

ITEM NO.101

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1572/2007

ASHOK SINGH & ANR.

Appellant(s)

VERSUS

STATE OF ASSAM

Respondent(s)

(With Office Report)

Date: 18/09/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s)

Mr. Pravir Choudhary, Adv.

For Respondent(s)

Mr. Navnit Kumar, Adv.

M/s Corporate Law Group, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Criminal Appeal is allowed in terms of the signed order.

(VISHAL ANAND)

COURT MASTER

(INDU POKHRIYAL)

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1572/2007

ASHOK SINGH & ANR.

Appellant(s)

VERSUS

STATE OF ASSAM

Respondent(s)

O R D E R

The appellants were tried by the Court of Sessions at Golaghat for offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

By its Judgment and Order dated 29-8-1995, the Sessions Court acquitted the appellants.

Being aggrieved by the Order of acquittal, the State of Assam carried an appeal to the Gauhati High Court.

By the impugned Judgment, the Gauhati High Court reversed the order of acquittal and convicted the accused for offences punishable under Section 304 Part II read with Section 34 of the I.P.C. The appellants - accused were sentenced to four years rigorous imprisonment each and to pay a fine of Rs.5000/- each, in default, to undergo simple imprisonment for one month.

Being aggrieved by the said Judgment, the appellants are before us.

We have heard at considerable length learned counsel appearing for the appellants - accused. Learned counsel submitted that the High Court fell into a grave error in setting aside a well-reasoned order of acquittal passed by the Trial Court. Learned counsel submitted that the view taken by the Trial Court was a reasonably possible view and the High Court ought not to have interfered with it.

Learned counsel appearing for the State of Assam, on the other hand, submitted that no interference with the impugned order is necessary as the High Court has taken into account the cogent evidence adduced by the prosecution, particularly the evidence of the injured witness and rightly reversed the order of acquittal.

In our opinion, the High Court erred in reversing the order of acquittal. The Trial Court's order was indeed a very well-reasoned order and can by no stretch of imagination be characterized as a perverse order meriting interference by the High Court. The Trial Court while acquitting the accused gave the following reasons:-

(1) The independent witnesses, namely Binode Dutta and Babulal Nayak although appeared and claimed to have seen the occurrence have not supported the case of the prosecution.

(2) The evidence of PW-9 and PW-10 appear to be interested and chance witnesses. Their evidence has not been corroborated by other witnesses. The description of the assault by a *dao* on the person of the deceased has not been supported by any other witnesses. The story of the seizure of the lathi in presence of the witness no. 9 is also doubtful. This witness categorically stated that he did not put his signature on the seizure list.

(3) PW-5 is the injured, PW-7 and PW-11 are none else but the father and brother of PW-5. They posed themselves as eye witnesses to the incident. PW-5 made no mention of the presence of his brother PW-11 at the place of incident. But PW-11 on the other hand, claimed to be the eye witness to this incident. PW-5 did not state that accused Ram Piyari Singh was one of the assailants. By badly belying the evidence of PW-5, PW-7 has stated that he saw accused Ashok Singh dealt two blow on the person of his wife with two different weapon namely one lathi and one iron rod. The learned counsel for the defence has submitted that this story as projected by this witness is nothing but a travesty of truth. A man is not expected to start fighting with two weapon in such a situation.

(4) The medical evidence namely the evidence of PW-4 and PW-6 has completely belied the eye witness account of PW-5, PW-7, PW-9, PW-10 and PW-11.

(5) Some vital contradictions and material omissions in the statement of the witnesses before the Investigating Officer has been elicited from the evidence of the I.O. this has elaborately been discussed in the foregoing paras.

(6) The evidence of PW-3, PW-9 and PW-10 clearly indicated that there was an exchange of lathi blows between the accused Ashok Singh and the injured Raj Kishore Singh. This fact has been fortified by the Statement of the accused recorded in Section 313 Cr. P.C. to the effect that they were assaulted by witnesses namely, PW-5, PW-7, PW-11 and others. The injured Ashok Singh was also medically examined and a certificate of

the Doctor indicates that the injuries sustained by him was caused by blunt and sharp weapon.

