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State of Madhya Pradesh Vs. Ballu Alias Vinod Kumar

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Court : Madhya Pradesh

Decided On : May-16-2008

Reported in : 2008(3)MPHT479

Judge : A.K. Gohil and ;Abhay M. Naik, JJ.

Appellant : State of Madhya Pradesh

Respondent : Ballu Alias Vinod Kumar

Disposition : Appeal dismissed

Judgement :

Abhay M. Naik, J.

1. This appeal has been preferred by the State of Madhya Pradesh (appellant) against acquittal of accused/respondent from the charge under Section 302 read with Section 34 of Indian Penal Code.

2. According to the prosecution story, Mishrilal son of Chironjilal was tenant in the house of respondent's father, namely, Chandra Kumar Jain. On the date of occurrence, i.e., 3-11-1986 Rajesh and Dilip, sons of Mishrilal (P.W. 1) were returning to their home when landlord's son, namely, Praveen picked up quarrel with them and gave beatings to Rajesh. He also broke fused mercury' tube light which was collected by Rajesh and Dilip from the road. On return, Rajesh and Dilip

made complaint to their father Mishrilal in presence of complainant Hukumchand (P.W. 3), who happened to be there with his wife Sheela Devi for celebrating 'Bhai Dooj'. Hukumchand was brother of Mishrilal's wife. Mishrilal told his sons that he will persuade Chandra Kumar, father of respondent to make his sons understand to behave properly and not to act in this manner. Mishrilal with Hukumchand and others came down stairs to Chandra Kumar. He asked Chandra Kumar to persuade his sons to behave properly. Suddenly, Pradeep, Praveen, Pramod and Vihod appeared there and started abusing them. They were asked to refrain from abusing. However, they shouted 'Maro Salon Ko'. Ballu alias Vinod handed over a knife to Pramod. Others were armed with lathi and rods. Pramod inflicted injuries on Dilip Kumar on right chest, left side of stomach and on the cheek near nose. Complainant Hukumchand made efforts to save Dilip. He was also attacked by Pramod, who inflicted injuries by knife on the left hand and wrist of Hukumchand. Pradeep, Vinod and Pramod were shouting that 'do not leave him, take his life'. Mishrilal's sister, namely, Khumania Bai also tried to protect Dilip, but she was also attacked by knife. Dilip Kumar on account of aforesaid injuries became serious and was taken to Vidisha Hospital on a handcart. Complainant Hukumchand lodged FIR at 0:30 A.M. At Police Station Vidisha on the same day, i.e., in the intervening night between 3rd and 4th November, 1986.

3. On 5-11-1986, Dilip succumbed to injuries and, ultimately, died at about 2:00 P.M. Police Vidisha submitted challan against Pramod Kumar (appellant in Cr. Appeal No. 60/2000) and Ballu alias Vinod Kumar (respondent in the present appeal bearing Cr. Appeal No. 36/2001). Pradeep Kumar and Praveen Kumar, accused Nos. 3 and 4 were discharged by this Court in Cr. Revision No. 307/95, vide order dated 15-2-1996. Accused Pramod Kumar has been found guilty for offence under Sections 302 and 324 of Indian Penal Code and was sentenced to life imprisonment and two years' Rigorous Imprisonment with fine of Rs. 500/-, whereas, Ballu alias Vinod Kumar was acquitted by the Court of First Additional Sessions Judge Vidisha, vide judgment dated 5-1-2000. Aggrieved by the acquittal of Ballu alias Vinod Kumar, present appeal has been preferred.

4. Contention of the learned Govt. Advocate is that the respondent had provided a knife to Pramod Kumar, who inflicted injuries on Dilip Kumar, which ultimately

caused the death. It has been proved by the evidence on record that the knife was handed over by Vinod Kumar to Pramod Kumar. Pramod Kumar having been held guilty, Ballu alias Vinod Kumar could not have been legally acquitted. It was Vinod Kumar who brought the knife from inside and provoked Pramod Kumar to inflict injuries on Dilip Kumar by handing it over and saying 'Aaj Mat Chhodo Maro Salon Ko, Jaan Se Mar Do'. Thus, Vinod Kumar has abetted the offence and is equally guilty with Pramod Kumar. It is further contended that learned Sessions Court while acquitting Vinod Kumar has not properly appreciated the evidence and the judgment of the learned Sessions Court to this extent is liable to be reversed. Vinod Kumar being equally guilty for offence under Sections 302 and 324 of Indian Penal Code, is liable to be punished with the same punishment/sentence like Pramod Kumar.

