2012 SCMR 1768

[Supreme Court of India]

Present: Swatanter Kumar and Ranjana Prakash Desai, JJ

STATE OF RAJASTHAN---Appellant

Versus

SHERA RAM alias VISHNU DUTTA---Respondent

Criminal Appeal No.1502 of 2005, decided on 1st December, 2011.

(a) Appeal against acquittal---

----Interference in judgment of acquittal by appellate court---Scope---Unless the judgment of acquittal was contrary to evidence, palpably erroneous or contained a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, the court should be reluctant to interfere with such judgment of acquittal---Presumption of innocence of the accused was further strengthened by the fact of acquittal of the accused, however the court would not abjure its duty to prevent miscarriage of justice, where interference was imperative and the ends of justice so required and it was essential to appease the judicial conscience.

(b) Penal Code (XLV of 1860)---

----S. 84---Act/crime by a person of unsound mind---Defence of insanity---Maxim: actus non facit reum, nisi mens sit rea---Applicability---Person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing---For committing a crime, the intention and act both are taken to be the constituents of the crime: actus non facit reum, nisi mens sit rea---Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved but a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behaviour.

(c) Penal Code (XLV of 1860)---

----S. 84---Act of a person of unsound mind---Exemption from criminal liability---Scope---Insanity, proof of---Person alleged to be suffering from any mental disorder cannot be exempted from criminal liability ipso facto---Onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act---Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

(d) Penal Code (XLV of 1860)---

----Ss. 84/302/449/295---Act of a person of unsound mind, murder, house-trespass in order to commit offence punishable with death, injuring or defiling place of worship with intent to insult the religion of any class---Appeal against acquittal---Reappraisal of evidence---Murder--- Defence of insanity--"Epileptic insanity"---Proof and scope---Accused suffering from continuous mental sickness---Injury inflicted by accused insufficient to cause death---Effect---Accused was alleged to have hurled a stone on the head of the deceased which resulted in instantaneous death---Trial Court rejected plea of insanity raised by the accused and convicted him---High Court acquitted the accused on the ground that he was a person of unsound mind within the meaning of S.84 of the Penal Code, 1860 and gave directions to detain him in safe custody in a hospital or place of custody for non-criminal lunatics---Validity--Accused led oral and documentary evidence in support of his plea of insanity---Doctor who was treating the accused had stated that the accused was suffering from "Epilepsy" which caused fits and behavioral abnormality---Brother of the accused had stated that the accused was suffering from mental disorder since the year 1993 and just prior to the incident, accused suffered from epileptic attack and behaved violently and caused injuries to his own family members---Prosecution had failed to prove beyond reasonable doubt that the injury inflicted by the accused

was sufficient in the ordinary course of nature to cause death---Appeal against acquittal was dismissed, in circumstances.

Medical Jurisprudence and Toxicology by Modi, 24th Ed. 2011 **ref.**

Date of hearing: 1st December, 2011.

JUDGMENT

SWATANTER KUMAR, J.---Respondent Shera Ram alias Vishnu Dutta was charged for committing an offence under sections 302, 295 and 449 of the Indian Penal Code, 1860 (for short 'IPC') and was sentenced to undergo imprison ment for life by the Additional Sessions Judge-1, Jodhpur vide judgment dated 7th June, 2000. However, upon appeal, he came to be acquitted of all the offences by a Division Bench of the High Court of Rajasthan vide order dated 21st February, 2004 primarily on the ground that at the time of incident, he was a person of un sound mind within the meaning of section 84, I.P.C. and was directed to be detained in safe custody in an appropriate hospital or a place of custody of non-criminal lunatics as would be provided to him by the State Government under the direct supervision of the Jail Authorities till the time he was cured of his mental illness and infirmity.

2. Aggrieved from the said judgment, the State of Rajasthan has presented this ap peal by way of a special leave petition.

