

DILA AND ANR.

v.

STATE OF U.P.

SEPTEMBER 20, 2002.

[S. RAJENDRA BABU, SHIVARAJ V. PATIL AND
ASHOK BHAN, JJ.]

*Penal Code, 1860—Section 302 read with 149—Order of acquittal—
Interference by High Court—Correctness of—Held, High Court was justified
in reversing acquittal order as it has properly analysed and reappreciated
the evidence keeping in view the probabilities of the case.*

According to the prosecution a person bought a piece of land and appellant No. 1 disputed his possession. A day prior to the incident there was an altercation and appellant No.1 threatened him. Next day appellants and three other co-accused accompanied by four others went to the scene of occurrence armed with weapons. It was alleged that appellant No.1 exhorted his son-appellant No.2 to kill the buyer of the land. Appellant No.2 fired shot causing injury to the buyer which later on resulted in his death. It was also alleged that other accused assaulted prosecution witnesses 1 to 3 causing injuries to them. Appellants and three other co-accused were tried for offences under sections 147, 148 and 302 read with 149 and 323 read with 149 IPC. Trial Court acquitted all the accused. High Court acquitted the three co-accused but reversed acquittal of appellants and convicted them under section 302 read with Section 149 IPC. Hence the present appeal.

Appellants contended that High Court was in error in reversing acquittal order of trial court based on proper appreciation of evidence and supported by reasons, on mere possibility of taking a contrary view; that the appellants could not be convicted on the basis of the same prosecution story which could not be proved against the three co-accused particularly so when four unknown persons were also involved in the incident; and that since appellant No.1 is more than 80 years old his case should be considered sympathetically.

Dismissing the appeal, the Court

A **HELD: 1. High Court on proper analysis and objective reappréciation**
of evidence, keeping in view probabilities of the case, was right and justified
in reversing the acquittal order. It is not a case where High Court interfered
merely because it could take a different view but has shown how the reasons
B recorded by trial court for acquittal were wrong and the view taken was not a
reasonable view and was opposed to weight of evidence. Thus, there is no reason
or ground to interfere with the order of the High Court. [527-F, G]

2.1. It is not in dispute that the deceased succumbed to the injuries
caused during the occurrence. As per the doctor's version, the deceased
received one gun shot injury on the chest and two minor incised wounds on
C his head. Prosecution witnesses 1 to 3 also received number of injuries which
could have been caused by some blunt weapon. [524-H; 525-A, B]

2.2. Prosecution witnesses 1 to 3 supported the case of the prosecution
as to the mode and manner of occurrence and the persons who participated in
the commission of these offences. The presence of PW1 to 3 at the place of
D occurrence could not be ruled out. [525-B-C]

2.3. The prosecution witnesses stated about the availability of light of
burning of lantern as well as the torches possessed by the two witnesses.
Investigating Officer examined the lantern and marked the place where it
E was hanging and also examined torches and prepared memos. High Court
having regard to the evidence placed on record did not agree with Trial Court
that the presence of light at the scene was doubtful. High Court rightly
observed that trial court ought not to have disbelieved the evidence merely on
the ground that the two witnesses were not injured, as it was not necessary
that every one of the witnesses should have been injured.
F [525-E; 526-C-E]

2.4. The prosecution witnesses deposed about the motive for the crime
which was clearly established as there were several litigations between the
parties. In such circumstances, High Court found that trial court was wrong
G in recording a finding that motive aspect was not proved and that appellant
No.1 was not aggrieved with the deceased or that the accused persons had
been named merely on the ground of suspicion.

3. Respondent-State will consider the case of appellant No.1
sympathetically as and when an application is made by him for commutation
H of sentence having regard to the relevant rules, keeping in view his old age

and the peculiar facts and circumstances of the case. [528-A-B]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 900 of 1994.

From the Judgment and Order dated 21.9.1994 of the Allahabad High Court in Govt. Appeal No. 1943 of 1980.

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Gaurav Jain, Ms. Abha Jain and Baldev Atreya for the Appellants.

Abhishek Chaudhary, Prashant Chaudhary and Pramod Swarup for the Respondent.

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The Judgment of the Court was delivered by

SHIVARAJ V. PATIL J. These two appellants alongwith three other accused were tried for the offences under Sections 147, 148, 302 read with 149 and 323 read with 149 IPC. The learned Sessions Judge, after trial and on the basis of the material placed before him, acquitted all the accused. On appeal filed by the State, the High Court by the impugned judgment and order affirmed the order of acquittal as regards the three other co-accused and reversed the order of acquittal relating to these appellants and convicted and sentenced them to imprisonment for life for offence under Section 302 read with Section 149 IPC and sentenced them for shorter period for the offences under other Sections. The appellants have assailed the said judgment and order of the High court in this appeal.

