

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION



Criminal Appeal No.400 OF 2018

JAIPAL

Appellant(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

With

Criminal Appeal No.399 of 2018

With

Criminal Appeal No.401 of 2018

O R D E R

Heard learned counsel appearing for the parties.

All the three appeals are filed against the common judgment wherein the appellants have been convicted for the major offence punishable under Section 302 read with Section 34 of the Indian penal Code, 1860 (hereinafter referred to as, 'the IPC') and therefore, sentenced for life imprisonment. The appellants have been arrayed as A6, A5 and A4 and charged under Sections 147, 148, 323, 307, 302, 452 and 506 of the IPC.

The case of the prosecution is that due to enmity which arose pursuant to a family dispute, six accused persons including the appellants armed with weapons

trespassed into the courtyard of PW1 and assaulted the family members resulting in homicide. For the said occurrence which happened on 08.05.2008, the trial court rendered an order of acquittal. On appeal, the High Court by the impugned order reversed the order of acquittal insofar as the appellants alone are concerned. Challenging the said conviction, the present appeals are before us.

Before the Trial Court, the prosecution examined 22 witnesses. All the eye witnesses relied upon by the prosecution - PW1, PW2, PW3 and PW4 - turned hostile. PW8 and PW13 being the witnesses to the recovery memo of *palkati* and spade also turned hostile. The Trial Court took into consideration the fact that PW1 who is the informant himself turned hostile and there are material contradictions in the evidence rendered by the other witnesses coupled with the discrepancy between Ex.K1 and Ex.K3 being the postmortem report and medical report respectively.

The High Court while overturning the order of the acquittal passed by the Trial court insofar as the appellants are concerned, primarily placed reliance upon the evidence of PW5, one amongst the injured witnesses.

As rightly submitted by learned counsel appearing for the appellants, the trial Court did take into consideration the evidence of PW5 along with PW10. While rejecting the testimony of the aforesaid two witnesses, the Trial Court placed reliance upon the contradiction between the depositions amongst themselves, apart from other witnesses. The medical evidence also did not lend any support the case as presented by the prosecution.

While reversing an order of acquittal, the Appellate Court has got power to re-appreciate the evidence. However, there has to be a specific finding that the reasoning adopted for such acquittal cannot sustain in the eye of law. On a perusal of the impugned judgment, we find that though the High Court found fault with the ultimate conclusion of the Trial Court, nonetheless did not go into the reasons assigned for doing so.

An order of acquittal creates double presumption and therefore, while reversing the decision the Appellate Court will have to take more care and satisfy itself that the said decision was a perverse one.

We have also perused the order and judgment of the Trial Court. Being the Court of Sessions it had the

opportunity of observing the demeanour of the witnesses. It has given its cogent reasoning for coming to its conclusion. Even the High Court eschewed the evidence of prosecution witnesses insofar as the other injured witnesses are concerned. While the law is quite settled that it is well open to the Court to sift the evidence of a witness, more caution is required to be undertaken when on the same basis some of the accused persons are acquitted. In the case on hand, the Trial Court after finding doubt over recovery did give a specific finding on the evidence adduced by the eye witnesses with reference to the nature of injuries suffered. In our considered view, the High Court under the impugned order did not undertake a proper exercise in overturning the order of acquittal rendered by the Trial Court furnishing adequate reasoning particularly when even the recovery was not proved and the time by which the deceased was brought either was dead or alive itself was in doubt.

In the light of the aforesaid discussion, we are inclined to set aside the order of conviction rendered against the appellants. Consequently, the judgment of the Trial Court stands restored and the appellants are acquitted.

The appeals are allowed accordingly. The appellants shall be released forthwith, if not required in any other case.

Pending applications shall stand disposed of.

.....J.
(M.M. SUNDRESH)

.....J.
(ARAVIND KUMAR)

NEW DELHI
NOVEMBER 29, 2023

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 SCRIMINAL APPEAL NO(S). 400/2018

JAIPAL

Appellant(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

WITH

Crl.A. No. 399/2018 (II-B)

Crl.A. No. 401/2018 (II-B)
(I.A.)

Date : 29-11-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE ARAVIND KUMARFor Appellant(s) Mr. Sudhir Kumar, Adv.
Ms. Sweta Rani, AOR
Ms. Ritika Khanna, Adv.
Mr. Samarth Agrawal, Adv.For Respondent(s) Mr. Jatinder Kumar Bhatia, AOR
Mr. Krishanam Mishra, Adv.
Mr. Param Kumar Mishra, Adv.

Ms. Filza Moonis, AORUPON hearing the counsel the Court made the following
O R D E RThe appeals are allowed in terms of the signed order which is
placed on the file.

The concluding paras of the order reads as under:

"In the light of the aforesaid discussion, we are
inclined to set aside the order of conviction rendered
against the appellants. Consequently, the judgment of
the Trial Court stands restored and the appellants are
acquitted.

The appeals are allowed accordingly. The appellants shall be released forthwith, if not required in any other case."

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)