3. Before we proceed to dwell upon the merits of the case and the legal issues in volved in the present appeal, a reference to the case of the prosecution would be nec essary. According to the prosecution, on 10th March, 1999 at about 7-15 a.m., while Pujari Tulsi Das (now deceased) was in the Raghunathji's temple, the respondent abruptly hurled a stone on his head result ing into his instantaneous death. The re spondent also damaged the idol and other properties of the temple. This all was un provoked. The incident was witnessed by the villagers including P.W.6 Santosh, P.W. 11 Narsingh Ram and P.W.16, Smt. Tiku Devi.

4. P.W.2, Ghan Shyam Das Daga re ported the matter to the police immediately. Upon receipt of the information, the po lice registered a case under section 302, I.P.C. and proceeded with the investigation. Besides recording statements of number of witnesses, the Investigating Officer also prepared the site plan and the inquest memo. The body of the deceased was sent for post-mortem which was performed by P.W.20, Dr. C.P. Bhati, who prepared the post-mortem report Ext.P-37.

5. After investigation, the police filed the challan upon which, the respondent was committed to the appropriate Court of Ses sion for trial. The charge-sheet was filed under sections 302, 295 and 449, I.P.C., as already noticed. The respondent denied the charges levelled against him and claimed trial.

6. The prosecution examined as many as 23 witnesses to prove its case. The ma terial piece of evidence appearing in the case of the prosecution against the respon dent were put to him and his statement was recorded by the learned trial Court under section 313 of the Code of Criminal Pro cedure, 1973 (for short 'Cr.P.C.'). Accord ing to the respondent, his mental condition right from the year 1992-1993 was not good and occasionally he suffered from fits of insanity. He had undergone treatment for the same. He has stated that in the jail also, he was receiving the treatment. To put it simply, he claimed the defence of insanity under section 84, I.P.C. The defence also examined D.W.2, Dr. Vimal Kumar Razdan and D.W.1, Bhanwar Lal, brother of the respondent who had produced records to show that the respondent was a person suf fering from insanity of mind. The learned trial Court rejected the plea of defence of insanity and convicted the respondent.

7. The respondent preferred an appeal against the judgment and order of convic tion by the Trial Court which resulted in his acquittal vide order dated 21st Febru ary, 2004 with the afore-noticed directions to the State Government. Dissatisfied from the said judgment, the State has preferred the present appeal.

8. As is evident from the above-noted facts, it is an appeal against the judgment of acquittal. The plea of insanity raised by the respondent has been accepted by the High Court resulting in his acquittal.

9. A judgment of acquittal has the obvi ous consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keep ing in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquit tal.

10. The penal laws in India are prima rily based upon certain fundamental pro cedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to

be not guilty of a criminal charge, he enjoys the benefit of such pre sumption which could be interfered with only for valid and proper reasons. An ap peal against acquittal has always been dif ferentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its ju risdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for. We may refer to a recent judgment of this Court in the case of State of Rajasthan, Through Secretary, Home Department v. Abdul Mannan [(2011) 8 SCC 65 : (AIR 2011 SC 3013)], wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same.

11. This Court referred to its various judgments and held as under:--

"(12) As is evident from the above re corded findings, the judgment of convic tion was converted to a judgment of ac quittal by the High Court. Thus, the first and foremost question that we need to con sider is, in what circumstances this Court should interfere with the judgment of ac quittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordi nary appeal preferred to this Court.

(13) When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquit tal of the accused under our criminal juris prudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is appar ent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the ad ministration of criminal justice revolves.

(14) It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The pre sumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresist ibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal ju risprudence.

(15) We may now refer to some judg ments of this Court on this issue. In State of M.P. v. Bacchudas (AIR 2007 SC 1236), the Court was concerned with a case where the accused had been found guilty of an offence punishable under section 304, Part II read with section 34, I.P.C. by the trial Court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Su preme Court's interference was called for only when there were substantial and com pelling reasons for doing so. After refer ring to earlier judgments, this Court held as under (SCC pp. 138-39, paras 9-10) : (Page 1239, Para 9 of AIR).