5. Before entering into the question of appreciation, this Court is obliged to keep in mind that the appeal is directed against acquittal. Scope of interference is not without limitations. There has been various occasions for the Apex Court to consider the scope of interference in appeal against acquittal. Hon'ble Supreme Court in the case of Tola Singh and Anr. v. State of Punjab 1987 CAR 200 (SC), has held:

The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the Lower Court to the consideration of the evidence in the case 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, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.

6. Likewise the Apex Court in the case of State of Madhya Pradesh v. Bacchudas alias Balaram and Ors. 2007 Cri. LJ 1661 has observed:

The principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process.

7. If the judgment of acquittal of respondent is viewed on the aforesaid yardsticks, it may be seen that the First Information Report (Exh. P-5) was lodged by Hukumchand Jain, who informed the police that Vinod brought the knife and handed over it to Pramod and Pramod inflicted injuries on Dilip Kumar by knife on right side of chest, left side of stomach and on nose. Mishrilal (P.W. 1), Hukumchand (P.W. 3), Hukumchand Ahirwar (P.W. 4), Rajesh Jain (P.W. 5), Sheela Devi (P.W. 6), Keshar Bai (P.W. 7) and Khumaniya Bai (P.W. 11) were present on the spot and had witnessed the incident. None of other witnesses (except P.W. 1 and P.W. 3) has stated in the Court on oath that the knife was brought by Vinod from inside and was handed over by him to Pramod Kumar. Moreover, dying declaration of Dilip Kumar was recorded by Naib Tehsildar which is on record as Exh. P-11. In the dying declaration, there is no mention that the knife was brought from inside by Vinod Kumar and was handed over by him to Pramod Kumar. It is not the case of the prosecution that any such statement was given at the time of recording of dying declaration and was not recorded by the Naib Tehsildar. Shri S.K. Suryawanshi, Naib Tehsildar, was examined as P.W. 13, who recorded the dying declaration. In cross-examination, this witness was never suggested that Dilip Kumar at the time of dying declaration had stated that the knife was brought from inside by Vinod Kumar and was handed over to Pramod Kumar by him.

8. Learned Govt. Advocate contended that the fact that Vinod Kumar had handed over the knife to Pramod Kumar is well established and Pramod Kumar having been found guilty of stabbing the deceased by knife, Vinod Kumar cannot be acquitted in the impugned manner. Countering it, it has been argued by Shri V.K. Saxena, learned Senior Counsel that the alleged factum of handing over the knife by Vinod Kumar to Pramod Kumar is not corroborated by other witnesses and, accordingly, Vinod Kumar has been rightly acquitted.

9. This Court is now required to examine the effect of non-corroboration by other witnesses with regard to alleged factum of handing over of knife by Vinod Kumar to Pramod Kumar. Section 134 of the Indian Evidence Act, 1872, makes it clear that no particular number of witnesses shall, in any case, be required for the proof of any fact. Thus, a particular fact may be proved even by a single witness. If, a fact stands proved, then it does not require any corroboration at all. What is required in law is, the demolition of the evidence adduced by such a sole witness to prove a particular fact. Demolition of evidence and non- corroboration of evidence are quite different. A fact if stands proved in the eye of law needs no corroboration, but is required to be demolished by contrary cogent evidence. Non-corroboration of such a fact by other evidence is insignificant. It is the demolition of evidence only which would give advantage to the opposite party and absence of corroboration in such a case will not affect the result. This being so, it is to be examined that whether the allegation of the prosecution that the knife was handed over to Pramod Kumar by Vinod Kumar, was fully established by the evidence of Hukum Chand Jain (P.W. 3, FIR lodger and Mishrilal, father of deceased) requiring demolition or the same was not duly established by such evidence and required corroboration.

