2024 INSC 258

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1167 of 2018

BALLU @ BALRAM @ BALMUKUND AND ANOTHER **...APPELLANT(S)**

VERSUS

THE STATE OF MADHYA PRADESH **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. The present appeal challenges the judgment dated 6th April 2018 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 261 of 1995, thereby allowing the appeal of the respondent-State which was filed challenging the judgment dated 26th March 1994 passed in S.T. No. 160 of 1992, vide which the learned 2nd Class Sessions Judge, Damoh (hereinafter referred to as 'the learned trial Judge') had acquitted the appellants of the charges under Sections 302, 201 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). The High Court, reversing the judgment of the learned trial Judge, had convicted the appellant No. 1 (Ballu Chaurasiya @

Balram @ Balmukund) under Sections 302 and 201/34 of IPC and appellant No. 2 (Halki Bahu @ Jamna Bai @ Jamuna Bai) under Sections 302/34 and 201 of IPC and awarded rigorous imprisonment for life under Sections 302 and 302/34 with fine of Rs. 1000/-, in default of payment of fine to further undergo rigorous imprisonment for three months. Insofar as Sections 201 and 201/34 of IPC are concerned, the High Court further awarded sentence of rigorous imprisonment for seven years with a fine of Rs. 3000/-, in default of payment of fine to further undergo rigorous imprisonment for 5 months.

2. The prosecution story in brief is as under:

2.1 The deceased-Mahesh Sahu was in a love relation with Anita, who is the daughter of respondent No.2-Jamna Bai (appellant No.2 herein) and sister of Ballu @ Balram @ Balmukund (appellant No.1 herein). Anita and deceased Mahesh Sahu resided at Agra for about eight months and then returned to Damoh. Thereafter, the marriage of Anita was solemnized with another person. Even then, they were in contact with each other. Due to this enmity, on 7th June, 1992 at about 11:00 P.M., the appellants caused death of the deceased in furtherance of their common intention. The prosecution relies on the evidence of Govind (PW-7), who saw

that appellant No. 1 was dragging a dead body from his house. He had also seen his mother, appellant No. 2, who was washing the blood stains at the door of their house.

2.2 After Beni Prasad @ Beri Prasad (PW-1) and Sumitra Bai (PW-6), who are the father and mother of the deceased, came to know about the incident, they came to the spot of the incident. On the basis of the oral report of PW-1, an FIR (Exh. P-1) came to be registered at Police Station, Damoh.

2.3 Upon completion of the investigation, the chargesheet came to be filed in the Court of Judicial Magistrate First Class. Since the case was exclusively triable by the learned trial Judge, it was committed to the learned trial Judge.

2.4 At the conclusion of the trial, the learned trial Judge has acquitted the accused persons since the prosecution has failed to prove the case beyond reasonable doubt. The respondent-State preferred an appeal before the High Court.

2.5 The High Court, by the impugned judgment, reversed the finding of the learned trial Judge, as aforesaid.

2.6 Being aggrieved thereby, the present appeal.

3. We have heard Mr. Varun Thakur, learned counsel appearing on behalf of the appellants and Shri Pashupathi Nath Razdan, learned counsel for the respondent-State.

4. Mr. Varun Thakur, learned counsel, submits that the High Court has grossly erred in reversing the well-reasoned judgment of acquittal. He submits that the learned trial Judge by giving elaborate reasonings, found that the prosecution has failed to prove the case beyond reasonable doubt. He submits that the High Court in a cursory manner interfered with the said finding. He submits that the present case is a case of circumstantial evidence and unless the prosecution is able to prove the chain of circumstances beyond reasonable doubt it is not permissible to interfere with the findings of the trial Judge and to record the finding of conviction. He further submits that, in an appeal arising from acquittal, the scope is limited. Unless the finding is shown to be perverse or impossible, it will not be permissible for the Appellate Court to interfere with the same.

5. Shri Pashupathi Nath Razdan, learned counsel for the respondent-State, on the contrary, submits that the learned trial Judge has totally misread the evidence. He submits that the evidence of Beni Prasad (PW-1) and Sumitra Bai (PW-6), coupled with the medical evidence, would show that the prosecution has proved the case beyond reasonable doubt.

