Supreme Court of India
Sri Jinnat Mia & Jinu Mia And Others vs State Of Assam on 12 December, 1997
Author: Srinivasan
Bench: M.M. Punchhi, M. Srinivasan

PETITIONER:
SRI JINNAT MIA & JINU MIA AND OTHERS

Vs.

RESPONDENT:
STATE OF ASSAM

DATE OF JUDGMENT: 12/12/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Srinivasan, J.

The main contention of the appellants is that the High Court has chosen to reverse the order of acquittal passed by the trial judge when the latter is not perverse or wholly unreasonable. In support of the same the decision in Tota Singh & Anr. Versus State of Punjab (1987) 2 SCC 529 is cited. A Bench of two judges has held that in an appeal against acquittal, the jurisdiction of the appellate court is circumscribed by the limitation that no interference is to be made with the order unless the approach made by the lower court to the consideration of evidence is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is liable therefore to be characterised as perverse. It has also been held that where two views are possible and the view taken by the court below is plausible, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the trial court is erroneous.

2. The power of the appellate court in an appeal against an order of acquittal was the subject of a decision of three member Bench of this court as early as in Sanwat Singh & Ors. Versus State Of Rajasthan AIR 1961 S.C. 715. The Bench considered the matter in detail and said:-

> "The foregoing discussion yields the following results : (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded : (2) the principles laid down in Sheo Swarup's case, 61 Ind App 398: (A)R 1934 PC 227 (2) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this court, such as,
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> (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and
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> (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire eavaidence and to come to its own conclusion; but in doing so it should not only consider eavery matater on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving ata a conclusion on those facts, but should also express those reasons in its judgment which lead it to hold that the acquittal was not justified".

3. In that case, the court also dealt with the scope of Article 136 of the constitution and pointed out that the practice of the court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the court.

4. Recently this Bench had occasion to rofer to the ruling in Betal Singh Versus State of M. P. (1996) 8 S.C.C. 205 and point out that the High Court has full powers i an appeal to review the entire evidence and come to its own conclusion unless the matter depended on the demeanour of the witness. [See judgment dated 9.12.1997 in Civil Appeal No. 888 of 1996 Rajendra Mahton versus State of Bihar]

5. Bearing the above principles in mind, we shall now consider the facts of the present case. The prosecution case was the following:

On 2.6.1987 after mid night the appellants entered the bed room in which Chand Mia, the deaceased was sleeping with his wife Jamuna Khatun, the complainant and killed him by hacking him with ram dao and other dangerous weapons, When the complainant tried to save her husband, she suffered some injuries. She went to the police station situated at a distance of 4 kilo metres by walk and presented a complaint written with the help of PW 4, a petition-writer around 2.15 A.M. She had mentioned the names of the appellants in the P.I.R. She was sent to a dispensary near the police station for treatment for her injuries. After investigation, the appellants stood charged with offences under Section 324/459/302/34 I.P.C.

6. The prosecution examained nine witnesses. The doctor who treated the complainant for her injuries was PW2. The complainant was examined as PW 3 and she was the only eye witness. PW 7 was a son of the deceased and the complainant who was sleeping in the same house in another room. The trial court acquitted the accused. The reasons given by the trial court were as follows:

(a) The evidence of PW3 cannot be belieaved as her version regarding a lamp in the bedroom at the time of occurrence was discrepant. She had described it as 'chaki' at one time and 'lamp' at another and it was not noted by the I.O. when he prepared the sketch of the place of occurrence.

(b) PW3 had not satisfactorily proved that she suffered injuries at the time of occurrence.

(c) An eight year old son who was sleeping in the same room in another bed was not examined. Some persons who came to the place of occurrence immediately thereafter and some persons named in the chargesheet were not exained.

(d) There were proceedings under Section 107 Crl. P.C. against some of the appellants at the instance of the deceased and thus the complainant has a motive to implicate them falsely.

(e) The evidence of PW 4 showed that he prepared a written complaint in the first instance which contained several other names as accused but it was torn and the complaint which was lodged as F.I.R. was prepared.

7. The High Court considered all the above reasons and held them to be unsustainable. The High Court also considered the evidence on record and found that there was no reason to disbelieave the evidence of PW3 who was the eye witness. It was held that the findings of the Sessions Judge were unreasonable and could not be sustained. Therefore the High Court convicted the appellants under Sections 302/34 and sentenced them to rigorous imprisonments for life, besides a fine of Rs. 300/- each. The appellants were also convicted under Section 324 but did not pass any separate sentence.

8. Learned counsel for the appellants laid stress on the reasoning of the trial court and contended that the High Court ought not to have interferred with the same. Before considering the contentions raised by him, it should be pointed out that the trial court has only repeated the arguments of Mr. Sharma, one of the advocates for the accused more and not analysed the matter itself. In several paragraphs the trial court has only referred to what Mr. Sharma pointed out and left it there without considering the relevant evidence on its own. In any event, the trial court set out the crucial aspect of the matter in the following words:-

> "The case, undoubtedly is a peripheral one, in the sense that if we accept the story of identification of the accused persons o the basis of the statements made by the solitary eye-witness P.W. 3 Mst. Jamuna Khatun, we must hold the accused persons guilty of the charges, otherwise we have no legal right to send them for life long incarceration or to the gallows, for, the charges inter alia also include Section 302/34 I.P.C."