10. In the FIR (Exh. P-5) there is no mention that Vinod had brought the knife from inside. Even in the statement (Exh. D-2) recorded under Section 161 of Cr.PC there was no specific mention that Vinod had brought the knife from inside. Although, in the statement recorded in the Court Hukumchand (P.W. 3), has stated in chief examination that Vinod had brought the knife from inside, but in the cross-examination he has admitted that Vinod had not gone inside for bringing the knife. This witness has further failed to assign any reason for not mentioning in Exh. P-5 (FIR) and Exh. D-2 (statement under Section 161 of Cr.PC) that Vinod had brought the knife from inside. He has further stated in Paragraph 11 that he himself, Mishrilal and other family members of Mishrilal were present when the knife was handed over. Mishrilal, father of the deceased (P.W. 1) has stated that Vinod went inside and brought the knife from inside. He handed it over to Pradeep, then he stated that he handed it over to Pramod. This witness has categorically stated in Paragraph 3 that the incident occurred in the presence of himself, Hukumchand, Hukumchand's wife Sheela, Khumaniya, Mishrilal son of Gorelal,

Raj Kumar, Suresh and Rajesh. His daughter and Rajaram also watched the incident. Since the incident is stated to have occurred in the presence of aforesaid persons, corroboration was expected from them. Dying declaration of Dilip Kumar is on record as Exh. P-11, which was recorded by the Naib Tehsildar, who was examined as P.W. 13. In Exh. P-1, there is no mention that the knife was brought from inside by Vinod Kumar and was handed over by him to Pramod Kumar. There was absolutely no reason for the deceased not to mention such an important fact and further involvement ol Vinod Kumar in the alleged incident. Shri S.K. Suryawanshi, Naib Tehsildar (P.W. 13) has recorded the dying declaration. It is not the case of the prosecution that the deceased while giving dying declaration gave any such statement that the knife was brought by Vinod Kumar from inside and was handed over to Pramod Kumar. Even in the cross-examination, no such suggestion was made to Naib Tehsildar (P.W. 13). Absence of the alleged fact of bringing the knife by Vinod Kumar from inside and handing it over to Pramod Kumar in the dying declaration is an important lacuna in the evidence which remained unexplained.

11. In the light of aforesaid discrepancies, the fact that the knife was brought from inside by the respondent and was handed it over to Pramod Kumar, is not fully established and required corroboration by other witnesses who are stated to be present at the place of occurrence. Evidence of Mishrilal and Hukumchand is insufficient to hold that the alleged fact that Vinod Kumar brought the knife from inside and handed it over to Pramod Kumar is fully established. This being so, it is not a case where demolition of aforesaid evidence was required, rather, it is a case where evidence of Mishrilal and Hukumchand required corroboration by other witnesses who are stated to be present at the place of occurrence. From the statements of other eye-witnesses, it is clear that these witnesses have not corroborated the case of prosecution on the point of handing over of knife by Vinod Kumar to Pramod Kumar. In the absence of such corroboration, learned Sessions Judge is not found to have committed any error in holding that the charge against Vinod Kumar is not proved beyond doubt.

12. We may profitably refer to the decision of the Hon'ble Supreme Court in the case of Samghaji Hariba Patil v. State of Karnataka (2007) 1 SCC (Cri.) 113,

wherein it has been held:

We have noticed hereinbefore that the High Court has taken a contrary view. Had the High Court been the First Court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible.

Similarly, it would not be out of place to mention here another decision in the case of Kashiram and Ors. v. State of M.P. : AIR 2001 SC2902 , wherein it has been held:

In case of appeal before High Court against acquittal, though judgment of Trial Court acquitting the accused was somewhat perfunctory and lacking clarity in certain respects, on the whole, the approach and conclusions of the Trial Court were not perverse or vitiated by any serious error warranting interference with the verdict of acquittal. View taken by Trial Court was a reasonably possible view; the Apex Court held that High Court was not justified in reversing the acquittal.

13. Accordingly, it is found that the learned Sessions Court has rightly appreciated the evidence on record and the finding of acquittal is based on material evidence on record. This Court does not find any perversity in appreciation warranting interference in the appeal against acquittal. In the result, there is no substance in the appeal. The same is hereby dismissed.

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