6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of

circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1]**,** wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
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> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the

[1] (1984) 4 SCC 116 = 1984 INSC 121

> accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
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> (3) the circumstances should be of a conclusive nature and tendency,
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> (4) they should exclude every possible hypothesis except the one to be proved, and
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> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must

> show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

> "13. In case of ***Sadhu Saran Singh vs. State of U.P.*** (2016) 4 SCC 397, the Supreme Court has held that:-
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> > "In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and !aw. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while

> enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar, In case of ***Harljan Bhala Teja vs. State of Gujarat*** **(2016) 12 SCC 665,** the Supreme Court has held that:-

> "No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open far the appellate court to express the right conclusion after re-appreciating the evidence If the charge is proved beyond reasonable doubt on record, and convict the accused."

10. In view of the above settled principles of law, we will have to examine the present case.

11. It is not in dispute that the death of the deceased is a homicidal death and as such, it will not be necessary to refer to the medical evidence. The only question that remains is as to whether the prosecution has proved its case beyond reasonable doubt and as to whether the appellants are guilty of committing

the crime.

12. Learned trial Judge, by elaborately discussing the evidence, had found that the appellants were not guilty. We crystallize the findings of the learned trial Judge, as under:

12.1 Beni Prasad (PW-1), who is the father of the deceased, had deposed that when he went to call his son Mahesh Sahu for dinner then Mahesh Sahu was standing at the Chowk with Pappu Tamrakar and two boys. Mahesh Sahu told him that he would come later, then Beni Prasad (PW-1) went to his house and fell asleep and later at night around 11:45 P.M., one boy came to him and told him that Ballu Chaurasiya (appellant No. 1), Santosh Chaurasiya and other persons were beating Mahesh Sahu. On hearing this, he ran towards the house of Ballu Chaurasiya wearing *chaddhi* and *baniyan*. He saw that Ballu Charuasiya, Santosh Chaurasiya and his two brothers were dragging Mahesh Sahu in dead condition and put his body 10 feet away from their house. After that the accused Ballu Chaurasiya went inside his house. Beni Prasad (PW-1) went near the place where Mahesh Sahu's body was lying and he found him to be dead. At that point of time, Sumitra Bai (PW-6), the mother of the deceased also came there and she saw that Jamuna Bai (appellant No. 2), who is the mother of the accused

Ballu Chaurasiya, was cleaning the blood on the door.

12.2 Beni Prasad deposed that in the last month of the year 1991 (December 1991) his son Mahesh Sahu went to Bhopal for an interview and there was no news about him for about eight months. Thereafter, a letter came to him from his son in the fourth month of the year 1992 (April 1992) informing him that he was working at Agra and that he had married a girl named Anita, who is the sister of the accused/appellant No. 1 Ballu Chaurasiya. Thereafter, the deceased Mahesh Sahu and Anita returned to Damoh (in the fourth month of the year 1992 i.e., April 1992), and Anita started living in her house and thereafter Anita was married to another person in Ujjain by her brother Ballu Chaurasiya (appellant No. 1). Thereafter, Anita left for her in-laws house and thereafter correspondence of letters started between Mahesh Sahu and Anita. He stated that this correspondence of letters was not liked by Ballu Chaurasiya (appellant No. 1) and he started to give death threats to Mahesh Sahu.

12.3 The learned trial Judge found that the statement given by Beni Prasad (PW-1), before the trial Judge was totally contrary to his statement recorded under Section 161 of the Code of Criminal Procedure, 1973 (Exh. D/1). It was found that Beni

Prasad (PW-1) had totally improved his story in his deposition before the Court. Learned trial Judge also found the behaviour of Beni Prasad (PW-1) to be abnormal. In his cross-examination, Beni Prasad (PW-1) admitted that when he saw four persons dragging the dead body, he said nothing because he was alone. However, he admitted that the dead body of Mahesh Sahu was lying in a dense basti and people have houses around the said place and there was also a dispensary of the (Nagar Palika) Municipality situated at Gauri Shankar Temple, about 9 feet away from his house. Learned trial Judge also found that within the same dispensary itself, the Police Chowki was situated, manned by hawaldar and constables. The learned trial Judge found that the conduct of the Beni Prasad (PW-1) in not informing about the dead body of the deceased being dragged away to anyone and particularly at the Police Chowki which was hardly any distance from the place of occurrence to be absolutely unnatural. The learned trial judge found that when a panchnama of the dead body (Exh. P-2) was being conducted, he did not give the name of the killers. The explanation given by Beni Prasad (PW-1) was that the police did not ask him. The learned trial Judge also found that Beni Prasad (PW-1) admitted in his evidence that at the time of panchnama of dead body

(Exh. P-2), there was a crowd of around 150 people.