(7) The prosecution did not explain the injuries sustained by the accused Ashok Singh.

(8) In the light of the aforesaid discussions and in the light of the decision of the Hon'ble Court and other Hon'ble High Courts, the prosecution has failed to prove the case beyond all reasonable doubt. As such, the accused persons namely Ashok Singh and Smt. Ram Piyari Singh are given a benefit of doubt. They are thus acquitted and set at liberty forthwith. The case record received from the Court of the learned Magistrate be sent back immediately. Seized articles, if any, be destroyed in due course of law."

The High Court while reversing the order of acquittal has not dealt with each of the loopholes or deficiencies in the prosecution case serially noted by the Trial Court which we have quoted here-in-above. To satisfy our conscience, we have gone through the evidence of all the 15 witnesses and we find that the Trial Court was justified in acquitting the accused. PW-5 Raj Kishna Singh is the injured witness and, therefore, the star witness of the prosecution. PW 5 stated in his evidence that while going to the market, he was stopped by appellant no.1 and he hit him on his head several times. When he shouted for help, his mother came and appellant no.1 assaulted her with a sword. Thereafter, his father and PW 11 Uma Kanta Singh came on the scene and then the accused fled from the scene of offence and his mother was shifted to the Hospital. It is pertinent to note that the evidence of other alleged eye-witnesses is not consistent with this evidence. It is also pertinent to note that PW-5 has not attributed any role to Appellant no.2.

PW-9 Mr. Gujurea Nayak who is stated to be an independent eye-witness has given a version which is not consistent with the version of PW-5. He stated that appellant no.1 and PW-5 were attacking each other with bamboo sticks. Appellant no.1 hit PW-5 and he fell down and at that time, the deceased came there running. Appellant no.1 hit her on her head and she fell down. Thereafter Appellant no. 2 hit the deceased with dao like object.

PW-10 Phatowa Nayak also claimed to be an eye-witness. He stated that on the date of incident, appellant no.1 and PW-5 were quarreling. He saw the quarrel when he was going for work. PW-5 fell down, the deceased came running, then appellant no.2 hit her with dao, due to which the deceased fell down. Thereafter she was taken to the Hospital. PW-11 who is the son of the deceased also claims to be an eye-witness. He stated that on the date of incident, when he was going along with PW-5 towards Golaghat Bazar, appellant no.1 armed with lathi and appellant no.2 armed with sword came there and they began to hit PW-5. When he shouted, the deceased came there running. She was beaten on her head and on her body by the appellants. He further stated that the deceased was hit on her leg by appellant no.2 with a sword. It is pertinent to note that PW-5 has made no reference to the presence of this witness. Similarly PW-7 has also not referred to the presence of this witness. PW-1, PW-3 and PW-12 the independent witnesses have not supported the prosecution case. Thus a reading of the evidence of the material prosecution witnesses shows that there are number of inconsistencies in their version.

PW 6 is Dr. Dharya Nath Bharali who has conducted the postmortem on the deceased. It is pertinent to note that Dr. Bharali stated in his evidence that the cause of death of the deceased was "shock and haemorrhage as a result of the injuries caused by blunt and heavy weapon." The prosecution case is not consistent and clear as to whether a dao or a sword was used by appellant no.2. In any case, the evidence of Dr. Bharali shows that dao or sword were not used at all because the injuries received by the deceased were stated to have been caused by blunt and heavy weapon. This circumstance makes a dent in the prosecution case.

In view of these several inconsistencies, we are of the opinion that the trial court has rightly acquitted the appellants. The High Court mis-directed itself in setting aside the well-reasoned order of acquittal without assigning any cogent reasons.

In the circumstances, the impugned order is set aside. The acquittal of the appellants is confirmed.

The Criminal Appeal is allowed in the afore-stated terms.

.....J  
(RANJANA PRAKASH DESAI)

.....J  
(N.V. RAMANA)

NEW DELHI;  
18TH SEPTEMBER, 2014.