"(9) There is no embargo on the appel late court reviewing the evidence upon which an order of acquittal is based. Gen erally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of ad ministration of justice in criminal cases is that if two views are possible on the evi dence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to en sure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the ac cused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P. (AIR 2003 SC 1088)). The principle to be followed by the appellate court consider ing the appeal against the judgment of ac quittal is to interfere only when there are compelling and substantial reasons for do ing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been

unjustifiably elimi nated in the process, it is a compelling rea son for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, Ramesh Babulal Doshi v. State of Gujarat (AIR 1996 SC 2035), Jaswant Singh v. State of Haryana (AIR 2000 SC 1833), Raj Kishore Jha v. State of Bihar (AIR 2003 SC 4664), State of Punjab v. Karnail Singh (AIR 2003 SC 3609), State of Punjab v. Phola Singh (AIR 2003 SC 4407), Suchand Pal v. Phani Pal (AIR 2004 SC 973) and Sachchey Lal Tiwari v. State of U.P. (AIR 2004 SC 5039).

(10) When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judg ment does not suffer from any infirmity to warrant interference."

(16) In a very recent judgment, a Bench of this Court in State of Kerala v. C.P. Rao decided on 16-5-2011 (reported in 2011 (6) SCC 450), discussed the scope of interfer ence by this Court in an order of acquittal and while reiterating the view of a three Judge Bench of this Court in Sanwat Singh v.
State of Rajasthan, the Court held as under:--

"(13) In coming to this conclusion, we are reminded of the well-settled principle that when the court has to exercise its dis cretion in an appeal arising against an or der of acquittal, the court must remember that the innocence of the accused is further re-established by the judgment of acquit tal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan At SCR p. 129, Subba Rao, J. (as His Lord ship then was) culled out the principles as follows:

'(9) 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 case afford a correct guide for the appel late 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 (i) "substantial and compel ling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evi dence and to come to its own conclusion; but in doing so it should not only consider every matter 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 at a con clusion on those facts, but should also ex press those reasons in its judgment, which lead it to hold that the acquittal was not justified'."

(17) Reference can also be usefully made to the judgment of this Court in Suman Sood v. State of Rajasthan (AIR 2007 SC 2774), where this Court reiterated with ap proval the principles stated by the Court in earlier cases, particularly, Chandrappa v. State of Karnataka (AIR 2008 SC 2323). Emphasising that expressions like "sub stantial and compelling reasons", "good and sufficient grounds", "very strong cir cumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail the extensive powers of an appel late court in an appeal against acquittal, the Court stated that such phraseologies are more in the nature of "flourishes of lan guage" to emphasise the reluctance of an appellate court to interfere with the acquit tal. Thus, where it is possible to take only one view i.e. the prosecution evidence points to the guilt of the accused and the judgment is on the face of it perverse, then the Court may interfere with an order of acquittal."

12. There is a very thin but a fine dis tinction between an appeal against convic tion on the one hand and acquittal on the other. The preponderance of judicial opin ion of this Court is that there is no substan tial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of inno cence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

13. Also, this Court had the occasion to state the principles which may be taken into consideration by the appellate court while dealing with an appeal against acquittal. There is no absolute restriction in law to review and re-look the entire evidence on which the order of acquittal is founded. If, upon scrutiny, the appellate court finds that the lower court's decision is based on er roneous views and against the settled position of law then the said order of acquittal should be set aside. (See State (Delhi Ad ministration) v. Laxman Kumar and others [(1985) 4 SCC

476 : (AIR 1986 SC 250)], Raj Kishore Jha v. State of Bihar and others [AIR 2003 SC 4664], Inspector of Police, Tamil Nadu v. John David [JT 2011 (5) SC : (AIR 2011 SC (Criminal) 1135).

14. To put it appropriately, we have to examine, with reference to the present case whether the impugned judgment of acquit tal recorded by the High Court suffers from any legal infirmity or is based upon erroneous appreciation of evidence.

15. In our considered view, the im pugned judgment does not suffer from any legal infirmity and, therefore, does not call for any interference. In the normal course of events, we are required not to interfere with a judgment of acquittal.