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In short, the prosecution case was that the deceased Om Pal had purchased some land from one Smt. Mukandi, widow of Chhota of village Krishni. The appellant No. 1 Dila disputed the possession of Om Pal over the land. On 27.9.1979, there was an altercation between Om Pal and Dila over harvesting of crop standing on the said land. At that time, Dila had threatened Om Pal. On the night of 28/29.9.1979, at about 12.30 A.M., the appellants and the other acquitted three co-accused accompanied by four others went to the house of Kishan Singh. Dila enquired about the whereabouts of Om Pal and when Kishan Singh kept mum, he was hit with lathi by Dila. On the shouting of Kishan Singh, Om Pal, Randhir Singh, Geeta Ram, Hari Singh, Balbir and Ved Prakash reached the place. Dila exhorted his son Telu Ram to kill Om Pal on which Telu Ram shot at Om Pal with a country-made pistol as a result of which Om Pal was injured, fell down and became unconscious. It was alleged

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A that Dila was armed with lathi, Sitam Singh with knife, Gaje Singh and Ram Pal were armed with guns and four unknown persons were armed with lathis and kulhari. The accused assaulted Kishan Singh, Hari Singh and Randhir Singh. After the accused left the place, Om Pal and injured persons were taken to hospital at Saharanpur. Om Pal died near the hospital. The injured persons were examined at hospital. As already noticed above, the trial court acquitted all the accused and the High Court, on appeal, reversed the order of acquittal as regards these two appellants.

B The learned counsel for the appellants strongly contended that the High court committed an error in reversing the order of acquittal on mere possibility of taking a contrary view. According to him, the conclusions drawn by the Sessions Judge based on proper appreciation of evidence and supported by reasons could not be disturbed by the High Court; the appellants could not be convicted on the basis of the same prosecution story which could not be proved against the three other co-accused particularly so when four unknown persons were also involved in the incident. The learned counsel also submitted that the appellant no. 1, Dila, is more than 80 years old and at this length of time his case needs to be considered sympathetically having regard to his age, health and other circumstances. In opposition, the learned counsel for the State argued in supporting the impugned judgment and order.

E We have carefully considered the evidence placed on record in the light of the submissions made by the learned counsel for the parties. In support of its case, the prosecution examined Geeta Ram (PW-1), Hari Singh (PW-2) and Kishan Singh (PW-3) who are the injured eye-witnesses. Saktu (PW-5) was examined to prove the motive of the crime. Dr. M.N. Ansari (PW-6) who conducted the post mortem examination was examined. Another doctor, Dr. S.K. Bansal (PW-7) who examined three other injured witnesses (PWs 1 to 3) also gave evidence. In addition, S.I. Sanpat Singh (PW-8), the Investigating Officer, was also examined besides other witnesses. As is evident from the impugned judgment, the High Court was fully alive to the legal position as to when and under what circumstances, there could be interference in the order of acquittal. In the judgment, it is stated that in an appeal against the order of acquittal, the High Court has same powers which trial court has in examining the evidence and if it comes to the conclusion that the view taken by the trial court was unreasonable or against the weight of evidence, it could reject the finding recorded by the trial court.

H The incident in question had taken place at 12.30 A.M. on the night of

28/29.9.1979. Geeta Ram (PW-1) lodged the first information report at 8.15 A.M. on 29.9.1979 at police station Rampur. It is not in dispute that Om Pal died due to the injuries caused during the occurrence. It is clear from the evidence of Dr. M.N. Ansari (PW-6) that deceased had received one gun shot injury on the chest and two minor incised wounds on his head. PWs. 1 to 3 received number of injuries which could have been caused by some blunt weapon such as lathi as testified by Dr. S.K. Bansal (PW-7). PWs. 1 to 3 have supported the case of the prosecution as to the mode and manner of occurrence and the persons who had participated in the commission of these offences. It is evident from the site plan (Exbt. Ka-13) that in the abadi of village Krishni, there was a 'bagar' in which there were houses of PWs. 1 to 3, deceased Om Pal and others. Having regard to the topography of the place of occurrence described in detail by the High Court in the impugned judgment, the presence of PWs. 1 to 3 at the place of occurrence could not be ruled out. On the other hand, it was but natural for them to be there, as spoken to by them. PW-1 has stated in his evidence that a lantern was burning in the verandah of Hari Singh and that witnesses Ved Ram and Sukhbir had torches. He also stated about the medical examination of the injured and death of Om Pal and that he got F.I.R. written at Shahranpur hospital and thereafter he lodged the same at police station Rampur. Hari Singh, (PW-2) has also stated about the occurrence. He has mentioned the names of the appellants and the weapons possessed by them. He also stated that his father Kishan was beaten by the accused when he did not disclose the whereabouts of Om Pal. He has further stated that the appellant No. 2 Telu on being instigated by Dila, the appellant No. 1, fired a shot from country-made pistol causing injury to Om Pal who fell down and became unconscious. He also deposed that accused persons had caused injuries to him as well as PWs 1 to 3. The prosecution witnesses have stated about the availability of light of burning of lantern as well as the torches possessed by the two witnesses. The Investigating Officer actually examined the lantern and found that a lantern was hanging at place 'C' shown in the site plan. He also examined the torches of the witnesses and prepared memos in respect of the same. The prosecution witnesses have also deposed about the motive for the crime. It has come on record that there was litigation between accused Dila on the one hand and deceased Om Pal on the other relating to the land which Om Pal had purchased. The dispute also related to the crop and on that day before the occurrence, the appellant No. 1 Dila had actually threatened the deceased Om Pal. PW-1 has also stated that one year before the occurrence, there was an incident in which accused Telu and his mother were injured for which the deceased

