Supreme Court of India
Ram Kumar Pande vs The State Of Madhya Pradesh on 11 February, 1975
Equivalent citations: 1975 AIR 1026, 1975 SCR (3) 519
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
RAM KUMAR PANDE

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH

DATE OF JUDGMENT11/02/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
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ALAGIRISWAMI, A.

CITATION:
1975 AIR 1026 1975 SCR (3) 519
1975 SCC (3) 815
CITATOR INFO :
D 1981 SC1036 (9)
R 1992 SC 891 (16,18,19)

ACT:
Criminal trial--High Court interfering with acquittal by trial court--When Supreme Court can interfere with decision of High Court.
Evidence Act (1 of 1872) s. 11, Scope of.
Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970--Acquittal set aside and sentence of life imprisonment imposed--Certificate of High Court for appealing to Supreme Court not necessary.

HEADNOTE:
The appellant was charged with two offences, (i) under s. 307 I.P.C. with respect to one person, and (ii) under s. 302/34, I.P.C. for having, along with other accused, caused the death of another. The trial court convicted him under s.324 I.P.C. on the first charge and acquitted him of the other charge. The appeal by the State against the acquittal on the second charge was allowed by the High Court and the appellant was convicted under s.302/34 I.P.C. and sentenced to life imprisonment.
Allowing the appeal to this Court,

HELD : (1) In the case of an appeal against an acquittal the appellate court should not interfere with the acquittal merely because it can take one of the two reasonably possible views which favours conviction. But if the view of the trial court is not reasonably sustainable, on the evidence on record. the appellate court will interfere with the acquittal. If the High Court sets aside an acquittal and convicts, this Court has to be satisfied, after examining the prosecution and defence cases, and the crucial points emerging for decision from the facts of--the case, that the view taken by the trial court, on the evidence on record, is atleast as acceptable as the one taken by the High Court, before this Court could interfere with the decision of the High Court. [521D]

(a) The First Information Report is a previous statement which, strictly speaking, can be only used to corroborate or contradict the maker of it. In the present case, the F.I.R. was made by the father of the deceased to whom all the important facts of the occurrence were bound to have been communicated. But, though the F.I.R. was given about 4 hours after the incident, it was not mentioned therein that the appellant had stabbed the deceased. The omission of such an important fact affecting the probabilities of the case is relevant under s.11 of the Evidence Act in judging the veracity of the prosecution case. [522D]

(b) The evidence, shows that the deceased was stabbed by one or the other accused; that the place of occurrence had been shifted by the witnesses for the prosecution; that the version of the alleged eye witnesses is not credible; and that the alleged dying declaration is unreliable. [524B-D]

(2) The High Court, having found that the appellant and the other accused were individually responsible for their acts, erred in finding the appellants guilty on the basis of common intention, of an offense under s. 302/34 I.P.C. [524FG]

(3) An appeal to this Court by the accused, in a case where his acquittal had been converted into a conviction and the sentence of life imprisonment was imposed upon him, lies as a matter of right under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, and no certificate of the High Court is necessary. [521A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 12 of 1972.

From the Judgment and Order dated the 1st May, 1971 of the Madhya Pradesh High Court in Crl. Appeal No. 653 of 1970. 2-470SCI/75 R. K. Bhatt for the appellant.

Ram Punjwani, H. S. Parihar and 1. N. Shroff, for the respondent.

The, Judgment of the Court was delivered by BEG, J. The sole appellant Ram Kumar Pandey, aged 45 years, was tried together with Suresh Kumar aged 20. years, and Mulkraj, aged 45 years, and Ramesh Kumar, aged 17 years, on two charges framed against him. These were :

> "Firstly; That you on or about the 23rd day of March 1970 at Raipur, did an act, to wit, hit Uttam Singh with a knife with such intention or. knowledge and under such circumstances, that if by that act, you had caused the death of Uttam Singh you would have been guilty of murder and that you caused grievous hurt to Uttam Singh by the said act and that you thereby committed an offence, punishable under Section 307 I.P.C. and;
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> Secondly : That at the said time and place, you or some other persons did commit murder by intentionally or knowingly causing the death of Harbinger Singh and the said act was done in furtherance of the common intention of all and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and within the cognizance of the Court of Sessions."

Suresh Kumar, Mulkraj and Ramesh Kumar, were accused of ,offences punishable under Sections 307/114 and Section 302 read with Section 34 and 114 Indian Penal Code. The Sessions' Judge of Raipur, who had tried the case, found Suresh Kumar guilty of the murder by stabbing of Harbinder Singh, aged about 16 years, and sentenced him to life imprisonment. He convicted the appellant under Section 324 I.P.C. only for the injury inflicted on Uttam Singh and sentenced him to one year's rigorous imprisonment, but acquitted him of other charges. He also acquitted the accused Ramesh and Mulkraj of all charges leveled against him.