16. Having deliberated upon the above question of law, we may now proceed to discuss the merits of the case in hand. The High Court after consideration of the en tire evidence produced by the prosecution, affirmed the finding that the incident as alleged by the prosecution had occurred and the respondent had hurled a stone on the head of Pujari Tulsi Das which resulted in his death. This being a finding of fact based upon proper appreciation of evidence, does not call for any interference by us.

17. The corollary that follows from the above is whether having committed the charged offence, the respondent is entitled to the benefit of the general exception con tained in section 84, Chapter IV of the I.P.C.? Section 84 states that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law.

18. It is obvious from a bare reading of this provision that what may be generally an offence would not be so if the ingredi ents of section 84, I.P.C. are satisfied. It is an exception to the general rule. Thus, a person who is proved to have committed an offence, would not be deemed guilty, if he falls in any of the general exceptions stated under this Chapter.

19. To commit a criminal offence, mens rea is generally taken to be an essential el ement of crime. It is said furiosi nulla voluntaus est. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For com mitting a crime, the intention and act both are taken to be the constituents of the crime, actus non facit ream nisi mens sit rea. Ev ery normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a

person suffering from mental disorder cannot be said to possess this basic norm of human behaviour. In the case of Surendra Mishra v. State of Jharkhand (2011) 3 SCC (Cri) 232 : (AIR 2011 SC 627)], the Court was dealing with a case where the accused was charged for an offence under section 302, I.P.C. and section 27 of the Arms Act. While denying the protection of section 84 of the I.P.C. to the accused, the Court held as under:--

> "9. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insan ity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equiva lent to insanity. But the term insanity car ries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto ex empted from criminal liability. The mere fact that the accused is conceited, odd, iras cible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intel lect weak and affected his emotions or in dulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was ab normal behaviour or the behaviour is queer are not sufficient to attract the application of section 84 of the Indian Penal Code."

20. From the above-stated principles, it is clear that a person alleged to be suffer ing from any mental disorder cannot be exempted from criminal liability ipso facto. The onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act.

21. Once, a person is found to be suffer ing from mental disorder or mental defi ciency, which takes within its ambit hallu cinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evi dence, the person concerned would be en titled to seek resort to the general excep tions from criminal liability.

22. Epileptic Psychosis is a progressing disease and its effects have appropriately been described in the text book of Medical Jurisprudence and Toxicology by Modi, 24th Ed. 2011 where it states as follows:--

"Epileptic Psychosis. - Epilepsy usually occurs from early infancy, though it may occur at any period of life. Individuals, who have had epileptic fits for years, do not necessarily show any mental aberration, but quite a few of them suffer from mental de terioration. Religiousity is a marked fea ture in the commencement, but the feeling is only superficial. Such patients are pee vish, impulsive and suspicious, and are easily provoked to anger on the slightest cause.

The disease is generally characterized by short transitory fits of uncontrollable ma nia followed by complete recovery. The attacks, however, become more frequent. There is a general impairment of the men tal faculties, with loss of memory and self- control. At the same time, hallucinations of sight and hearing occur and are followed by delusions of a persecuting nature. They are deprived of all moral sensibility, are given to the lowest forms of vice and sexual excesses, and are sometimes dangerous to themselves as well as to others. In many long-standing cases, there is a progressive dementia or mental deficiency.

True epileptic psychosis is that which is associated with epileptic fits. This may occur before or after the fits, or may re place them, and is known as pre-epileptic, post-epileptic and masked or psychic phases (psychomotor epilepsy).

Post-Epileptic Mental III-health - In this condition, stupor following the epileptic fits is replaced by automatic acts of which the patient has no recollections. The pa tient is confused, fails to recognize his own relatives, and wanders aimlessly. He is ter rified by visual and auditory hallucinations of a religious character and delusions of persecution, and consequently, may com mit crimes of a horrible nature, such as thefts, incendiarism, sexual assaults and brutal murders. The patient never attempts to conceal them at the time of perpetration but on regaining consciousness may try to conceal them out of fear."

23. Similar features of Epilepsy have been recorded in the HWV COX Medical Jurisprudence and Toxicology (7th Edn) by PC Dikshit.

