnesses falsely implicated the ac-

cused/appellant because of the old enmity between the two groups. The learned counsel has contended that in a very short time, a written complaint was lodged in the Akbarpur Police Station which is admittedly four miles away from the place of occurrence. The prosecution story is that after the incident the said written complaint was reduced in writing by a person other than the complainant and thereafter the complainant went to the Police Station to file the written complaint. If the incident had taken place at about 6.00 P.M. as alleged by the prosecution, it is practically impossible to lodge the said written F.I.R. at Akbarpur Police Station by 7.15 P.M., particularly when

Abdul Hamid, the complainant did not straightaway go to the Akbarpur Police Station but he had been to his house and got a report of the occurrence written by Mohd. Raizwan (P.W.4) and then lodged the F.I.R. at the Akbarpur Police Station. The learned Sessions Judge had taken note of this very important fact in not accepting the prosecution case. Unfortunately, the High Court failed to appreciate the strong reasonings given by the learned Sessions Judge in not accepting the prosecution case. The learned counsel has also submitted that there is serious discrepancy so far as the injury of Mohd. Umar is concerned. Admittedly, Mohd. Umar got injured by a gun shot at the back but the manner in which the injured was sitting and the direction from which the gun was fired by the appellant, could not have caused gun shot injuries at the back of Mohd. Umar. The learned Sessions Judge having noted such discrepancies had rightly rejected the prosecution case implicating the accused/appellant. He has also submitted that the doctor had noted that Mohd. Umar sustained gun shot injuries from a bullet but the injuries sustained by the other deceased, namely, Shamim Raza was a gun shot injury from pellets. It was nobody's case that different guns had been used by the accused/appellant for injuring the said two persons differently. Because of such discrepancy, the learned Sessions Judge was not inclined to accept the prosecution case and the suggestion.given by the prosecution witnesses that Mohd. Umar might have turned his back in a reflex and received the gun shot injuries at the back was not accepted by the learned Sessions Judge. The learned counsel for the appellant has also contended that the alleged eye-witness were in the faction of the complainant Abdul Hamid and they were partisan witnesses. Accordingly, their testimonies were required to be considered with extreme care and caution. The learned Sessions Judge, therefore, after noting the various discrepancies in the prosecution case, was not inclined to place reliance on the evidences adduced by the alleged eye-witnesses and acquitted the accused/appellant.

Such order of acquittal, in the facts of the case and the reasons indicated by the learned Sessions Judge, was not required to be interfered with in appeal by the High Court. We are, however, unable to accept the submissions made by the learned counsel for the appellant. In an appeal arising from an order of acquittal, the appellate Court is not precluded from appreciating the evidences on its own if the reasons given by the learned trial Judge in passing the order of acquittal, do not stand scrutiny and are against the weight of the evidences adduced in the trial. The appellate Court, will be quite justified in setting aside the order of acquittal if it appears to the court of appeal that improper consideration of the materials and evidences on record was made and the reasonings of the trial Judge are wholly unjustified. It is only necessary that the court of appeal should weigh the reasonings of the learned trial Judge with care and caution in the light of the evidences adduced in the case by giving cogent reasons as to why such findings are unreasonable and against the evidence. In the instant case, the High Court has taken care in analysing each and every finding of the learned Sessions Judge in the light of the evidences adduced in the case and has given cogent reasons as to why such findings were unreasonable and not acceptable. It is an admitted position that the two persons suffered gun shot injuries on December 25, 1975 in the evening and one of the injured persons died on the spot and the other was removed to hospital. He got serious injuries and later on sccummbed to such injuries. The mere fact that there was enmity and bitterness between the two groups, by itself, does not establish that the eye-witnesses falsely implicated the accused/appellant. Shamim Raza was the son-in-law of Abdul Hamid and it was established in evidence that he was looking after the cases between the parties and making'pairvi'in civil and criminal cases. In our view,

the High Court is justified in holding that because of such positive role taken by Shamim Raza, he had incurred displeasure of the other group which acted as a motive for the gun shot injuries. The learned Sessions Judge doubted the prosecution case because of lodging the F.I.R. at 7.15 p.m. at Akbarpur Police Station which was about four miles away from the place of occurrence where the incident, according to the prosecution, had taken place at about 6.00 P.M. We do not think that such F.I.R. could not have been lodged by that time. The High Court has considered the reasonings of the learned Sessions Judge on the question of lodging the F.I.R. at Akbarpur Police Station within a short time and has, in our view, given very good reasons in not accepting the views entertained by, the learned Sessions Judge. In our view, the learned Sessions Judge was also not justified in holding that the gun shot injuries suffered by Mohd. Umar had not been property explained by the prosecution because the doctor had noted that such injuries were caused by bullet and not by pellets. The injuries suffered by Mohd. Umar as noted by the doctor do not run counter to the prosecution case that such injuries were caused by the gun used by the accused/ap- pellant. The High Court is right, in our view, in holding that the size of the pellet depends on the type of cartridge used in a gun. It cannot be held as a matter of course that simply because the pellets injuring the deceased Shamim Raza were smaller in size than the size of the pellets used in injuring Mohd. Umar, both the injuries could not have been inflicted by the same gun. The High Court, in our view, is also justified in not accepting the reasonings of the learned Sessions Judge that the injuries caused at the back of Mohd. Umar were not possible and run counter to the evidences adduced by the prosecution. There was interval though very short between the two shots and it is not at all unlikely or highly improbable that because of the inherent reflex, the other injured, Mohd. Umar, had turned his side and received the injuries at the back portion. In the instant case, there are eye-witnesses to the occurrence and there are no intrinsic discrepancies in their evidences. Even if it is assumed that such eye-witnesses belong to the group of the complainant, their evidences are not liable to be discarded on that score if such evidences otherwise inspire confidence and get corroborated by other evidences and from the nature of injuries, sustained by the deceased persons. The High Court is right in holding that although Abdul Khaliq (P.W.1) belonged to a group and appeared to be a partisan witness, his evidence was not required to be discarded on that ground but was required to be closely scrutinised. The High Court, in our view, is also justified in holding that Qamruddin (P.W.3) was not related to Shamim Raza, deceased or the complainant and he did not belong to any of the rival groups. This witness had no enmity with the accused/appellant or his father. Qamruddin (P.W.3) has been rightly held by the High Court, as an independent and reliable witness.

It appears to us that all the findings made by the learned Sessions Judge were considered in detail by the High Court and the findings of the learned Sessions Judge were not accepted by the High Court by indicating that such findings were against the weight of the evidences and the same were wholly unreasonable. In the aforesaid circumstances, we do not find any reason to take a contrary view in this appeal and set aside the order of conviction made by the High Court. The appeal therefore fails and is dismissed. By the Order dated April 8, 1986, this Court granted bail to the accused/appellant. In view of the dismissal of this appeal the bail stands cancelled and the accused/appellant is directed to surrender and serve out the sentence.

V.P.R. Appeal dismissed.