

KALYAN SINGH
v.
STATE OF MADHYA PRADESH

NOVEMBER 21, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Code of Criminal Procedure, 1973:

s. 378—Acquittal by Trial Judge—Reversed by High Court in appeal—Challenge to—Held: On facts, view of Trial Court cannot be said to be wholly unsustainable—As having regard to the fact situation, two views are possible, High Court should not have interfered with the judgment of acquittal passed by the Trial Judge—Penal Code, 1860—Section 302/34.

According to the prosecution, all the accused persons including Appellant surrounded the deceased whereafter Appellant gave an exhortation pursuant to which one of the other accused fired at the deceased resulting in his death.

The Trial Judge held that having regard to the enmity between the prosecution witnesses and the accused persons, benefit of doubt should be given to Appellant and that the prosecution witnesses were not reliable *vis-a-vis* the implication of Appellant. Accordingly he was acquitted. High Court, however, held that the findings of the Trial Judge were perverse and contrary to records and accordingly set aside the acquittal of Appellant. He was convicted under Section 302/34 IPC. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The High Court unfortunately did not notice that the Trial Judge analyzed the evidence of the said witnesses in great details and found inconsistencies therein. The High Court while dealing with the matter, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the Trial Judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the Appellate Court shall not ordinarily interfere with the judgment of acquittal. Even if the High Court reversed the judgment of acquittal recorded by the Trial Court,

- A it is incumbent on the High Court to arrive at the conclusion that no two views are possible. Having regard to the fact situation of the instant case, as two views are possible, the High Court should not have interfered with the judgment of acquittal passed by the Trial Judge. [251-H; 252-A-C]

- B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 819 of 2006.

From the final Judgment and Final Order dated 8-11-2005 of the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 236/1992.

- C Dr. Kailash Chand, Vijay pratap Singh and Lakhan Singh Chauhan for the Appellant.

Vishwajit Singh, Philemon Nongbri and Vibha Datta Makhija for the Respondent.

- D The following Order of the Court was delivered

ORDER

- E This appeal by the appellant herein arises out of a judgment dated 8.11.2005 passed by a Division Bench of the High Court of Madhya Pradesh whereby and whereunder the criminal appeal preferred by the State questioning an order of acquittal passed by the Trial Judge against three accused persons, namely, Gulab Singh, Ashok Kumar and Kalyan Singh, was allowed in part and the appellant herein was convicted for the alleged commission of offence under Section 302/34 of the Indian Penal Code. The High Court by reason of the said judgment, however, dismissed the appeal preferred by Budh Singh
- F who had been convicted by the learned Trial judge under Section 302 of the IPC.

- G The incident occurred at about 4.30 p.m. on 31.7.1989. The first informant Gyan Singh, who is the brother of the deceased, had gone to take bath at the well of one Dangal Singh Yadav. Allegedly Gyan Singh, who was also coming to the well for taking bath, found that his brother had been taking bath using soap on his body when Budh Singh armed with bore double barrel rifle, Kalyan Singh armed with 12 bore double barrel rifle, Ashok Yadav armed with Topidar rifle of Kalyan and Gulab and Dashrath armed with rifles reached the spot and surrounded the well. The appellant herein is said to have given an exhortation pursuant whereunto Budh fired at Durga Singh Rawat (the deceased)
- H

from behind resulting in his death. The learned Trial Judge disbelieved that part of the prosecution story whereby Kalyan Singh, Ashok Kumar and Gulab Singh were roped in, *inter alia* on the ground that Gyan Singh (PW-1) stated in his deposition that Kalyan Singh said: "hit sale main" "he should not escape", but the statement of Munna Lal (PW-2) is that Kalyan Singh said to Budh Singh: "Hit sale main", and thus there was contradiction between the statements of PW-1 and PW-2.

The learned Trial Judge opined that having regard to the enmity between the prosecution witnesses and the accused persons, benefit of doubt should be given to Kalyan Singh that he had given the exhortation. The learned Trial Judge thereafter discussed the evidence and the deposition of the prosecution witnesses and came to the conclusion that the same was not reliable *vis-à-vis* the implication of the said Kalyan Singh.

It was specifically noticed by the Trial Judge:

"It is the argument of learned counsel of the accused that in support of this evidence, prosecution examined Ram Prasad P.W.3, Jagdish Singh P.W.4, Sughar Singh P.W.5 and Santosh Singh P.W.6 but it is not the statement of none of these witnesses that either by Gyan Singh or Munnalal told them, that at the time of occurrence kalyan Singh said to Budh Singh that 'hit sale main, he should not escape'. Hence, Ramprasad P.W.3, Jadgdish P.W.4, Suughar Singh P.W.5 and Santosh Singh P.W.6 do not support this statement of Gyan Singh and Munnalal that Kalyan Singh said to Budh Singh that 'hit sale main, he should not escape'. By which is appears that Kalyan Singh was not present at the time of occurrence there."

The High Court, however, reversed the said findings on the premise that the findings of the learned Trial judge are perverse and contrary to records. The High Court did not interfere with the judgment of acquittal passed in favour of Gyan Singh and Ashok Kumar. The only ground which weighed with the High Court was the deposition of the witnesses to the effect that Kalyan Singh asked Budh Singh : "Hit Sale Ko, enemy should not escape".

The High Court unfortunately did not notice that the learned Trial Judge analysed the evidence of the said witnesses in great details and found inconsistencies therein. The learned Trial Judge stated , it will bear repetition to state, that he did not accept the prosecution case so far as Kalyan Singh is concerned as also on the ground that the depositions of the prosecution

A witnesses who were inimically disposed towards Kalyan Singh.

The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned Trial Judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the Appellate Court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case here a judgment of acquittal is in question, would not go into the evidences brought on records by the prosecution of by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the Trial Court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible.

We, therefore, having regard to the fact situation of the instant case, are of the opinion that as two views are possible, the High Court should not have interfered with the judgment of acquittal passed by the learned Sessions Judge. We, therefore, set aside the impugned judgment and allow this appeal. The appellant is in jail, he is directed to be released forthwith if not required in connection with any other case.

B.B.B.

Appeal allowed.