

1957

April 2.

BHAGWANDAS

v.

THE STATE OF RAJASTHAN

(BHAGWATI and J. L. KAPUR JJ.)

Appeal against acquittal—When High Court may interfere—Dying declaration—Value of—Expert evidence—Discrediting by reference to text books—Practice—Appreciation of evidence—Interference by Supreme Court.

The High Court should not set aside an acquittal unless there are "substantial and compelling" reasons for doing so.

Surajpal Singh v. State, (1952) S.C.R. 193, *Ajmer Singh v. The State of Punjab*, (1953) S.C.R. 418, *Aher Raja Khima v. The State of Saurashtra*, (1955) 2 S.C.R. 1285, followed.

It is not a satisfactory way of disposing of the evidence of an expert witness to discredit it by reference to text books unless the passages which are sought to discredit his opinion are put to him.

Sunderlal v. The State of Madhya Pradesh, A.I.R. (1954) S.C. 28, followed.

Although the Supreme Court will not interfere with the findings of the High Court because its conclusions on the evidence as to the guilt or innocence of the accused differ from that of the High Court, yet where the evidence is such that no tribunal could legitimately infer from it that the accused is guilty the Supreme Court would set aside the conviction.

Stephen Seneviratne v. The King, A.I.R. (1936) P.C. 289, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 1957.

Appeal by special leave from the judgment and order dated January 27, 1956, of the Rajasthan High Court at Jodhpur in Criminal Appeal No. 119 of 1954 arising out of the judgment and order dated March 23, 1954, of the Court of the Sessions Judge at Ganganagar in Original Criminal Case No. 74 of 1953.

Mohan Behari Lal, for the appellant.

Kan Singh and T. M. Sen, for the respondent.

1957. April 2. The Judgment of the Court was delivered by

KAPUR J.—Bhagwandas and Netram are two brothers who along with Mt. Rameshwari, a daughter

of the former, were tried by the Sessions Judge of Ganganagar for an offence under s. 302 of the Indian Penal Code but were acquitted. On appeal to the High Court of Rajasthan, the order of acquittal of Bhagwandas and Netram was reversed and they were convicted under s. 302 read with s. 34 and sentenced to transportation for life. The order as to Mt. Rameshwari was affirmed and she was acquitted. The convicted persons have obtained Special Leave to appeal under Art. 136 of the Constitution.

The appeal is founded on two grounds :

(1) that there was no evidence against the appellants sufficient to warrant a conviction and (2) that there were no compelling reasons for reversal of the judgment of acquittal.

According to the prosecution the canal after a temporary closure restarted flowing on May 5, 1953. And although it was not his turn of water the deceased Shival was allowed to take the water to irrigate his fields. On May 6 the canal was flowing to its full capacity and Shival was to take his turn of water which was of 6 hours duration from 8 a.m. to 2 p.m. but he watered his lands from 8 a.m. to 10-30 a.m. because the village *diggi* (pond) which was empty had to be filled up. *Mirab* Ram Karan P.W. 1 with the consent of Shival diverted the water for the purpose of filling up the *diggi*, promising him (Shival) to get him the rest of his turn of water, *i.e.*, for 3½ hours after the *diggi* had been filled up. The *diggi* was filled up by 1 p.m. on the 7th. Shival then wanted to divert the water into his field but Bhagwandas prevented him from doing so claiming the turn to be his. According to Ram Karan *Mirab* P.W. 1 the turn of Bhagwandas was after Surta whose turn was next to that of Shival.

As Shival was prevented from taking his turn of water he started walking towards the village saying that he would go and speak to *Mirab*. Bhagwandas thereupon shouted that "the enemy was going" and hit Shival on the head with a *kassi*.

Netram then hit Shival with lathi as a result of which he fell down and then both beat Shival, and

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Mt. Rameshwari also, it was alleged, joined in this beating with a wooden handle of a *kassi*. This occurrence was witnessed by Hazari P.W.3 who was grazing his camels in the field of Surta. He went up to the place where the beating was going on and shouted to the assailants who "went away" leaving their *kassi* behind. Hazari found Shivlal seriously injured and unconscious. He sprinkled some water on his face which revived Shivlal and the latter asked Hazari to take him to the Thana but Hazari helped him to walk up to the Khala (threshing floor) of Hukma which was at a short distance from that place. Hazari P.W. 3 has stated that the left Shivlal with Jora, Jagmal, Bhogar, Begaram and Binja, and on their asking him he (Hazari) told them what he had seen. Shivlal was then taken to Raisinghnagar by Bhaggu and Jagmal on a she-camel to the shop of Gyani Ram P.W.4. There Shivlal told Gyani Ram also that Bhagwandas, Netram and Rameshwari had assaulted him because of the water dispute and also asked Gyani -Ram to send for his son Ram Pratap and his Artya (Commission Agent) Ishardas. Ram Pratap came at about 6 p.m. Shivlal repeated the story to him and was then taken to the hospital by Jagmal, Bhaggu and others. At the hospital he was treated by the doctor P.W. 11 but died the following day (8th) at 8-15 a.m.

The First Information Report was based on a written report Ex. P-1 by Ram Pratap s/o Shivlal. It was recorded on May 7 at about 7-30 p.m. The prosecution supported their case by the evidence of two eye witnesses, dying declarations made to 3 persons and on the recovery of the *kassi*. They produced two eye witnesses Begaram, P.W. 2 and Hazari P.W. 3. The dying declarations were made to three persons first to Jora P.W. 7, later to Gyaniram P.W.4 at his shop and lastly to Ram Pratap P.W.5 who arrived at the shop at 6 p.m. If the dying declaration was made to this witness it must have been at that time.