12.4 Ms. Sumitra Bai (PW-6), mother of the deceased, also stated about the relationship between the deceased Mahesh Sahu and Anita. She stated that the accused/appellant No. 1 Ballu Chaurasiya was threatening the deceased Mahesh Sahu on a day prior to the date of the incident. She also informed about one boy coming at about 11:45 P.M./12 A.M. and informing her that a fight was going on between Mahesh Sahu and Ballu Chaurasiya. When she went to the house of the accused, she saw accused Ballu Chaurasiya, his elder brother, his *manjhla* brother and accused Jamuna Bai dragging her son and leaving her son in front of bade father's house. Learned trial Judge found that the evidence of this witness was also totally improvised. Learned trial Judge also found that there was extreme exaggeration in the depositions given by this witness in the Court as compared to the statements under Section 161 Cr.P.C. (Exh. D-2). The learned trial Judge, as a result, disbelieved the evidence of these two witnesses, i.e., the father and mother of the deceased.

12.5 Learned trial Judge also found that the prosecution had relied on the evidence of Raju (PW-4), Dharmendra Singh (PW-5) and Govind (PW-7) to establish the circumstances

regarding the accused being last seen with the deceased Mahesh Sahu. Further all these three witnesses had turned hostile and not supported the prosecution case.

12.6 Learned trial Judge also discarded the circumstances relied on by the prosecution regarding cutting the nails of both the hands of the accused Ballu Chaurasiya and the said nails containing the blood of the deceased Mahesh Sahu. Learned trial Judge also found that the nails were cut after a period of six days from the date of the incident. The prosecution has also relied on the circumstances of recovery of the blood stained clothes and the knife. Learned trial Judge found that the said circumstances were also of no assistance in the case of the prosecution, inasmuch as there were no evidence to show that the blood found on these articles was a human blood.

12.7 Insofar as the circumstances with regard to the mother of the appellant No. 1, Jamuna Bai (appellant No. 2), are concerned, the learned trial Judge found that the independent witnesses had turned hostile, and the only evidence in that regard was that of S.K. Banerjee @ S.K. Banerji @ Sukant Banerjee/Investigating Officer (PW-15).

12.8 Learned trial Judge found that Rajesh Kumar (PW-14), who was a panch witness, in his evidence, had stated that

the deceased was his cousin brother and he has signed the documents on the directions of the S.K. Banerjee/Investigating Officer (PW-15). As such, the learned trial Judge found that the circumstances with regard to the memorandum under Section 27 of the Evidence Act, 1872 and subsequent recovery was also not proved beyond reasonable doubt. Learned trial Judge further found that though from the panchnama, it was shown that the blood was found at various places, he had not made any attempt to seize the samples nor had he provided an explanation as to why he had not seized the samples of the said blood.

12.9 Learned trial Judge found that the knife was seized on a memorandum of the accused (Exh. P-14) on 14th June 1992 from an open place in the same room as mentioned in panchnama (Exh. P-11). Learned trial Judge also found that if immediately on the next day of incident, the Investigating Officer had visited and searched the room but he did not see the knife, then the subsequent recovery of knife from the very same room appears to be planted.

12.10 Learned trial Judge also found that though the incident was of 7th June 1992 at around 12:00 A.M. and it had been reported to the Investigating Officer at 12:40 A.M., the

arrest of the accused persons had been made only on 15th June 1992, which creates a doubt on the prosecution version. This is more so when the distance between the place of occurrence and the police station is hardly 1 to 1 ½ kms.