24. Reverting to the facts of the present case, it may be noted that no witness of the prosecution including the Investigating Officer stated anything with regard to the mental condition of the respondent. However, the respondent not only in his state ment under section 313, Cr.P.C. took up the defence of mental disorder seeking ben efit of section 84, I.P.C. but even led evidence, both documentary as well as oral, in support of his claim. He examined Dr. Vimal Kumar Razdan, D.W.2, who deposed that he had examined the respondent and had given him treatment. He, also, pro duced the examination report in regard to the treatment of the respondent, Ext.D-5, which was prepared in his clinic.

25. According to the statement of this doctor and the prescription, the respondent was suffering from Epilepsy and while de scribing post epileptic insanity, this witness stated that after the epileptic attack, a patient behaves like an insane person and he is unable to recognise even the known per sons and relatives. During this time, there is a memory loss and the patient can com mit any offence. In the prescription, Ext.D-3, issued by Dr. Ashok Pangadiya, it was stated that the patient was suffering from the fits disease and symptoms of behavi oural abnormality. Two types of medica tion on the basis of diagnosis of epileptic disease and other one for insanity were prescribed to the respondent who continued to take these medicines, post epileptic insanity.

26. Another witness who was produced by the defence was D.W.1, Bhanwar Lal, the brother of the respondent. According to this witness, the respondent was suffer ing from mental disorder since 1993. He stated that when he gets the fits of insan ity, he can fight with anybody, hit anybody and even throw articles lying around him. At the initial stage, Dr. Devraj Purohit had treated him. Then Dr. V.K. Razdan treated him and thereafter, in Jaipur, Dr. Ashok Pagadiya/Pandharia also treated him. Even when he was in jail, he was under treat ment. He produced the prescription slips i.e. Exts. D3 and D4. This witness has also stated that on the date of occurrence at about 6-00 - 6-30 a.m., Shera Ram/respondent was not feeling well and, in fact his condition was not good. Even at home he had broken the electricity meter and the bulbs. When the people at home including the witness tried to stop him, he had bitten D.W.1 on his arm and after hitting him on the face he had run away.

27. This oral and documentary evidence clearly shows that the respondent was suf fering from epileptic attacks just prior to the incident. Immediately prior to the oc currence, he had behaved violently and had caused injuries to his own family members. After committing the crime, he was arrested by the Police and even thereafter, he was treated for insanity; while in jail.

28. Thus, there is evidence to show con tinuous mental sickness of the respondent. He not only caused death of the deceased but also on the very same day injured and caused hurt to his family members includ ing D.W.1. His statement made under sec tion 313, Cr.P.C. is fully corroborated by oral and documentary evidence of D.W.2 and Exts.D-3 and D-4. Though, the High Court has not discussed this evidence in great detail, but this being an

admissible piece of evidence can always be relied upon to substantiate the conclusion and findings recorded by the High Court.

29. In other words, the High Court on the basis of the documentary and oral evi dence has taken a view which was a pos sible and cannot be termed as perverse or being supported by no evidence. The find ing of the High Court, being in consonance with the well-settled principles of criminal jurisprudence, does not call for any inter ference. More so, the learned counsel ap pearing for the State has not brought to our notice any evidence, documentary or oth erwise, which could persuade us to take a contrary view i.e. other than the view taken by the High Court.

30. Another aspect of this case which requires consideration by this Court is that the case of the prosecution suffers from legal infirmity. In fact, the prosecution has failed to prove beyond reasonable doubt that the injury inflicted by the respondent upon the deceased was sufficient in the ordinary course of nature to cause death. It is the case of the prosecution that the re spondent had hurled a stone which had caused injury (lacerated wound on the left side of the forehead) whereupon the de ceased fell on the ground and subsequently collapsed. The injury is said to be 2" x 1/2" x upto bone, transversely Lt. side of fore head and another lacerated wound 2" x 1/2" x 1/4" near injury No.1 towards the forehead. These are the injuries which the deceased is stated to have suffered. In addition, abra sion of 1 cm x 1 cm on the left eye-brow was also present. According to the doctor, all these injuries were ante mortem in na ture and the cause of death was shock and haemorrhage due to head injury.

