



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2094 OF 2010

RAMESHAPPELLANT(S)

VERSUS

STATE OF UTTARAKHAND
.....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1095 OF 2010

CRIMINAL APPEAL NO. 2095 OF 2010

AND

CRIMINAL APPEAL NO. 2221 OF 2010

J U D G M E N T

A.K. SIKRI, J.

After hearing these appeals, the same were allowed with the following order:

“The parties have completed their arguments. It is 03.58 p.m. Therefore, it is not possible to dictate the judgment in full.

We are allowing these appeals. The detailed judgment shall follow.

This short order is passed because of the reason that two of the appellants namely Bhola and Khalil are in jail. We direct that the

appellants namely Bhola and Khalil shall be released on bail forthwith, if not required in any other case.”

- 2) We hereby give our reasons in support of the aforesaid conclusion.
- 3) In these four appeals, appellants were accused, along with two more persons for committing offence punishable under Section 302 read with Section 34. The appellants are Ramesh, Bhola, Paramjeet Singh and Khalil. Accused Paramjeet Singh and Ramesh were also charged under Section 25 of the Arms Act. Respective charges were framed against the persons under the aforesaid provisions. The accused persons pleaded innocence. Prosecution led its evidence. The accused persons did not examine any witness in defence but in the statements recorded under Section 313 of Code of Criminal Procedure (for short, 'Cr.P.C.')
- they denied the charges levelled against them. Their version was that of total denial and false implication. The learned Additional Sessions Judge/Special Judge, Nainital, vide judgment dated 28th April, 1997 acquitted all the accused persons of all the charges, as according to the trial court, the prosecution had totally failed to prove the case against the accused persons. Specific finding was recorded to the effect that it was a case of no evidence relating to blind murder which had taken place in the midnight. Feeling aggrieved by this judgment of acquittal, the State Government preferred appeal in the High Court. The High Court has, vide impugned judgment dated 7th April, 2010 overturned the verdict of the trial court, holding that the entire evidence on record leads

to the conclusion that these four persons had committed the offence with which they were charged. They are, accordingly, convicted for commission of offence punishable under Section 302 read with Section 34 of Indian Penal Code (for short, 'IPC') and sentenced to undergo imprisonment for life. A fine of Rs. 5000/- on each of these accused persons has also been imposed with further stipulation that in default of payment of fine the convicted persons would undergo imprisonment for further period of six months. Paramjeet and Ramesh have also been convicted under the Arms Act and sentenced to undergo imprisonment for six months each for this offence.

- 4) To recaptulate the prosecution case in brief, it alleged that one Birendra Majumdar (PW-2), who was the servant of deceased Manoharlal and his wife Hardeep Kaur, was coming from the sugarcane field owned by Manoharlal at about 5 p.m. on 25th May, 1995. At that time, when he reached near the tubewell of the co-accused Birsa Singh(PW-2), saw that accused Birsa Singh along with his son Paramjeet and two other co-accused Bhola and Khalil, were conspiring together. As they were talking loudly, he could hear their conversation. According to PW-2, Birsa Singh allegedly told Bhola and Khalil that work had to be done in the night itself and the payment shall be received by them after a week. After hearing this conversation, PW-2 went to the house of Manoharlal. However, after reaching there, he could see that three guests were also

sitting with him. Therefore, he did not disclose about the conspiracy to him. Thereafter, he completed his daily routine work, being the servant of Manoharlal and after serving meal to them, went to sleep in his cottage in the farm.

- 5) As per the prosecution, on the intervening night of 25th/26th May, 1995, Manoharlal (victim) and his wife Hardeep Kaur (victim) were sleeping in the courtyard of their farmhouse. So also according to PW-2, who is the servant of Manoharlal, he was sleeping in his cottage. According to PW-2, he got up in the night at about 12 p.m. on hearing a sound of gunfire and immediately he rushed towards the farmhouse of Manoharlal. When he reached near the spot, he could see that Paramjeet and Ramesh, nephew of Birsa Singh were armed with countrymade pistols each, whereas co-accused Khalil and Bhola were armed with Patals (a sharp edged weapon). According to PW-2, the co-accused Khalil and Bhola gave blows of Patals, causing death of the said two victims and this act was seen by himself. According to this witness, at that time the co-accused Paramjeet saw him at the place of occurrence and threatened him not to disclose the incident to anybody, otherwise he has to face the dire consequences. Therefore, he came back to his cottage and did not disclose about the incident to anybody. At the relevant time, his wife and children were also present in the cottage. According to him, after the incident was over he came back to his cottage and on the next day

