GAJANAN

v.

STATE OF MAHARASHTRA

NOVEMBER 20, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Indian Penal Code, 1860 :

S. 302/34—Appellant along with another prosecuted for murder—Trial Court acquitted them holding that witnesses claiming to be eye witnesses did not see the actual incident; their testimony does not inspire confidence and is in conflict with medical evidence; the alleged extra judicial confession was introduced by prosecution to buttress its case; the occurrence did not take place in the manner suggested by the prosecution—On appeal High Court convicted appellant u/s 302 and maintained acquittal of the co-accused—Held, High Court should not have interfered with the order of acquittal more so when the reasons given by the trial court were neither perverse nor even unreasonable—Trial Court gave cogent and sufficient reasons to acquit the appellant—High Court did not dispel the reasons given by trial court while upsetting the order of acquittal—Judgment of High Court set aside.

Code of Criminal Procedure, 1973 :

S.378—Appeal against acquittal—Judicial approach in dealing with a case of appeal against acquittal has to be cautious, circumspect and careful—High Court overlooked these salutary principles and wrongly interfered with a well merited order of acquittal by adopting an erroneous approach.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 708 of 1991.

From the Judgment and Order dated 11.8.89 of the Bombay High Court in Crl. A. No. 285 of 1985.

Lokesh Kumar and R.S. Sodhi for the Appellant.

D.M. Nargolkar and S.M. Jadhav for the Respondent.

A The following Order of the Court was delivered :

The appellant alongwith Dnyandeo were tried for an offence under sections 302/34 IPC by the learned Sessions Judge, Buldhana in respect of an occurrence which took place on 10th September, 1984 in which Suryabhan died after receipt of a blow on his head resulting in multiple B fracture of the scalp bone. The trial court found that Gangubai, PW2 and Ukanda, PW. 3, who claimed to have seen the deceased being "dragged" (pulled) by the appellant after hitting him on the head with a heavy stone, had actually not seen the occurrence or any part thereof and their evidence did not inspire confidence. The trial court also referred to the medical evidence provided by Dr. Kashinath Motiram, PW. 1, and found that the C account given by PW. 2 and PW. 3 was in conflict with the medical opinion. The trial court further opined that the prosecution had introduced letter Ext. p. 22, the alleged extra Judicial confession of the appellant with a view to buttress the prosecution case. It was held that the motive as alleged by the prosecution had not been established and that the occurrence did not take place in the manner and at the place suggested by the prosecution. D The trial court, on the basis of these findings acquitted the appellant and his co-accused. The High Court on an appeal by the State against acquittal reversed the findings in so far as the appellant is concerned and convicted him of an offence under section 302 IPC and sentenced him to undergo life imprisonment, but maintained the acquittal of the co-accused since E learned counsel for the State did not press the appeal against his acquittal.

We have heard learned counsel for the parties and critically analysed the evidence on the record.

The manner in which the High Court has dealt with the appeal against F acquittal has left much to be desired. The High Court treated PW. 2 and PW. 3 as if they were the eye witnesses of the occurrence and opined that the observations of the trial court "that there is no direct evidence in this case is obviously wrong". In the words of the High Court "merely because these witnesses *did not see the actual assault by stone*, their clinching G evidence cannot be discarded". We fail to understand the justification for criticism of the trial court as noticed above. If the High Court itself found that PW. 2 and PW. 3 had not seen the *actual assault* on the deceased how they could be treated as providing *direct evidence* of assault is not at all intelligible. Similarly, while dealing with letter Ext. p. 22, the High Court, without at all dealing with the reasons given by the trial court to disbelieve H the evidence of PW. 7 and the recovery of the letter Ext. P. 22, opined that

one sentence in that letter amounts to *confession* and went on to rely upon the same as a piece of extra judicial confession. The High Court apparently ignored that there was no proof worth the name on the record to show that letter Ex. p. 22 had been written by the appellant. The appellant in his statement under section 313 Cr. P.C. denied the authorship of the letter. PW. 7 who claimed to have received the letter from the appellant, was working as a labourer with the appellant and on his own admission he had never received any letter from the appellant nor had he any other occasion to see his handwriting. How then could PW. 7's evidence be considered as sufficient to prove that it was the appellant and the appellant alone who had written letter Ext. P. 22? The prosecution led no other evidence to prove the handwriting of the appellant. No expert was examined either. Even otherwise, reading the letter Ext. P. 22 as a whole we do not find any extra judicial confession to have been made by the appellant, assuming for the sake of arguments that the letter was written by the appellant. The High Court was obviously in error in holding that Ext. P. 22 was written by the appellant or that the letter amounted to an extra judicial confession.

The High Court also appears to have overlooked some glaring infirmities in the prosecution evidence. The occurrence, according to the prosecution, took place in the field of Govind Shinde. The appellant after causing the injury is alleged to have dragged (pulled) the body of the seriously injured deceased for a distance of about 50 feet and left it in the field of Rabbani. The reason for leading this evidence is not far to seek. Unless this exercise was done by the appellant, PW. 2 and PW. 3 who claim to be on the track road could not have witnessed the dragging or identified the appellant. There was no need for the body to be dragged from the field of Govind shinde to Rabbani's field by the appellant except to enable himself to be identified. It appears that the story of dragging of the deceased was introduced so as to enable PW. 2, wife of the deceased, to claim to have seen the appellant running away after dumping the body in Rabbani's fields. Coupled with this is yet another tell tale circumstance. The investigating officer in the inquest report, in his zeal to support the story of dragging, showed that there were dragging marks/abbrasions etc. On the legs and other parts of the body of the deceased. PW1, who, performed the post mortem examination, however, clearly deposed that no such marks were found on the body of the deceased and that besides the injury on the head, no other injury had been found on the body of the deceased. PW.1 categorically asserted that had the body been dragged and brought in contact with rough surface it was bound to sustain abrasions but none was found on the body of the deceased. The manner in which the investigating officer tried to introduce the story of dragging and the extra

A judicial confession through Ext. P.22, shows that the investigation was not fair and the High Court failed to take this aspect into consideration.

The Trial Court gave cogent and sufficient reasons to acquit the appellant. The High Court should not have interfered with the order of acquittal more so when the reasons given by the trial court were neither B perverse nor even unreasonable. The High Court did not dispel the reasons given by the Trial court while upsetting the order of acquittal. Though, no distinction is made regarding powers of the High court in dealing with appeals against acquittal as well as against conviction and it has full power to review all the evidence and arrive at independent findings, nonetheless the High Court should be rather slow to interfere with the findings of the C trial court, unless the same are perverse or otherwise unreasonable. Judicial approach in dealing with a case of appeal against acquittal has to be cautious, circumspect and careful. Unfortunately, the High Court overlooked these salutory principles and interfered with a well merited order of acquittal by adopting an erroneous approach. The Order of the High Court under the circumstances convicting and sentencing the appellant for an offence under D section 302 IPC to life imprisonment cannot be sustained.

We, accordingly, accept this appeal and set aside the judgment of the High Court dated 11th August, 1989 and maintain the acquittal of the appellant as recorded by the trial court. The appellant, if in jail, shall be E released from custody forthwith if not required in any other case.

R.P. Appeal allowed.