13. The above points, that we have culled out from the judgment of the learned trial Judge, make it clear that the learned trial Judge has done a very elaborate exercise of discussing the evidence in great detail. We therefore would not like to burden our judgment with more details. The aforesaid points are more than sufficient to come to a conclusion that the prosecution has failed to prove any of the incriminating circumstances beyond reasonable doubt and in no case, the chain of circumstances, which was so interlinked to each other that leads to no other conclusion, than the guilt of the accused persons. We have no hesitation to hold that the findings of the learned trial Judge are based on correct appreciation of the material placed on record.

14. This elaborate exercise of the learned trial Judge, has been washed away by the learned Division Bench of the High Court in a totally cursory manner. Insofar as the testimony of Beni Prasad (PW-1) and Sumitra Bai (PW-6) is concerned, the Division Bench of the High Court observed thus:

> "**8.**.....After considering the entire testimony of Beni Prasad (PW-1) and Sumitra Bai (PW-6) we come to the conclusion that there are improvements and exaggerations in their court statement. But on this ground their whole testimony cannot be brushed out as the principle *"Falsus in uno, Falsus in Omnibus"* is not applicable in criminal trial. Sometimes, the witnesses are in fear that if their testimony cannot be relied upon by the Court, the main culprit may be acquitted. Therefore, naturally they improve their statement to some extent."

15. The testimony of S.K. Banerjee/Investigating Officer (PW-15), which has been disbelieved by the learned trial Judge, giving sound reasons, has been believed by the learned Division Bench of the High Court, by placing it in paragraph 12 as under:

> "**12.** We do not find any reason to disbelieve the testimony of Investigation Officer who impartially performed his duty with sincerity. He had no enmity with the respondents or relationship with the deceased. Therefore, we are inclined to rely upon his testimony. It cannot be brushed aside simply on the basis of conjectures and surmises in favour of the respondents."

16. We find that the learned trial Judge had given sound and cogent reasons for discarding the testimony of the IO and the other witnesses. We are of the view that the High Court has totally erred in observing that the trial Judge had brushed aside the evidence of the IO simply on the basis of conjectures and surmises. Rather, it is the judgment of the High Court which is

based on conjectures and surmises.

17. After reproducing the aforementioned two judgments of this Court, discussing the settled law on the scope of an appeal against acquittal, the Division Bench of the High Court observed thus:

> "**15.** As discussed above, we find that there is sufficient ground to reverse the impugned the judgment. Dr. J.P.Parsai (PW-8) examined respondent No. 1 Ballu. He found some injuries on the body of respondent no. 1 which also indicate that before the death, the deceased struggled to save himself from the respondents. Dr. J.P.Parsai took sample of nails of both the hands of the deceased and sent them for FSL examination."

18. After discussing this, the High Court noted that the articles which were seized by S.K. Banerjee/Investigating Officer (PW-15) contained blood stains as per the FSL report. The High Court observed that the accused failed to offer any explanation with regard to the presence of blood on these articles. The High Court observed thus:

> "**18**...Respondent No. 1 did not offer any explanation with regard to presence of blood on these articles. This is a strong link along with the blood marks of dragging found from the house of the respondent to the spot where the body of the deceased was lying. This establishes that the respondents committed murder of the deceased Mahesh because he had love relation with Anita. After his death, six love letters of Anita were found in the pocket of the deceased which indicates that Anita also wanted to reside with the

deceased against the will and consent of her family members."

19. At the cost of repetition, we are compelled to say that the findings of the High Court are totally based on conjectures and surmises. Though the High Court has referred to the law laid down by this Court with regard to the scope of interference in an appeal against acquittal, the High Court has totally misapplied the same and a very well-reasoned judgment based upon the correct appreciation of evidence by the trial Court has been reversed by the High Court, only on the basis of conjectures and surmises.

20. The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible. As already discussed hereinbefore, no perversity or impossibility could be found in the approach adopted by the learned trial Judge.

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view.

22. In that view of the matter, we find that the judgment passed by the High Court is totally unsustainable in law.

23. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The impugned judgment dated 6th April 2018 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 261 of 1995 is quashed and set aside; and

(iii) The accused persons (appellants herein) are acquitted of all the charges they were charged with. The appellants are already on bail. Hence, their bail bonds shall stand discharged.

24. Pending application(s), if any, shall stand disposed of.

.....J.
[B.R. GAVAI]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
APRIL 02, 2024.