2024 INSC 633

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1151 OF 2010

Raju and Another ....Appellant(s)

versus

State of Uttarakhand ....Respondent(s)

JUDGEMENT

SURYA KANT, J.

1. This appeal is directed against the judgment dated 10.12.2009 passed by the High Court of Uttarakhand at Nainital (**hereinafter, 'High Court'**) in Appeal No. 1458/2001, whereby the judgment and order dated 13.10.1995 of the Additional Sessions Judge-cum-Special Judge, Dehradun (**hereinafter, 'Trial Court'**) in S.T. No. 116/1994 was substantially set aside and the Appellant was convicted under Section 307 of the Indian Penal Code, 1860 (**hereinafter, 'IPC'**) and sentenced to undergo seven years of rigorous imprisonment, along with a fine of Rs. 1000/-.

FACTS:

2. At this juncture, it is essential to outline the factual matrix as described in the FIR to clearly understand the context of the instant appeal.

2.1. On 08.05.1994, Farzan Ali, the Complainant, filed an FIR being Case Crime No. 84/1994 at the Vikasnagar Police Station, Dehradun, recounting the events of the previous night. He reported that his son Imran, along with his friends Mathu,

Irfan, and Jakir, had gone for a late-night cinema show in Vikasnagar. On their return around 12:30 a.m., they saw the Appellant and the other accused—Raju, Bhola Ram, Manoj, and Suresh — standing near Gopal's house. The Appellant and Bhola Ram were armed with knives, while Manoj and Suresh were carrying dandas/lathis. The accused were seen in the light of a singular bulb lit in front of Devdutt's house.

2.2. The FIR states that Mathu and Imran inquired from the accused persons as to why they had assembled there, which allegedly infuriated them and they (accused) started hurling abuses at them and assaulted Imran, Mathu, Irfan and Jakir. Imran and Mathu were attacked with knives and lathis, whereas Irfan and Jakir suffered injuries as they tried to save them. Thereafter, presuming Imran and Mathu to be dead, the accused fled from the place of incidence. The Complainant further detailed that Jakir and Irfan came to his house and narrated the entire incident to him. This formed the basis for the Complaint at Vikasnagar Police Station and the said FIR was registered.

2.3. The investigating officer commenced the investigation, followed by a chargesheet. The Trial Court thereafter framed charges for offences punishable under Section 307 read with Section 34 of the IPC, against the Appellant and the other accused. The Trial Court, evaluated the statements of the prosecution witnesses, sought the medical opinion to be brought on record, analysed the statement of the investigating officer, recorded the statements of the accused under Section 313 of the CrPC, and decided to acquit the Appellant and his co-accused *vide* judgment dated 13.10.1995.

2.4. The State felt aggrieved and challenged the acquittal of the Appellant and other accused before the High Court. The High Court, as already mentioned in the

opening paragraph, partially allowed the appeal, sentenced the Appellant and one of his co-accused to rigorous imprisonment for seven years and confirmed the acquittal of the other two accused.

2.5. We have heard Learned Counsel(s) for the parties at a considerable length and perused the trial record with their able assistance.

CONTENTIONS OF PARTIES

3. Mr. Anuvrat Sharma, learned counsel representing the Appellant, while assailing the reversal of acquittal, contended that the High Court has failed to appreciate the evidence on record due to which it arrived at an erroneous finding. Mr. Sharma impressed that the Complainant, Farzan, was not an eye-witness to the alleged incident. He admittedly arrived at the scene only after being told about it. Learned counsel highlighted the glaring contradictions between the account provided in the FIR and the testimonies of the witnesses, as recorded by the Trial Court.

4. Mr. Sharma argued that the Trial Court, on the other hand, had considered the absence of discernible evidence to prove that the Appellant and another accused were holding knives and had caused stab injuries. In the same vein, he contended that the testimonies of the injured witnesses and medical experts, combined with the inconsistencies in the Complainant's account, have unfolded significant gaps in the investigation conducted.

5. *Per contra*, Mr. Advitiya Awasthi, learned State Counsel urged that the Appellant, along with the other accused, Bhola, voluntarily inflicted injuries upon Mathu and Imran with a knife, with the intention to cause death. He asserted that the injured witness Mathu, in his testimony, stated that at the time of the incident, both, the Appellant and Bhola were armed with knives. This testimony,

he argued, aligned with the opinion of the medical expert, who had opined that Mathu's injuries had been caused by some sharp object.

6. The singular question that requires our deliberation is whether the material on record unmistakably justifies the conviction of the Appellant under Section 307 of the IPC?

ANALYSIS

7. To begin with, it would be apposite to recount the settled proposition of law that a conviction under Section 307 of the IPC may be justified only if the accused in question possessed intent coupled with some overt act in aid of its execution.[1] Ascertaining the intention to kill or having the knowledge that death may be caused as a result of the overt act, is a question of fact and hinges on the unique circumstances that each case may present. Though these fundamentals have been established in a plethora of decisions across several decades, we have briefly mentioned the same to ensure a lucid understanding of the rationale behind the instant decision.

8. Keeping these principles in mind, the intention of the Appellant in this context may perhaps be ascertained through the material on record, consisting the testimonies of the witnesses; medical opinion and the very first version of events contained in the FIR itself.

