Supreme Court of India
Bahal Singh vs The State Of Haryana on 12 March, 1976
Equivalent citations: AIR 1976 SC 2032, 1976 CriLJ 1568, (1976) 3 SCC 564
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Bench: N Untwalia, R Sarkaria
JUDGMENT N.L. Untwalia, J.

1.Bahal Singh, the sole respondent in this appeal, was tried by the Sessions Judge of Hisar for an offence under Section 302 of the Indian Penal Code for the murder of one Ram Sarup, brother of Manphool, P.W. 2. The Trial Judge held that the prosecution was not able to establish the occurrence in the manner alleged by any reliable evidence; at any rate, the case against the respondent was not free from doubt. Accordingly, he acquitted the respondent. On appeal by the State of Haryana the High Court of Punjab and Haryana set aside the respondent's acquittal, convicted him under Section 302 of the Penal Code and imposed a sentence of life imprisonment. This appeal has been preferred under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. The principles governing the scope of an appeal against acquittal and the High Court's power to interfere in it are well settled by several decisions of this Court, to wit Khedu Mohton v. State of Bihar and Ram Jag v. State of Uttar Pradesh . In Khedu Mohton's case (supra) it has been pointed out by Hegde, J, in paragraph 3 at page 452 = para 3 at pp. 67-68 of AIR SC:

It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cri. P.C. are as extensive as its powers in appeals against convictions but that Court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge has found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.

3. Chandrachud, J. speaking for the Court in Ram Jag's case has summarized the law on the point in the following terms:

The principles governing appeals against acquittal are thus firmly established and the issue cannot now be re-opened. The CrPC by Section 423, has accorded parity to appeals against conviction and appeals against acquittal, the Code makes no distinction between the powers of the appellate court in regard to the two categories of appeals and therefore the High Court has powers as full and wide in appeals against acquittal as in appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of criminal jurisprudence that unless the statute provides to the contrary, there is a presumption of innocence in favour of the accused and secondly that the accused is entitled to the benefit of

reasonable doubt. Due regard to the views of the trial Court as to the credibility of witness in matters resting on pure appreciation of evidence and the studied slowness of the appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. They are self-imposed limitations on a power otherwise plenary and like all volunary restraints, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed.

4. In the instant case it appears to us that the High Court, having entertained a grave suspicion against the respondent as being responsible for the murder in question, allowed itself to transgress the limits of its power and felt persuaded to brush aside or side track some of the salient features of the prosecution case which led the trial Judge to doubt it and acquit the respondent. After having examined the two judgments and the relevant pieces of evidence with the assistance of the learned Counsel for the parties we have come to the conclusion that the trial Judge was right in recording an order of acquittal in favour of the respondent and there was no sufficient justification for the High Court to interfere with it. In any event, the view taken by the trial Court was reasonably possible to be taken and the High Court could not reverse it merely because it was inclined to take a different view of the facts.

5. The learned Sessions Judge in his judgment has leveled several criticisms against the prosecution case and the evidence. Some of them were too insignificant and flimsy to shake the prosecution version of the occurrence. The High Court, no doubt, has taken pains to discuss and refer to almost all the criticisms mentioned in the judgment of the trial Court and has rightly not attached any importance to some of the minor criticisms. But in dealing with some of the salient features of the case it seems to have unjustifiably tilted the balance in favour of the prosecution as against the views of the trial Court.

6. There is a village Kajla within the jurisdiction of Sadar Police Station, Hissar, District Hissar situated at a distance of about nine miles. On the 15th of March, 1970 Ram Sarup - the deceased, respondent Bahal Singh and Jagdish, P.W. 8, according to the prosecution case went to the Cattle fair at Hissar. Ram Sarup and Bahal Singh indulged in gambling. The latter lost Rs. 1,100/-. There was altercation between them because Bahal Singh wanted the return of the money lost by him. Ram Sarup and Jagdish returned to the village on the 16th March. Bahal Singh also returned a day later. On the 17th March, 1970 at about sunset time i.e. at about 6.30 p.m. Ram Sarup and his brother Manphool, P.W. 2, the prosecution case further runs, were going through a lane in the village to the house of one Ram Chander - their Siri-in-cultivation who was not attending to their work for 3 or 4 days. When they reached near the shop of one Gobind Sunar (not examined) Bahal Singh was standing there armed with his single barrel-gun. On seeing the two brothers, he challenged Ram Sarup and fired a shot at him hitting him on his left thigh. Ram Sarup fell down. Manphool pounced upon Bahal Singh to catch him and his gun but the latter fled away with it. The