morning went to the Laxmi Rice Mills and told Ram Prakash (PW-1) who was the Watchman of the Laxmi Rice Mills to inform about the incident to the Police Station Bazpur. Accordingly, a telephonic message was given to the Police Station Bajpur on 26th May, 1995 at about 5.40 a.m. by PW-1 who was the Watchman of Laxmi Rice Mills that Manoharlal and his wife Hardeep Kaur had been murdered by 'unknown persons' while causing gunshot injuries and injuries of sharp edged weapon. Accordingly, this information was recorded in the General Diary/Exh. KA-5 on 26th May, 1995 at 5.40 am by Bajpur Police Station. However, surprisingly, the names of any of the assailants were not disclosed by Ram Prakash (PW-1) to the police. The Police Officers visited the spot. The dead bodies of Manoharlal and Hardeep Kaur were taken in custody by the police and the inquest reports of both the bodies were prepared on the same date. However, surprisingly, in the inquest report nothing was recovered besides the dead bodies.

- 6) As per the prosecution, on the date of incident Janak Kumar (PW-3), who was the resident of Indore and is son of Hardeep Kaur's brother was also allegedly sleeping inside the room adjoining the courtyard. He had allegedly come to visit his Buva/Hardeep Kaur on that very day in the evening. According to this witness, his servant Abdul Hakim had also accompanied him from Indore to Badripur. So also one Harnam Singh from Jalandhar had also come there. After their dinner, they were

sleeping in the adjoining room. Electricity bulb and tube-light were emitting light in the courtyard. In the midnight, PW-3 woke up after hearing some noise and he saw from the window of his room that the co-accused Paramjeet Singh, fired at victim Manohar Lal while appellant Ramesh fired at Hardeep Kaur with their respective countrymade pistols. Meanwhile accused Bhola and Khalil gave one 'Patal' blow each to Hardeep Kaur and Manoharlal respectively. Further, he was not able to see the faces of assailants properly. On receiving the injuries, both the victims died at the spot. Thereafter, all the accused left the spot by giving threats that no one should raise any noises and disclose anything to anyone otherwise they have to face the dire consequences. According to PW-3, he fell unconscious thereafter and, therefore, could not disclose about the incident to anybody.

- 7) Thereafter, the dead bodies of Manoharlal and Hardeep Kaur were sent for postmortem. The copies of Postmortem Reports of the body of Manoharlal came to be exhibited as Exh. KA-2 and the postmortem report of the body of Hardeep Kaur came to be exhibited as Exh. KA-3.
- 8) The prosecution also alleged that at 11.40 am on 26th May, 1995, i.e., the next day, the dog squad arrived at the spot and the dog named, 'Sultan' led the squad to a godown where accused Paramjeet and 3-4 other persons were allegedly sitting. On this basis, Paramjeet and one other person named Suresh were arrested. Another accused person,

Ramesh, was also arrested on that date at 6.45 pm and one countrymade pistol from Paramjeet and Ramesh came to be recovered on their disclosure statement recorded under Section 27 of the Indian Evidence Act. That was the reason for implicating these two persons, Paramjeet and Ramesh, under Section 25 of the Arms Act as well. On the basis of further investigation, Khalil, Bholu and Birsa Singh were also arrested. It may be mentioned at this stage that insofar as Birsa Singh is concerned, charge against him was for offence punishable under Section 120B, IPC. He was, however, acquitted by the trial court and this acquittal has been upheld by the High Court as well.