31. In the statement of P.W.20, Dr. C.P. Bhati, it is nowhere stated that the injuries caused by the respondent were sufficient in the ordinary course of nature to cause death. It is also not recorded in the post mortem report, Ext.37. This was a mate rial piece of evidence which the prosecution was expected to prove in order to bring home the guilt of the respondent. This is a serious deficiency in the case of the pros ecution. Absence of this material piece of evidence caused a dent in the case of the prosecution. The High Court has not taken note of this important aspect of the case.

32. The learned counsel appearing for the respondent placed reliance upon this evidence and strenuously contended that the respondent was entitled to acquittal on this basis alone. We should not be under stood to have stated any absolute proposi tion of law, but in the facts and circumstances of the present case, it was expected of P.W.20 to state before the Court as well as record the same in the post-mortem re port prepared by him i.e. Ext. 37, that the injuries were sufficient in the ordinary course of nature to cause death of the de ceased.

33. Ex-facie, injuries do not appear to be so vital that they could have resulted in the death of the deceased, but this fact was required to be proved by expert evidence. The counsel for the respondent relied upon a judgment of this Court in the case of Ram Jattan and others v. State of U.P. [(1995) SCC (Cri) 169 : (AIR 1994 SC 1130)] where this Court held that it is not appropriate to interfere with the conclusion that the inju ries are not sufficient to cause death unless they are so patent. The Court held as un der:--

> "4. The learned counsel, however, fur ther submitted that in any event the offence committed by the members of unlawful assembly cannot be held to be one of mur der and therefore the common object of unlawful assembly was not one which at tracts the provision of section 302 read with section 149, I.P.C. We find consider able force in this submission. Though, in general, right from the first report onwards the prosecution case is that all the 12 ac cused armed with sharp-edged weapons and lathis surrounded the three persons and inflicted the injuries but from the doctor's report we find that no injury was caused on the vital organs. So far as Patroo is con cerned, who got the report written by P.W.7 and gave it in the police station, we find 13 injuries but all of them were abrasions and lacerated injuries on the legs and hands. The doctor opined that all the injuries were simple. On Balli, P.W.8, the doctor found 12 injuries and they were also on arms and legs. There was only one punctured wound, injury No. 8 and it was not a serious injury and it was also a simple injury. Now, com ing to the injuries on the deceased, the doc tor who first examined him, when he was alive, found 11 injuries. Out of them, inju ries Nos. 1 and 2 were punctured wounds. Injury No. 5 was an incised wound and injury No. 6 was a penetrating wound. All these injuries were on the upper part of the right forearm and outer and lower part of right upper arm. The remaining injuries were abrasions and contusions. The doctor opined that except injuries Nos.7 and 9 all other injuries were simple. He did not say whether injuries Nos.7 and 9 were griev ous but simply stated that they were to be kept under observation. The deceased, however, died the next day i.e. 9-4-1974 and the post-mortem was conducted on the same day. In the post-mortem examination 11 external injuries were noted but on the internal examination the doctor did not find any injury to the vital organs. He, however, noted that 8th and 9th ribs were fractured. Now, coming to the cause of death, he opined that death was due to shock and haemorrhage. It is not noted that any of the injuries was sufficient to cause death in the ordinary course of nature. It could thus be seen that neither clause Istly nor clause 3rdly of section 300 are attracted to the facts of this case. This contention was also put forward before the High Court but the learned Judges rejected this contention observing that the fracture of 8th and 9th ribs must have resulted in causing death and therefore these injuries must be held to

be sufficient in the ordinary course of nature to cause death. We are unable to agree with this reasoning. In the absence of proof by the prosecution in an objective manner that the injuries caused were suffi cient in the ordinary course of nature to cause death, the same cannot be interfered with unless the injuries are so patent. As we have noted above except fracture of ribs there was no other injury to any of the vi tal organs. As a matter of fact internally the doctor did not notice any damage ei ther to the heart or lungs. Even in respect of these two injuries resulting in fracture of the ribs, there were no corresponding external injuries. Again as already noted all the injuries were on the non-vital parts of the body. The learned counsel for the State, however, submitted that a forceful blow dealt on the arm might have in turn caused the fracture of the two ribs. Even assuming for a moment it to be so, it is dif ficult to hold that from that circumstance alone the common object of the unlawful assembly of 12 persons to cause the death of the deceased is established.