The State of Madhya Pradesh appealed against the acquittal of the appellant Ram Kumar Pandey of the charge under Section 302/34 I.P.C., and of Mulkraj and Ramesh Kumar of all charges. Suresh Kumar, the son of Mulkraj appealed against his conviction under Section 302 simplicitor, but this appeal was dismissed by the High Court which maintained his life imprisonment. The High Court also allowed the States appeal against the acquittal of Ram Kumar Pandey for injuries caused to Harbinder Singh, and, convicting him under Section 302/34 I.P.C., it sentenced him- to life imprisonment. It convicted Mulkraj of an offence punishable only under Section 323 I.P.C. and sentenced him to a fine of Rs. 200/-, and, in default of payment of fine, to rigorous imprisonment for two months. It, upheld the acquittal of Ramesh Kumar Ahuja of all charges.

This appeal has come up before us after a certificate granted by the High Court under Article 134(1) (c) of the Constitution, but the certificate says that the appellant is entitled to it under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, strictly speaking, no certificate of the High Court is required for such an appeal where an acquittal has been converted into a conviction finder Section 302/34 I.P.C., and a sentence of life imprisonment imposed upon an accused person. Thus appeal, in such a case, lies as a matter of right to this Court under the Act of 1970.

The only question before us now is whether the appellant, who had not appealed at all to the High Court against his conviction under Section 324 I.P.C., which stands, was rightly convicted by the High Court under Section 302/34, I.P.C., after setting aside his acquittal for the graver offence for injuries resulting in the death of Harbinder Singh.

The well settled rule of practice in a case of an appeal against an acquittal is that the appellate Court should not interfere with the acquittal merely because it can take one of the two reasonably possible views which favours conviction. But, if the view of the Trial Court is not reasonably sustainable, on the evidence on record, the appellate Court will interfere with an acquittal. If the Appellate Court sets aside an acquittal and convicts, we have to be satisfied, after examining the prosecution and defence cases, and the crucial points emerging for decision from the facts of the case, that the view taken by the Trial Court, on evidence on record, is at least as acceptable as the one taken by the High Court, before we could interfere with the High Court's judgment.

The prosecution case, as set out in the First Information Report was ; Uttam Singh, PW 1, residing at Ganj Parao, on the first floor went home at about 3.30 p.m. on 23-3-1970 and was preparing to have a bath when Suresh Ahuja came down from an upper storey of the house and complained that Uttam Singh had been quarreling with members of his family. Uttam Singh requested him to take his seat and promised to look into the matter. This angered Suresh Ahuja. Thereafter, his, elder brother arrived and started quarreling with Uttam Singh's daughter. At this stage, the landlord Mulkraj Ahuja, accompanied by the appellant Ram Kumar Pandey, who lives with his family in a side room on the ground floor, entered and immediately gave him a blow on his eye-,brow. Uttam Singh fell down. As Uttam Singh got up, the appellant struck him with a knife from behind. Mukhraj asked Pandey to run down-stairs. Both the accused tried to run away. Uttam Singh tried to catch them but failed. Uttam Singh when asked his son Harbinder Singh to make a telephone call. At this point, Suresh, son of Mulkraj, stabbed Harbinder Singh who fell down in the lane. Uttam Singh saw Harbinder Singh lying near the house of Saudager Shah with an injury on his chest which was bleeding profusely. Harbinder Singh was carried to a hospital on a cart and Gurcharan Singh telephoned the police. Joginder Singh also came while the injuries were being inflicted. Uttam Singh's daughters Amarit Kaur and Taranjit Kaur saw Uttam Singh wrapping a chadar an the wound of Harbinder Singh. Raj Jaggi had seen Harbinder Singh falling down. The motive for this incident was that Mulkraj Ahuja, the landlord, wanted his house vacated by Uttam Singh. Harbinder Singh had died while being taken to hospital.

The above mentioned First information Report was lodged at Police Station Ganj on 23-3-1970 at 9.15 p.m. The time of this incident is stated to be 5 p.m. The only person mentioned as an eye witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the F.I.R. only as persons who saw the wrapping of the chadar on the wound of Harbinder Singh, What is most significant is that it is nowhere mentioned in the F.I.R. that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9.15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh. No doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important

facts of the occurrence, so far as they were, known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow' on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that or missions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

Even Joginder Singh, PW 8, was not an eye witness of the, occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the F.I.R. that Joginder Singh had met Uttam Singh before the F.I.R. was made. Uttam Singh did not mention there that any dying declaration indicating that the appellant had also injured Harbinder Singh. was made by Harbinder Singh. The omission to mention any injury inflicted on Harbinder Singh by the appellant in the F.I.R. seems very significant in the circumstances of this case. Indeed, according to the version in the F.I.R., Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside.

Satwant Kaur, PW 7, the wife of Uttam Singh, who claimed to have been an eye witness of the whole occurrence, was also not mentioned in the F.I.R. Suresh had, according to her, stabbed Harbinder Singh on the right side of the chest at the door of the kitchen, and thereafter, Pandey was said to have attacked him.