- 9) As pointed above, the learned Additional Sessions Judge acquitted all the accused persons which has been reversed by the High Court. Apart from PW-2 and PW-3, the nature of whose deposition has been noticed above, six more witnesses had appeared on behalf of the prosecution. PW-1 is one Ram Prakash, who gave telephonic information to the Police Station has been on the basis of which entry was registered in General Diary. PW-4 is Virendetr Pal Singh who had taken dead bodies to mortuary. Rajendra Shukla (PW-5) was the dog master. Dr. Surender Singh (PW-6) had conducted the postmortem, Vijay Kumar, son of the deceased persons had appeared as PW-7 whereas Investigating Officer gave his testimony as PW-8. It can also be discerned from the discussion recorded above that main witnesses are PW-2 and PW-3.

PW-2 is the servant of victim who has appeared as eye-witness. PW-3 is the nephew of deceased Hardeep Kaur, who is also, allegedly, an eye-witness.

- 10) A perusal of the judgment of the trial court would reveal that the trial court did not accept the credit worthiness of the statements of PW-2 as well as PW-3. It was held by the learned Session Judge that according to this witness, when he was passing from the tubewell of Birsa Singh, Paramjeet, Bholi and Khalil were conspiring together. According to him, Birsa Singh told rest of the three persons that 'work must be done in the night itself and they shall be paid for the same in the next week'. However, very surprisingly, despite that fact that this witness claims to have heard the conspiracy, preferred to keep mum and did not disclose about the incident to Manoharlal who was his master. Therefore, this is very unnatural conduct of this so claimed eye-witness and creates doubt about the credibility of his version about happening of incident and, accordingly, his testimony was rightly disbelieved by the learned Sessions Judge. According to the learned Sessions Judge, no satisfactory explanation was coming from the deposition of PW-2, Birendra Majumdar, as to why he did not disclose about the alleged conspiracy to his Master. Therefore, PW-2, Birendra was acting against the natural conduct and according to his evidence after serving the meal to his master and guests, he went to his cottage to sleep which appears

to be unbelievable.

- 11) The Additional Sessions Judge also held that even if the alleged hatching of conspiracy to kill victims was considered to be right, still it was unbelievable. Because it is highly unbelievable for anybody to conspire together to kill somebody in an open public place and that too in such a loud voice that it can be heard by the person passing thereby. According to the learned Sessions Judge, the conspiracy has to be in whisper or in secret so that it should not come to the knowledge of others. However, according to PW-2, he could hear the same while passing from the tubewell of Birsa Singh. Therefore, the version of the PW-2 about plotting of conspiracy appears to be unnatural, exaggerated and was rightly discarded by the learned Sessions Judge.
- 12) It is pertinent to mention that PW-2 admitted in his cross-examination that he was in Rudrapur on the date of incident as his brother's son was sick. Thus, he admitted his absence from his workplace for 17 days prior to the incident. On that basis, the very presence of Birendra Majumdar at the place of incident was found to be doubtful.
- 13) The learned Additional Sessions Judge, by drawing the sketch map of the incident, further held that even considering the distance between the spot and the cottage of PW-2, the testimony of PW-2 appeared very improbable. As per the evidence of PW-2, he was sleeping in his cottage at the time of incident. He woke up by hearing the sound of two

gun fires and thereafter he went to the place of incident and saw the occurrence standing behind a wall of the Farm House of Manoharlal. According to the learned Sessions Judge, considering the distance between the spot and the cottage of Birendra, it was quite clear that the incident might have been over when he reached at the spot. However, PW-2 stated in his evidence that when he came to the spot he could see that appellant-Ramesh and co-accused Paramjeet were carrying countrymade pistols in their hands while co-accused Khalil and Bhola gave blows of Patal causing death of the said two victims and the said act was seen by himself. However, pertinently, there is only one blow each of Patal on the dead body of Manoharlal and his wife Hardeep Kaur. Therefore, on this count also the learned Sessions Judge raised the doubt about the witnessing of the incident by PW-2.