5.The common object has to be gath ered or inferred from the various circum stances like nature of the weapons, the force used and the injuries thatare caused. After carefully going through the medical evi dence we find that it is difficult to conclude that the common object was to cause the death. The injuries on Patroo, P.W.8 as well as on the deceased were more or less of the same nature except that in the case of de ceased, there were few punctured wounds which were not serious but only simple. He died due to shock and haemorrhage the next day. In any event there is no indica tion anywhere in the evidence of the doctor or in the post-mortem certificate that any of the injuries was sufficient in the or dinary course of nature to cause death. No doubt in his deposition the doctor, P.W.4 has stated in the general way that these in juries were sufficient to cause death in the ordinary course of nature. We have already held that there was no external injury which resulted in the fracture of the ribs. In such an event clause 3rdly of section 300, I.P.C. is not attracted. Likewise clause Istly of section 300, I.P.C. is also not attracted i.e. intentionally causing death. If their inten tion was to cause death, they would have used the lethal weapons in a different way and would not have merely inflicted simple injuries on the non-vital parts like legs and hands.

6.In the result we set aside the convic tions of these eight appellants under sec tion 302 read with section 149, I.P.C. and the sentence for imprisonment for life. In stead we convict them under section 304, Part II read with section 149, I.P.C. and sentence each of them to undergo rigorous im prisonment for five years. The sentences and convictions imposed on other counts are confirmed. The four other accused who were convicted by the trial Court as well as by the High Court are not before us. How ever, we are of the view that they must also get the same benefit. They are Ram Chander (A-2), Dal Singhar (A-7), Barai (A-8) and Birju (A-11). Accordingly their convictions under section 302 read with section 149, I.P.C. for imprisonment for life are set aside and instead they are also con victed under section 304, Part II read with section 149, I.P.C. and are sentenced to un dergo rigorous imprisonment for five years. The other convictions and sentences im posed on other counts are, however, con firmed.

34. Reliance was also placed upon the judgment of this Court in the case of State of Rajasthan v. Kalu [(1998) SCC (Cri) 898], where in the post-mortem examina tion of the deceased, the cause of death was noticed as "acute peritonitis" as a result of abdominal injuries. However, during the cross-examination, Dr. Prem Narayna ad mitted that "peritonitis" could have set in due to surgical complications also. The Court took the view that the medical evi dence, therefore, when analysed in its cor rect perspective shows that the evidence recorded by the High Court is correct to the effect that prosecution had not proved that the injuries were sufficient in the ordi nary course of nature to cause death of the lady and had acquitted the-respondent. The Supreme Court declined to interfere with the finding recorded by the High Court.

35. In the present case also, there is no documentary or oral evidence to prove the fact that the injuries caused by the respondent to the deceased were sufficient in the ordinary course of nature to cause death. This, however, cannot be stated as an ab solute proposition of law and the question whether the particular injury was sufficient in the ordinary course of nature to cause death or not is a question of fact which will have to be determined in light of the facts, circumstances and evidence produced in a given case. (Ref. Halsbury's Laws of England 5(2) Criminal Law-II).

There could be cases where injuries caused upon the body of the deceased per se can irresistibly lead to the conclusion that the injuries were sufficient to cause death in the ordinary course of nature, while there may be other cases where it is re quired to be proved by documentary and oral evidence. Resultantly, it will always depend on the facts of each case. Thus, in such cases, it may neither be permissible nor possible to state any absolute principle of law universally applicable to all such cases.

36. In view of our discussion above, we find no error in the judgment under appeal. Thus, we have no hesitation in dismissing the appeal and the same is hereby dis missed.

Appeal dismissed.


PAK LEGAL DATABASE