According to the doctor's evidence Shivlal was unconscious when he was brought to the hospital at 5 p.m. He had 15 injuries on his body, out of which

injury No. 1 was with a sharp-edged weapon and injury No. 2 with a blunt weapon and both these injuries were grievous and were "individually and collectively fatal sufficient to cause death."

The learned Sessions Judge disbelieved the whole evidence and acquitted the accused. He was of the opinion that the evidence produced by the prosecution was not "free from suspicion and not sufficient to convict them". Begaram P. W. 2 was disbelieved both by the Sessions Judge and the High Court. The learned Sessions Judge described Hazari as a "facile fluent liar" but his testimony was accepted by the High Court. Both courts rejected the statement of Ram Pratap but the statements of Gyaniram and Jora were accepted by the High Court although they were rejected by the Sessions Judge.

The High Court has relied upon the testimony of one eye witness Hazari P. W. 3 and two witnesses before whom Shivilal is alleged to have made two dying declarations. There are apparent contradictions between the testimony of Hazari and Bega. The learned High Court Judges disposed of this by saying that Bega's presence

"on the spot is open to grave doubts. As such it is, in our opinion, not proper to contradict the statement of a man who was present on the spot by using the statement of another man who was in all probability not there."

The learned Judges have made the following significant observation in regard to Hazari :

"It seems to us that Hazari had said this because the prosecution was producing Bega, and he must have been asked to say that Bega was also present. So far as the story of Hazari about the incident itself is concerned, nothing has been brought out in his cross-examination to throw doubts on this part of his statement."

They also pointed out, but attached no importance, to other contradictions in the statements of Hazari made before the trial court and before the Police. If as observed by the learned Judges of the High Court, Hazari had mentioned the presence of Bega merely

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because the latter was to be produced as a prosecution witness and because he (Hazari) had been asked to mention it, then it would detract so materially from his reliability that it would be dangerous to accept his testimony as being of any great value which is still more diminished by the finding as to the innocence of Mt. Rameshwari.

The other piece of evidence which the prosecution relied upon was the two dying declarations made by Shivilal to Gyaniram P. W. 4 and Jora P. W. 7. Besides the infirmities which the testimony of these two witnesses (Gyaniram P. W. 4 and Jora P. W. 1) suffered from due to material contradictions in their respective statements made at various stages of the case and which have been pointed out by the learned Sessions Judge who said about Gyaniram :

“In such a state of affairs I refuse to put any weight and value to the statement of Gyaniram.....” their evidence cannot be a sure foundation for maintaining the conviction if the statement of Hazari the sole eye witness is disregarded, as it must be disregarded in this case; because ordinarily a dying declaration of the kind which the prosecution has relied upon is by itself insufficient for sustaining a conviction on a charge of murder.

The learned Sessions Judge was of the opinion that the evidence of the doctor P. W. 11 made the story that Shivilal could walk for a little distance upto the Khala of Hukma or was able to talk so as to make a dying declaration, improbable. But the learned Judges of the High Court disposed of this matter by saying that the doctor was comparatively young and that his statement was not in accord with the opinion expressed in books on Medical Jurisprudence by authors like Modi and Lyon. But it cannot be said that the opinions of these authors were given in regard to circumstances exactly similar to those which arose in the case now before us nor is this a satisfactory way of disposing of the evidence of an expert unless the passages which are sought to discredit his opinion are put to him. This Court in *Sundarlal v. The State of Madhya Pradesh*⁽¹⁾ disapproved of Judges drawing

conclusions adverse to the accused by relying upon such passages in the absence of their being put to medical witnesses. The learned Judges of the High Court were, therefore, in error in accepting the testimony of these witnesses in support of the correctness of the two dying declarations nor could the statement of the deceased alleged to have been made in the circumstances of this case be considered sufficient to support the conviction of the accused. The recovery of the *ķassi* is a wholly neutral circumstance because it has not been proved that it belonged to Bhagwandas.

Although this Court will not interfere with the findings of the High Court because its conclusions on the evidence as to the guilt or innocence of the accused differ from that of the High Court, yet where the evidence is such that no Tribunal could legitimately infer from it that the accused is guilty this court would set aside the conviction. The Judicial Committee of the Privy Council in *Stephen Seneviratne v. The King*⁽¹⁾ in setting aside an order of conviction said :

“.....there are here no grounds on the evidence, taken as a whole, upon which any Tribunal could properly, as a matter of legitimate inference, arrive at a conclusion that the appellant was guilty.....”

In our view the evidence in the present case is of such quality and no legitimate inference of guilt of the accused could properly be drawn.

The second point on which the judgment of the High Court is assailed is the lack of compelling reasons for setting aside the judgment of acquittal.

This court has held that the High Court should not set aside an acquittal unless there are “substantial and compelling” reasons for doing so. *Surajpal Singh v. State*⁽²⁾, *Ajmer Singh v. The State of Punjab*⁽³⁾, *Aher Raja Khima v. The State of Saurashtra*⁽⁴⁾. The judgment of the High Court does not disclose any such reasons justifying interference with the findings of the trial Court.

We would, therefore, allow this appeal, set aside the judgment of the Rajasthan High Court, restore that of the Sessions Judge and order the acquittal of the accused.

Appeal allowed.