

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 429 OF 2007

State of Rajasthan ...Appellant

Versus

Harchandi (dead) & Ors. ... Respondents

O R D E R

1. This appeal has been preferred against the judgment and order dated 20.9.2005 passed by the High Court of Rajasthan (Jaipur Bench) in Criminal Appeal No.1148 of 2002 reversing the judgment and order of conviction and sentence dated 5.8.2002 in Sessions Case Nos.37 of 2001 (83/1998) passed by the Additional Sessions Judge (Fast Track), Alwar.

2. Facts and circumstances giving rise to this case are:

A. That one Bhagwandas (deceased) and Chandrawati (PW.2) were ploughing their field, Harchandi and his sons, namely Inder, Raju, Brijendra and Lalaram and sons of Sarasmal Mev alongwith two other persons came over there on Eicher tractor of Jaggi Khan at 3.30 p.m. on 30.7.1998. Inder and Raju were armed with guns and both of them opened fire at Bhagwandas which hit him at the head and backside of the hand.

After

2

receiving the injuries, Bhagwandas fell down on the ground. At that stage, the other accused-respondents gave him lathi blows.

B. The son of Jaggi drove the tractor over Chandrawati (PW.2) who sustained injuries on her foot and knee. This incident had been witnessed by Mukesh

(informant), her elder brother Phool Singh (PW.4) and Birma (PW.9). Harchandi, Lalaram and Brijendra inflicted blows on the person of Phool Singh and fled away.

C. Bhagwandas, injured, was taken to Alwar Hospital, however, considering the gravity of injuries, he was referred to Jaipur Hospital.

D. The informant (PW.1) lodged the complaint at the Police Station MIA Alwar on the same day at 11 p.m. on the basis of which FIR No.255/98 was registered under Sections 147, 148, 323, 307 and 447 of Indian Penal Code (hereinafter called IPC) and investigation commenced. Bhagwandas expired on 31.7.1998 and thus, Section 302 IPC was added.

E. The autopsy on the dead body of Bhagwandas was conducted by Dr. Suman Dutta (PW.6) and in his opinion, the death occurred due to anti mortem skull and brain injuries.

F. During the investigation, the arms used in the crime were recovered at the disclosure statement of respondents-accused and on completion of the investigation, chargesheet was filed against 7 persons. During the trial, one accused, namely, Subha died. Hence, 6 persons faced trial.

G. After conclusion of the trial, the learned trial Court convicted accused Raju under Section 148 IPC and awarded rigorous imprisonment of one and a half year, under Section 323/149 IPC and awarded RI for six months, under Section 302 IPC to suffer life imprisonment and fine of Rs.5,000/-, in default to further suffer one year RI. The other 4 accused, namely, Inder, Harchandi, Brijendra and Hanif had been convicted under Sections 148, 323/149 and 302/149 IPC and awarded same punishments as in the case of

accused Raju.

3. Being aggrieved, the respondents-accused filed appeal before the High Court which has been allowed vide impugned judgment and order dated 20.9.2005 setting aside the conviction of the respondents-accused. Hence, this appeal.

4. We have heard learned counsel for the parties and perused the record. The question of interference against the order of acquittal is permissible only in exceptional circumstances wherein there are compelling circumstances and the judgment in appeal is found to be perverse, the appellant court can interfere with

4

the order of the acquittal. The appellant court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: State of Rajasthan v. Talevar & Anr., AIR 2011 SC 2271; and State of U.P. v. Mohd. Iqram & Anr., AIR 2011 SC 2296).

5. The High Court after re-appreciating the entire evidence in appeal reached the conclusion that Bhagwandas sustained injuries which were sufficient to cause death and the death was due to anti mortem skull and brain injuries. The High Court did not find the deposition of the alleged eye-witnesses trust worthy as none of the said witnesses could depose as what injuries had been caused by which accused. Chandrawati (PW.2) also suffered injuries but the same had been superficial and no doctor was examined to

prove her injuries. She has deposed that in spite of the fact that she had been pushed by the tractor she remained standing. Her statement was not trust worthy. She has further deposed that Hanif was having a lathi but did not beat any body. She has admitted in the cross-examination that when the police party reached in the village for investigation, she did not meet any member of the said party. As per FIR Mukesh (PW.1), Uganta (PW.3), Phool Singh (PW.4) and Birma (PW.9) were not the eye-witnesses and had reached the place of occurrence after the incident was over. None of the alleged witnesses could point out as who had caused the gun injuries. As per the FSL reports Exts.PW.27 and PW.28, the country made guns recovered in the incident were serviceable but the time of their last firing could not be ascertained. More so, the cartridge case recovered from the place of occurrence could not be fired from the guns recovered. The Rojnamcha number had been changed by over writing in the FIR. More so, there had been most material contradictions in the depositions of witnesses in various respects including as to whether there was a light facility in the house of Smt. Chandrawati (PW.2) when Bhagwandas, I.O. arrived for investigation.

The injuries suffered by the complainant party except Bhagwandas (deceased) were found to be managed as the reports of any of those injured witnesses could not be proved at the trial by any Doctor. Even otherwise, the injuries were found to be superficial.

6. In view of the above, we do not see any cogent reason to interfere with the order of acquittal. The appeal lacks merit and it is accordingly dismissed.

(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

New Delhi,
May 15, 2012

ITEM NO.108

Court No.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 429 OF 2007

STATE OF RAJASTHAN

Appellant (s)

VERSUS

HARCHANDI (DEAD) & ORS.

Respondent(s)

(With office report)

Date: 15/05/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Dr. Manish Singhvi, AAG
Mr. Milind Kumar, Adv.

For Respondent(s) Mr. Atishi Dipankar, Adv.

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

The appeal lacks merit and is dismissed in
terms of the signed order.

(DEEPAK MANSUKHANI)
Court Master

(M.S. NEGI)
Court Master

(The signed order is placed on the file