- A** Om Pal and he himself were prosecuted. The High Court did not agree with the observation of the learned Sessions Judge that it was difficult to accept that Dila, the appellant No. 1, was not aggrieved and that persons related or interested in Om Pal could have named the accused persons on suspicion. For the reason that the motive was clearly established as there were several
- B** litigations between the parties, the dispute relating to the land was still pending before the revenue court and there were civil and criminal litigations. In such circumstances, the High Court found that the trial court was wrong in recording a finding that motive aspect was not proved and that the appellant Dila was not aggrieved with the deceased or that the accused persons had been named merely on the ground of suspicion. The learned Sessions Judge
- C** had doubted the presence of light at the scene of occurrence but the High Court did not agree with the same having regard to the evidence placed on record in this regard. A lantern was burning in the verandah outside the kothari of Hari Singh (PW-2). The Investigating Officer examined the lantern and marked the place where it was hanging, in the site plan. The fact of
- D** burning of lantern was mentioned in the F.I.R. as well as in the statements of witnesses. Further, it is in the evidence that the witnesses Sukhbir and Ved Prakash who had reached the scene of occurrence, had torches which they flashed. This source of light was also mentioned in the F.I.R. The Investigating Officer did examine the torches of these witnesses and prepared the memos in respect of the same. The eye-witnesses have also stated about the source
- E** of torch-light at the scene of occurrence. In view of this evidence, as rightly observed by the High Court, the trial court ought not to have disbelieved this evidence merely on the ground that the two witnesses Sukhbir and Ved Prakash were not injured. It was not necessary that every one of the witnesses should have been injured.

- F** With regard to the contradiction found by the trial court as regards the place where the deceased Om Pal was sleeping, the High Court has in the impugned judgment considered in sufficient detail and recorded that the so-called contradiction was not material.

- G** The High Court in the impugned judgment as regards participation of appellants in the crime, has observed thus:-

“However, as regards accused Dila and Telu, we do not find anything to throw any doubt regarding their participation in the crime. It appears that these two accused persons alongwith four others had committed

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the murder of Om Pal and caused injuries to three others. It appears that the learned Sessions Judge has been much influenced by the so called absence of any injury which could have been caused by a country made pistol and the alleged presence of an injury which could have been caused by a rifle, on the body of the deceased. The learned Sessions Judge has referred to the recovery of one used 12 bore cartridge and one live rifle cartridge at the scene of occurrence and thereafter, due to some unexplained reason, has come to the conclusion that there was every likelihood of use of a rifle on the spot. He has thereafter negatived the contention of the witnesses that Om Pal was hit by a country made pistol used by Telu. We are of the view that these observations by the Sessions Judge are the result of misreading of the evidence. The Investigating Officer found a 12 bore used cartridge as well as live rifle cartridge on the spot. It will thus appear that a 12 bore cartridge was fired. There is nothing to show that any of the assailants was armed with rifle or had used the same. The post mortem of Om Pal clearly and beyond doubt shows that Om Pal was not hit by a rifle cartridge but was shot by a cartridge which could have been fired from a country made pistol. The post mortem report shows that thirteen small pellets were recovered from the pleural cavity. Obviously these pellets could not have been fired from a rifle but could have been fired from a country made pistol. It appears that learned Sessions Judge did not consider the clinching evidence available on this point and so coming to a wrong conclusion, rejected the assertions made by the prosecution witnesses about the firing of the shot from country made pistol by accused Telu."

Thus, in our view, the High Court on proper analysis and objective reappraisal of evidence, keeping in view probabilities of the case, was right and justified in reversing the order of acquittal passed by the trial court so far it related to these appellants. It is not a case where High Court has interfered with the order of acquittal merely because it could take a different view. On the other hand, the High Court has shown how the reasons recorded by the trial court for acquittal were wrong and that the view taken by the trial court was not a reasonable view and it was opposed to weight of evidence. We see no reason or ground to interfere with the impugned order. Consequently, the appeal is dismissed. The appellants are at large on bail. They shall be taken into custody for serving the remaining part of the sentence.

- A** Responding to the last submission of the learned counsel for the appellants in regard to the appellant No. 1, Dila, being old person, we expect that the respondent-State will consider his case sympathetically as and when an application is made by him for commutation of sentence having regard to the relevant rules, keeping in view that he is more than 80 years old; the
- B** incident relates to the year 1979 and the peculiar facts and circumstance of this case.

N.J.

Appeal dismissed.