Again, we find that Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, daughters of Uttam Singh, have figured as eye witnesses of the whole occurrence including the stabbing of Harbinder Singh by the appellant. As already indicated, they are not mentioned in the F.I.R. as eye witnesses of the murder. This is also very significant in the present case. They have been mentioned only as witnesses of wrapping a chadar on the wound of Harbinder Singh who was then said to be lying in the lane after the occurrence.

In order to explain how Harbinder Singh, said to have been attacked near the kitchen of Uttam Singh on the first floor, was found lying in the lane in a pool of blood, the persecution version is that, after the attack with knives by Suresh and the appellant, Harbinder Singh ran and rushed down the steps into the lane. It was pointed out that, in view of the nature of two injuries sustained, by Harbinder Singh and the medical evidence about them, it was not possible for Harbinder Singh either to have rushed down, or, in any case, to have made a dying declaration. The injuries on Harbinder Singh found by Dr. S. C. Vishnoi were as follows :

> "(i) An incised wound on the left side of the chest placed anteriorly and measuring 1-1/2" x 1" x 1-1/2" deep. In the fifth intercostal space-closed to the lateral border of the left side of the sternum. It had clean cut and blood stains margins.
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> (ii) An incised wound on the right side of back in the 8th intercostal space 2" below the inferior angle of scapula. It had measured 1" x 1" x 1". It had clean cut and

bloodstains margins. There was found difficulty in probing through this wound".

The Doctor said about the first injury "This injury had entered the cavity of the right ventrical. It was a very serious injury. Right ventrical is an important part of the heart. Generally such an injury would result in an instantaneous death. Injury to the right ventrical and the paricardium had resulted in profused hemorrhage". He also said :

Injury to the lobe of the right lung and the pleura as found in this case will result in shock. Ordinarily such a injury would immediately be fatal".

The main points for decision which emerged from the evidence in the case were:

1. Where was Harbinder Singh stabbed?

2. Who could have been the witness of the stabbing?

3. Could the alleged eye witnesses be believed?

4. Could the dying declaration, said to have been made, to Joginder Singh, be made the sole basis of the conviction of the appellant under section 302/34 IPC if the evidence ,of alleged eye witnesses was to be discarded?

As regards the place where the stabbing' took place, the High Court had itself felt highly dissatisfied with the manner in which the case was investigated. The site plans do not show any place where the blood was found. if blood marks had been shown and blood had been taken from spots where it had fallen, it would have afforded very valuable evidence on the question whether any stabbing of Harbinder Singh did take place at door of the kitchen and whether he ran after that.

The site plans did not show even where the kitchen was. Therefore, we cannot know, by looking at these, whether the three ladies, who are alleged to be eye witnesses at the trial, could have seen the occurrence in the room in which Uttam Singh was injured as well as at the door of the kitchen. Taking all the relevant evidence on this point into account, it is far 'more likely that, as the Sessions' Judge had guessed, the deceased had been stabbed by Suresh twice in the lane, probably once from the front and again while he fell or was trying to run away. He could not have moved far from the scene where he was stabbed. The High Court's reasons to dislodge this inference are insufficient. As regards the second and third points, we are unable to give credence to the version of the three alleged eye witnesses as they were not mentioned as eye witnesses in the F.I.R. made in the circumstances indicated above. Lastly, the alleged dying declaration is also not mentioned in the F.I.R. On the other hand, the F.I.R., mentions Joginder Singh, who tried to prove the dying declaration as an eye witness.

It may be pointed out that the charge against the appellant for offences under Section 302/34 I.P.C. is also defective inasmuch as it shows that either the appellant "or some other person" committed

the murder. It does not show how or even mention that the appellant acted in concert with anyone else. However, no grievance has been made of any defect in the charge or any prejudice to the appellant from it. We therefore, ignore it.

It may also be mentioned that the High Court had itself recorded the following finding:

> "All the eye-witnesses have admitted that the four accused did not come together ;it the same time in the room where the incident happened. Suresh Kumar came in that room first, Ramesh Kumar then entered the room and some time after they were followed by Mulkraj and Ram Kumar Pandey. There is nothing to show that there was a preconcert between the four accused to commit any particular offence in the room. It appears that the whole incident took an ugly and unexpected turn and the most unfortunate result was that Harbinder Singh was killed. We are of the view that the trial Court was right in reaching the conclusion that Ram Kumar Pandey and Suresh Kumar were individually responsible for their acts".

It is difficult, after this finding to follow the reasoning of the High Court in coming to the conclusion that the appellant was guilty of an offence punishable under Section 302/34 I.P.C.

Consequently, we allow this appeal and set aside the conviction and sentence of the appellant under Section 302/34 I.P.C. If the appellant has already served the sentence awarded under Section 324 I.P.C., as is stated on his behalf, he will be released forthwith.

V.M.K. Appeal allowed.