9. Having analysed the evidence on record, we find that there are several gaps in the prosecution story. We say so for the reasons that, *firstly*, the testimonies of PW2 and PW3, Mathu and Imran, are inherently contradictory to the narrative of the prosecution, insofar as the sequence of events and the roles attributed to the accused persons are concerned. Mathu for instance, admitted during his cross

1 State of Maharashtra v. Balram Bama Patil, 1983 (2) SCC 28; Vasant Vithu Jadhav v. State of Maharashtra, AIR 2004 SC 2678.

examination that he could not identify as to who among the accused persons inflicted stab wounds and who used lathis.

10. *Secondly*, the other injured witness, namely Imran, had initially testified that all the four accused persons were found standing near Gopal's house, with the Appellant and Bhola carrying knives and Manoj and Suresh holding lathis. However, upon being cross-examined, he changed his position, claiming that Bhola and the Appellant lashed them with lathis while the other two accused arrived at the place of incidence from the direction of their house. Given the incertitude in regards to the roles attributed to the accused persons, the conviction of the Appellant or his co-accused by the High Court becomes all the more questionable.

11. *Thirdly*, there seems to be consequential disparity in the oral evidence adduced by witnesses; the medical reports and the opinions, in terms of the nature of injuries suffered by Mathu and Imran. Specifically, it is undisputed that the injuries suffered by the victims were not caused by lathis or a blunt weapon. Similarly, the evidence regarding the placement and extent of knife injuries sustained by Mathu and Imran does not inspire confidence. Hence, the questions surrounding the use of lathis or knives have undermined the prosecution case, just as they have cast doubt on the extent and nature of injuries sustained by the injured witnesses.

12. *Fourthly*, and most importantly, what makes the circumstances entirely murky is the fact that the FIR itself was lodged by a hearsay witness, namely, PWI Farzan, who is Imran's father. Notably, Farzan was not present at the scene and only learned about the incident through alleged eye-witnesses Jakir and Irfan, both of whom had accompanied Imran and Mathu when the latter were allegedly

attacked by the Appellant and other accused persons. Ironically, there is not even a whisper about the alleged eye-witnesses, Jakir and Irfan joining the investigation. These persons were apparently ghost witnesses who neither had their statements recorded by the Investigating Officer under Section 161 of the CrPC nor were they produced by the prosecution before the Trial Court. Similarly, no attempt was made to record their version under Section 164, CrPC. The discrepancies elucidated above could have been clarified with ease had these eye-witnesses been produced or their statements recorded, shedding light on the sequence of events as they unfolded. The deafening absence of these two alleged eye-witnesses, in our considered opinion, has considerably weakened the prosecution case.

13. Usually in matters involving criminality, discrepancies are bound to be there in the account given by a witness, especially when there is conspicuous disparity between the date of the incident and the time of deposition. However, if the discrepancies are such that they create serious doubt on the veracity of a witness, then the Court may deduce and decline to rely on such evidence. This is especially true when there are variations in the evidence tendered by prosecution witnesses regarding the sequence of events as they have occurred. Courts must exercise all the more care and conscientiousness when such oral evidence may lean towards falsely implicating innocent persons.[2]

14. Undoubtedly, there are glaring interludes which severely enfeeble the case that the prosecution sought to present. The prosecution story has been demolished by the oral testimonies of the witnesses, including the medical experts, coupled with the contents of the FIR registered by a hearsay witness. It

2 Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy, (2018) 7 SCC 623.

goes without saying that the chain of evidence proffered by the prosecution has to be as complete as is humanly possible and it does not leave any reasonable ground for a conclusion consistent with the innocence of the accused and must instead, indicate that the act had indeed been singularly committed by the accused only.[3]

15. To further fan the flames, there is no motive attributed to the Appellant or his co-accused Bhola, in order to justify their conviction under Section 307 of the IPC. Both the injured witnesses, Imran and Mathu, during their cross-examination, clearly explicated that there was no enmity or ill will between them and the accused persons. It is not even the prosecution's case that this was a chance occurrence. It seems that the accused and the alleged victims were familiar with each other and had some kind of association. There is thus more to this than meets the eye, and we are not entirely convinced of the narrative presented and perceived by the prosecution.

16. In our considered view, the High Court ought to have given due weightage to the glaring inconsistencies, before reversing a well-reasoned order of acquittal. It is a well-established canon of law that when the Trial Court has acquitted the accused based on a plausible understanding of the evidence, and such finding is not marred by perversity or due to overlooking or misreading of the evidence presented by the prosecution, the High Court ought not to overturn such an order of acquittal[4]. We are inclined to hold that the Trial Court, after reviewing the entire evidence on record, was correct in concluding that the totality of circumstances casts doubt on the alleged incident and suggests that the prosecution witnesses

3 Hanumant v. State of Madhya Pradesh, (1952) SCR 1091; Ram Gopal v. State of Maharashtra, AIR 1972 SC 656; Sharad Birdhi Chand Sarda v. State of Maharashtra, 1984 AIR 1622.

4Darshan Singh v. State of Punjab, (2010) 2 SCC 333; Ballu@Balram v. State of Madhya Pradesh, Crl. Appeal No. 1167.2018.

may have concealed the actual story.

CONCLUSION AND DIRECTIONS

17. We, thus, find it quite unsafe to convict the Appellant on the basis of such laconic evidence. Rather, we deem it appropriate to allow this appeal and acquit the Appellant in FIR Case Crime No. 84/1994. Accordingly, the order of conviction by the High Court dated 10.12.2009 is set aside, and that of the Trial Court dated 13.10.1995 is restored in so far as the Appellant is concerned. The bail bonds, if any, furnished by the Appellant are hereby cancelled.

18. The present appeal is allowed in the above terms.

..... J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

.....J.
(UJJAL BHUYAN)

NEW DELHI
DATED : 31.07.2024