phatti (fore-end) (wrongly described as stock in the judgment of the High Court) got separated from the barrel of the gun and came in the hands of Manphool. Two other persons Sheo Narain, P.W. 4 and Surja, P.W. 5 are said to have witnessed the occurrence. Injured Ram Sarup was taken to Civil Hospital, Hissar in a bullock cart where the party reached at about 10.00 p.m. The Doctor on duty found Ram Sarup dead and sent a Ruka to Police Station at 10.15 p.m. Sub-Inspector Sis Ram, P.W. 11 received the Ruka at 12.30 A. M. on the 18th March, 1976 and reached the Hospital at 2.00 A. M. He recorded the statement of Manphool at 2.30 A. M. About an hour later, the formal First Information Report was recorded and a copy of it reached the Illaka Magistrate in the town of Hissar at about 7.30 in the morning. The respondent is said to have been apprehended with his gun which was a licenced one at Agraha turning bus stand on the 22nd March, 1970 when Sis Ram - the Sub-Inspector was returning to Hissar from Adampur where he had gone for an investigation of another case. The phatti is Ext. P1 and the gun is Ext. P2. After charge-sheet and commitment the respondent was tried in the Court of Session under Section 302 of the Penal Code.

7. Ignoring the minor and the filmsy criticisms of the prosecution evidence in the case out of those mentioned in the judgment of the trial Court, we shall advert to the principal and important reasons given therein. They are the following:

(1) Jagdish P.W. 8 admitted in cross-examination that Bahal Singh and Ram Sarup did not gamble in his presence. His evidence, therefore, was not sufficient to establish the genesis or the motive of the occurrence.

(2) The story of Manphool that both the brothers were going to the house of Ram Chander, their Siri, was not natural and probable.

(3) P.Ws. 4 and 5 are collaterals of Manphool. Both were chance witnesses and their reasons for their presence at the place and time of occurrence were not credible.

(4) Manphool's testimony of having snatched the phatti of the gun from the hands of the respondent, its deposit with the Sub-Inspector, P.W. 11 did not appear to be true.

(5) The alleged eye-witnesses who were three in number including Manphool did not make any attempt to follow and apprehend the respondent even after his gun became useless on the alleged separation of the phatti.

(6) No independent witness from around the place of occurrence was examined in support of the prosecution version of the occurrence.

(7) The story of apprehending the respondent on the 22nd March at Agroha turning and the seizure of the gun without the phatti, was not reliable.

(8) A pair of shoes was found at the place of occurrence and no attempt was made to find out as to whose shoes they were.

(9) The clothes of me deceased were found to be torn by the Doctor who held the autopsy on the dead body. The explanation given by Manphool in that regard was not believable. Rather, the torn clothes showed that there was a scuffle between the deceased and the assailant. The gun also seems to have been fired on him from a very close range.

8. Now we come to the High Court judgment and refer to the discussion of the points in the order mentioned above. The High Court is of the opinion that although, Jagdish P.W. 8 admitted that Bahal and Ram Sarup did not gamble in his presence, it appeared that they had altercated and exchanged slaps and fist blows in his presence as he was positive in asserting that he had separated the respondent and the deceased. The tenor of the evidence of P.W. 8 did not warrant this conclusion. According to the said evidence, gambling altercation and exchange of slaps and fist blows all happened in succession at the same time. The statement in examination-in-chief was suggestive of the fact of the presence of the witness at the said happenings. When in cross-examination Jagdish admitted that the gambling did not take place in his presence it shook his entire evidence. It may, however, be said that even if the genesis or the motive of the occurrence was not proved the ocular testimony of the witnesses as to the occurrence could not be discarded only on that account, if otherwise it was reliable.

9. The trial Court was not unreasonable in doubting the story of Manphool going with his brother Ram Sarup to the house of Ram Chander merely to find out the reason of his not coming to work. The view taken by the High Court that in villages both the brothers could go for the purpose is also possible to be taken. But unless the one taken by the trial Court was perverse or reasonably not possible, a different view was not warranted.

10. As to the presence of P. Ws. 4 and 5 at the time and place of occurrence the trial Court entertained grave doubts. If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. In the instant case, P. Ws. 4 & 5 were agnatic relations of the deceased-one of them a close one. The reason given by them for being at the place of occurrence did not appear to be true to the trial Court. There was not any compelling or sufficient reason for the High Court to differ from the evaluation of the evidence of the two chance witnesses. It may well be as remarked by the High Court that the respondent was also their collateral but they appeared to be partisan witnesses on the side of the prosecution and hence their testimony was viewed with suspicion by the trial Judge.