- 14) Another reasons for discarding the testimony of PW-2 was his unnatural conduct even after the incident. The incident had occurred at about 12 O'clock in the midnight. However, surprisingly though he admits that Janak Kumar-PW-3 was present in the house of deceased Manoharlal, both of them kept quiet till the next morning. So also, it appears to be unnatural that PW-2 instead of disclosing about the incident to the Police, preferred to inform about the same to PW-1, Ram Prakash, who was the Watchman of Laxmi Rice Mills and in turn Ram Prakash informed the police about the incident. More importantly, PW-1 himself

admitted that PW-2 did not disclose him the names of the assailants. Instead, PW-2 had categorically told PW-1 that he had not seen any of the assailants. Insofar as PW-3 is concerned, learned Sessions Judge disbelieved his deposition as well. He found that PW-3 was nephew of deceased Hardeep Kaur. As per his own testimony that he saw the incident, he was inside the room where he was sleeping, he had also accepted that he became unconscious after he saw the incident and that he did not even come out of the house. Further, his testimony was found to be full of exaggeration, contradictions and omissions. The learned Sessions Judge concluded that the very presence of PW-3 at the spot on the date of incident was highly improbable. Interestingly, according to this witness when he peeped out of the window by hearing the noise of gun shot, he could not see the faces of the co-accused Khalil and Bhola. Further, he had not seen them prior to the incident. From this, the learned Sessions Judge inferred that if such was the situation and if he could not see the faces of co-accused Khalil and Bhola, it was obvious that he might not have even seen the faces of the Ramesh and Paramjeet as well. Further, very surprisingly, Janak Kumar, PW-3, has admitted in his cross-examination that he cannot say whether appellant Ramesh and co-accused Paramjeet were amongst the assailants who caused the death of two victims as all the assailants were at one spot and their faces could not be seen by him.

- 15) After going through the testimony of these witnesses on record, we find that the analysis carried out by the Sessions Judge was in right perspective. The view taken by the Sessions Court cannot be treated as perverse. This was a plausible and possible view. In fact, it appears to be the correct view. We may add that record also shows that when inquest report was prepared, both PW-2 and PW-3 were not present at the spot. They were not present even when the dog squad had arrived. Another stange factor is that as per the prosecution, dog 'Sultan' had led the squad to a godown where Paramjeet and 3-4 more persons were sitting. However, it is not explained as to how only Paramjeet and Suresh were arrested and on what basis, other persons sitting there were not arrested. It is also not clear as to how Suresh was arrested when no such person is made accused. We, therefore, find that the prosecution had failed to prove the guilt beyond reasonable doubts.
- 16) In a case like this when the trial court acquitted the accused persons of their charges, the High Court could not have reversed the finding merely on the basis that other view, as recorded by the High Court, appeared to it to be a plausible view. Such an approach by the High Court, against the judgment of the acquittal, is impermissible. In this context, we may usefully refer to the case of ***Kalyan & Ors. v. State of U.P.***¹ wherein it was held:

¹ (2001) 9 SCC 632

“15. ...The view taken by the trial court could have been disturbed only if there were compelling reasons. We do not find any compelling reason noticed by the High Court while setting aside the order of acquittal.

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18. Even if another view regarding the occurrence was possible, as taken by the High Court, the same could not be made a basis for setting aside the order of the trial court in view of the settled position of law on the point.

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20. Under the circumstances, the appeal is allowed by setting aside the judgment of the High Court convicting the accused persons and sentencing them to various imprisonments including life imprisonment. We uphold the order of acquittal passed by the trial court in favour of the appellants....”

- 17) In another judgment in the case of **Basappa v. State of Karnataka**², this Court noticed plethora of judgments where this very principle had been adopted, as can be seen from the following discussion therefrom:

“11. In *Bhim Singh v. State of Haryana* [(2002) 10 SCC 461 : 2003 SCC (Cri) 1469] , it has been clarified that interference by the appellate court against an order of acquittal would be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take.

12. In *Kallu v. State of M.P.* [(2006) 10 SCC 313 : (2006) 3 SCC (Cri) 546] , it has been held by this Court that if the view taken by the trial court is a plausible view, the High Court will not be justified in reversing it merely because a different view is possible...

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14. In *Ganpat v. State of Haryana* [(2010) 12 SCC 59 : (2011) 1 SCC (Cri) 309] , at para 15, some of the above principles have been restated. To quote: (SCC p. 62)

² (2014) 5 SCC 154

“15. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:...

(iv) An order of acquittal is to be interfered with only when there are ‘compelling and substantial reasons’ for doing so. If the order is ‘clearly unreasonable’, it is a compelling reason for interference.