9. But the trial court chose to dis-believe PW3 and held against the prosecution. The High Court has accepted the evidence of PW 3 as it did not find any infirmity therein.

10. Learned counsel for the appellants has contended that PW 3's evidence is unbelievable in as much as she has given different versions with regard to the existence of lamp in the room at the time

of occurrence. He has made much of her using the words 'chaki' and 'lamp' alternatively. It is his argument that a 'lamp' is different from 'chaki' and neither was noticed at the premises soon after the occurrence. According to learned counsel a lamp was purchased and handed over to the police later on the next day and that this circumstance goes a long way to make the prosecution case doubtful. There is no basis in the evidence for this argument. The discrepancy, if at all is insignificant. The High Court has found that the lamp was seized by police on the next day. It is quite natural that a lamp or chaki is kept in the room where children are sleeping. it is the evidence of PW 3 that her children were suffering from dysentry and she had to take them frequently outside the room for making them attend to the calls of nature and for that reason she had kept a lamp on the table in the room. In the circumstances of the case when the accused persons entered that room, it would have been easier for the inmates of the room to identify the new entrants as the former were accustomed to the dim light at that time inside the room. If the accused who had come from outside could identify the victim, whom they hacked with the deadly weapons, there would have been no difficulty for PW 3 in identifying the accused. We do not find anything wrong in her evidence which makes it incredible or unacceptable.

11. It is next contended that the injuries suffered by her are superficial and could not have been caused by the assailants of her husband. It is argued that she had clasped her husband and if that was true, she would have suffered some serious injuries. There is no merit in this contention. The assailants were only keen on attacking the deceased and not PW 3. The injuries on her body depended on the exact position in which she was holding her husband. There can be no doubt that she did suffer injuries and she had been sent to the hospital near the police station immediately, after she reported the occurrence at the police station. PW 2, the doctor examined her and noticed the injuries. He has entered the same in the Injury Register. There were four injuries on her body and the doctor found that the injuries were all one to two hours old caused by sharp weapon. There is no cross- examination of the said doctor. It is stated that the injury report was obtained from the doctor only on 9.7.1987 i.e. after more than a month. Nothing turns on that circumstance as the evidence makes out that the doctor examined her soon after the occurrence on 3.6.1987 itself and entered the injuries in the injury register. The report given by him was only copied from the injury registrer. Hence, There is no merit in this contention.

12. It is next argued that two statements of complaint were prepared. In the first, names of about 13 or 14 persons were mentioned and the said statement was torn off. A fresh one was drawn and in the second statement the appellants were implicated. For this purpose reliance is placed on the evidence of PW 4. The said witness was declared hostile in the trial court. The High Court has considered his evidence in detail and found that his version that two statements were prepared and the first was torn off is not acceptable. We do not find any error in this view taken by the High Court. The solitary evidence of PW 4 cannot be accepted t hold that there were two written complaints and the one prepared earlier was torn off.

13. It is next argued that PW 3 had motive to implicate the appellants as there were proceedings under Section 107 against the appellants at the instance of the deceased. We do not accept this contention. In our opinion the evidence of PW 3 cannot be rejected on the said ground. Soon after the occurrence a son of the deceased who was sleeping in another room of the same house rushed to

the room where his parents were sleeping. He was informed by PW3 about the assailants. It cannot be imagined that as soon as the occurrence took place, she thought of implication the appellants falsely. Those persons were known to her for a long time and PW 7 also, knew them already. Thus the evidence of PW 7 corrborates that of PW 3 and the High Court has rightly accepted the same.

14. It is next contended that other persons mentioned in the chargesheet were not examined by the prosecution. It is also argued that an eight year old son of the deceased who was sleeping in the same room was not examined. Raliance is placed upon the judgment in The State of U.P. Versus Hari Prasad & Ors. (1974) 3.S.C.C. 673. It was held on the facts of that case that failure of prosecution to examine persons mentioned in the FIR was detrimental to the prosecution. The question before us in the present case is only whether evidence of the eye witness has to be accepted or not. Once it is found by the High Court that the evidence of PW3 is acceptable, there is no merit in the contention that other persons have not been examined.

15. It is next argued that there is a considerable delay in forwarding the report to the Magistrate from the Police Station. We find that the report was forwarded on the next day i.e. 4.6.87. In the facts and circumstances of the case we do not find that there is any delay which could create a doubt in the case of the prosecution. Reliance is placed by the learned counsel for the appellant in Arjun Marik & Ors. Versus State of Bihar, 1994 Supp. (2) S.C.C. 372 while taking into account several circumstances which vitiated the prosecution case the Court referred also to the delay of 3 days in forwarding the report to the Magistrate. Even in the said case it is pointed out that quite often there are valid reasons for the delay in the despatch of the FIR and it is not always a circumstance on the basis of which the entire prosecution case may be said to be fabricatred but it all depends upon the facts and circumstances of each case where the circumstance of delay may read to serious conclusions. In the present case we find that the delay of one day in forwarding the report does not vitiate the prosecution case.

16. We have gone through the entire record and satisfied ourselves that the reversal of the order of acquittal by the High Court is justified. The conclusion of the trial court has been rightly found to be unreasonable. In the result the appeal fails and is hereby dismissed.