11. The reasons 4, 5, 6 and 7 mentioned above from the trial Court judgment may be taken up together. Either there was delay in giving information to the police or unexplained delay in the various steps taken by Sub-Inspector Sis Ram. The Police Station was at a distance of about 3 kilometers from the Hospital. It does not stand to reason that the Ruka sent by the Doctor took more than two hours to reach the Sub-Inspector at the Police Station and that the latter took an hour and a half in reaching the Hospital after receipt of the Ruka. The copy of the First Information Report was received by the Illaka Magistrate at 7.30 A. M. in the morning. Although there was no

evidence in support of the suggestions thrown on the side of the respondent, the possibility of the suggestions being true could not be ruled out. Viewed in the background of the very suspicious story of the apprehension of the respondent on the 22nd March, 1970 at Agroha turning the story of snatching the fore-end of the gun by Manphool becomes very doubtful. From the evidence it is not clear how far this Agroha turning is from village Kajla. But Jagdish P.W. 10, it is interesting to find, happened to be at Agroha turning just by chance although he is a resident of a village 20 miles away from there. He is also related to the deceased. He was a witness to the seizure of the gun from the person of the respondent at Agroha turning. His evidence was too crude on its face to inspire any confidence as to the arrest of the respondent at Agroha turning with the phattiless gun. The High Court, in our opinion, has wrongly accepted this evidence as against its rejection by the trial Court. It is strange that Sis Ram could find the respondent present at the Agroha turning just by chance and P.W. 10 also a ready witness by chance. In this background the suggestion on behalf of the respondent that his licenced gun was taken away from his house soon after the occurrence in the same night, although not proved by any evidence, does cash doubt on the prosecution story as to the manner of Manphool's catching hold of the phatti, P.Ws. 4 and 5 are also licenced gun holders. If the story of separation of the phatti on Manphool's pouncing upon the respondent was correct the three persons present at the scene of occurrence, if at all they were present, could have succeeded in catching the respondent with his gun. It was a single barrel gun and after one shot was fired it could not be reloaded on detachment of its fore-end. There would have been, therefore, no fear or risk in the witnesses pursuing and apprehending the respondent with his gun at or near the place of occurrence. There are houses of persons around the scene of occurrence. The occurrence is said to have taken place at about sun-set time. There must have been present independent persons in the village to watch the occurrence if it did take place in the manner alleged. But there was no such witness coming forward. The High Court remarked that some persons came immediately after the occurrence. But none of them was examined to say whether any of the three eye-witnesses was present at the scene of occurrence or any of them told the persons who arrived there the name of the respondent as being the assailant of the deceased.

12. The High Court was not justified on mere speculation in observing that the pair of shoes found at the place of occurrence by Sub-Inspector Sis Ram might have been of the deceased. There was no evidence in that regard. Had the pair of shoes been of the deceased or of the respondent the prosecution could have no excuse for its failure to say so. It suggests that the pair of shoes, if it was not transplanted later by somebody, was of an unknown assailant. Or, in any event it was also a hook in the chain of doubt as to the prosecution case.

13. Coming to the 9th and the last reason mentioned above it would be noticed that the shirt of the deceased was found to be torn at two places. His dhoti was also torn and kachha was found torn at some places. It was not Manphool's evidence that Ram Sarup while going with him was wearing torn and tattered clothes. He was, therefore, obliged to give an explanation for their being found torn. The explanation was that while putting Ram Sarup on the bullock cart the clothes got torn. The trial Judge found it difficult to swallow this explanation. In our opinion the High Court was wrong in accepting it. In the circumstances of the case the probability of the clothes being torn and especially of the kachha in the manner suggested by the prosecution, was not there at all. On the other hand, it was quite legitimate to think that Ram Sarup had a scuffle with his assailant and the clothes got torn

in that scuffle. Neither Manphool nor P.Ws. 4 and 5, perhaps, saw the occurrence. It is also clear that the gun was fired by the assailant at Ram Sarup's thigh from a very close range. The muzzle of the gun at the time of fire must not be more than a foot away from the thigh. The Doctor who did post-mortem examination found a piece of card-board torn in four parts and a metallic pellet in the left thigh of Ram Sarup The was burning of the margins of the wound entry. The Doctor was not quite right in saying that it was due to heat of the bullet or the pell And this showed that the gun was fired from close range. The High Court was also of the same view. The ocular version of the occurrence given by the prosecution witness 2, 4 and 5 does not indicate that the gun. was fired by the respondent after he had come very close to the deceased. Rather, according to the evidence of Manphool it was fired from distance of about 1 1/2 pondas i.e. about 7 1/2 .

14. In our judgment, therefore, the order of acquittal recorded by the trial Court was correct as the prosecution case could not be said to have been proved beyond doubt against the respondent. In any view of the matter the order was not such as could be justifiably and legally interfered with by the High Court. The High Court has gone wrong in setting the acquittal aside and convicting the respondent. We allow his appeal and set aside hi conviction and sentence.