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17. ...It is not the stand of the High Court that there had been some miscarriage of justice in the way the trial court has appreciated the evidence. On the contrary, it is the only stand of the High Court that on the available evidence, another view is also reasonably possible in the sense that the appellant-accused could have been convicted. In such circumstances, the High Court was not justified in reversing the acquittal...

18. The appeal is allowed. The impugned judgment [*State of Karnataka v. Basappa*, Criminal Appeal No. 2139 of 2005, decided on 15-11-2010 (KAR)] is set aside and that of the trial court is restored.”

- 18) In the entire judgment rendered by the High Court, there is not even a whisper as to how the view taken by the trial court was perverse or improbable. Insofar as, testimony of PW-2 is concerned, the High Court has noted that it was discredited mainly on the ground that PW-2 was employed by Manoharlal and, thereafter, with his son Vijay Kumar, it cannot be a ground for rejecting testimony of a witness. However, that was not the only reason given by the trial court. As already noticed above, the trial court analysed the deposition of PW-2 threadbare and found various loopholes and contradictions therein coming to conclusion that his testimony was unreliable. Same is the position in respect of PW-3. Curiously, as per the High Court ‘eye-witness account is more

probable than the arguments raised by the defence' and on that ground 'more probable' version is believed. Such an approach is clearly erroneous inasmuch as prosecution is supposed to prove the guilt beyond reasonable doubt, by leading credible evidence and conviction cannot be on the basis of probabilities.

- 19) For all these reasons, we are of the view that the judgment of the High Court is unreasonable. Accordingly, these appeals are allowed and the appellants are acquitted of the charges.

.....J.
(A.K. SIKRI)

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

**NEW DELHI;
JULY 14, 2016**

ITEM NO.102

COURT NO.12

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). 2094/2010

RAMESH

Appellant(s)

VERSUS

STATE OF UTTARKHAND
(with office report)

Respondent(s)

WITH

Crl.A. No. 1095/2010, (Office Report), Crl.A. No. 2095/2010
Office Report) & Crl.A. No. 2221/2010
Office Report)

Date : 14/07/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE N.V. RAMANAFor Appellant(s) Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Anagha S. Desai, Adv.
Mr. Mithilesh Kumar, Adv.
Mr. Akash Kadade, Adv.
Ms. Chinmay, Adv.For Respondent(s) Mr. Rahul Kaushik, Adv.
Ms. Bhuvneshwari Pathak, Adv.Ms. Rajni, Adv.
Mr. Hininder Lal, Adv.Mr. Jatinder Kumar Bhatia, Adv.
Mr. Tanmey Aggarwal, Adv.

Mr. Abhishek Atrey, Adv.

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

The parties have completed their arguments. It is 03.58 p.m.
Therefore, it is not possible to dictate the judgment in full.

We are allowing these appeals. The detailed judgment shall

follow.

This short order is passed because of the reason that two of the appellants namely Bholā and Khalil are in jail. We direct that the appellants namely Bholā and Khalil shall be released on bail forthwith, if not required in any other case

(Ashwani Thakur)
COURT MASTER

(Tapan Kr. Chakraborty)
COURT MASTER

ITEM NO.102/1

COURT NO.12

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). 2094/2010

RAMESH

Appellant(s)

VERSUS

STATE OF UTTARKHAND
(with office report)

Respondent(s)

WITH

Crl.A. No. 1095/2010, (Office Report), Crl.A. No. 2095/2010
Office Report) & Crl.A. No. 2221/2010
Office Report)

Date : 14/07/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Anagha S. Desai, Adv.
Mr. Mithilesh Kumar, Adv.
Mr. Akash Kadade, Adv.
Ms. Chinmay, Adv.

For Respondent(s) Mr. Rahul Kaushik, Adv.
Ms. Bhuvneshwari Pathak, Adv.

Ms. Rajni, Adv.
Mr. Hininder Lal, Adv.

Mr. Jatinder Kumar Bhatia, Adv.
Mr. Tanmey Aggarwal, Adv.

Mr. Abhishek Atrey, Adv.

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

The appeals are allowed in terms of non-reportable signed judgment.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Signed non-reportable judgment is placed on the file)