

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S).1552/2010

HALKE RAM & ANR.

APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH

RESPONDENT(S)

O R D E R

This appeal under Section 379 of Code of Criminal Procedure, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellant Jurisdiction) Amendment Act, 1972, is directed against the judgment and order dated 20/08/2009 passed by the High Court of Madhya Pradesh Bench at Gwalior in Criminal Appeal No. 223/1998. By the Judgment and Order under Appeal, the High Court reversed the judgment and order of acquittal passed by the Trial Court and convicted the present appellants for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 and sentenced them to life imprisonment.

The crime in the present case was registered pursuant to F.I.R. No.102/95 dated 30.04.1995 with Police Station city Fatak, Dehat, District Vidisha pursuant to reporting by one Dhan Singh (PW-1). The said Dhan Singh reported that in the morning of 30.04.1995 at about 8:00 A.M., his father Aman Singh was assaulted

by five persons, namely, Ganesh Ram having Kulhari, Halke having farsa, Ballu having stick, Prabhu Khatik having iron rod and one more unnamed person in front of the house of one Kamla Harijan. According to his reporting, Ganesha Ram inflicted blow on the leg, Halke Ram inflicted farsa blow on the head and right hand of his father while Prabhu Khatik and the unnamed person also assaulted him. It was stated that the informant ran to rescue but he was kept at bay by the accused. According to him, the incident in question was witnessed by his mother Kapoori Bai(PW-4), Shanti Bai wife of said Kamla Chamar in front of whose house the incident had occurred, his own sister Radha Bai and wife Lakshmi Bai. The First Information Report further stated that he had put the dead body of his father in a truck and had come to lodge the report. After registering the crime, the investigation was undertaken by PW-8(P.P. Gautam). The investigating officer conducted inquest Panchnama Ex.P-4 and thereafter made over the body for post mortem examination which was conducted by PW-4(Dr. R.K. Nigam). According to post mortem report, following injuries were found on the person of the deceased:

1) One abrasion left elbow posterior lateral aspect, size 2cm x 1cm, Black.

2) One abrasion left FA middle third posterior side, size 1cm x 0.1cm.

3) One incised wound over left frontal region oblique, 4cm x 0.5 cm x scalp deep.

4) Fracture humerous with incised wound right arm size 3cm x 1cm x 2cm, oblique.

5) An incised wound over right FA posterior medial aspect, size 1.5cm x 0.5cm x 0.5cm

6) One incised wound over right by lower third lateral aspect, size 3cm x 0.5cm x 0.5cm.

7) Depressed fracture on skull, left parietal bone.

All injuries were ante-mortem in nature.

During investigation, statements of Shanti bai, wife of Said Kamla Chamar, Lakshmi Bai sister of informant, Dhan Singh, Radha Bai, sister of informant Dhan Singh, Kapoori Bai and others were recorded. After completing investigation, five persons were sent up for Trial and were tried in Sessions Case No. 110/95 by Sessions Judge, Vidisha.

The prosecution principally relied upon the eye-witness account which was unfolded through testimony of PW-1 Dhan Singh-informant and PW-4 his mother Kapoori Bai. The prosecution also examined PW-5 Shanti Bai who turned hostile and did not support the case of prosecution. However, Lakshi Bai and Radha Bai, though cited his witnesses in the charge sheet were not examined by the prosecution.

After considering the entirety of the matter and evidence on record, the Trial Court found that the prosecution had completely failed to establish its case and it acquitted all five accused of the charges levelled against them, namely, for the offences

punishable under Sections 148, 302 read with 149 Indian Penal Code.

The Order of acquittal rendered by the Trial Court principally rests on:

1) The prosecution had failed to establish that the incident had occurred at about 8:00 A.M. on 30.04.1995 as alleged.

For arriving at this conclusion, the Trial Court relied inter alia on the testimony of PW-7 (Dr. R.K. Nigam) and the fact that undigested food was found in the intestines of the deceased at the time of post mortem examination.

2) It also found that the distance between the place where the incident was said to have occurred and the house of the deceased from where PW-4, Kapoori Bai is said to have witnessed the incident was about 650 feet. The Trial Court gave benefit of doubt on the aforesaid two counts and acquitted all the accused of the charges levelled at this time.

In the appeal against acquitted as aforesaid, to the extent it concerned the present appellants, it was accepted by the High Court. The High Court affirmed the view and confirmed the acquittal in so far as the other three accused are concerned but found that the prosecution had been able to establish its case against the present appellants, namely, Halke Ram and Ganesh Ram. The High Court convicted and sentenced the present appellants for the offence punishable under section 302 read with 34 which view is presently under appeal before us.

It is well settled that while dealing with an appeal against

acquittal, the Appellate Court must be extremely cautious and very slow in interference. It has further been laid down by this Court that the presumption of innocence which is the basic principle of Criminal jurisprudence gets further strengthened and established by an order of acquittal which must not be readily and easily disturbed. While dealing with an appeal against the acquittal the reasons that weighed with the Trial Court while rendering a judgment of acquittal must be gone into by the High Court and dealt with. It is only and only if those reasons are found to be completely unsustainable that the case for interference by the High Court would be made out.

With the assistance of learned counsel, we have gone through the judgment under appeal. The High Court has not dealt with the reasons which weighed with the Trial Court but has generally considered the matter from the stand point of eye-witness account and whether the eye-witness account stands materially corroborated with the medical evidence on record or not. Be that as it may, we have independently considered the entirety of the matter since the present appeal is both on facts as well as in law.

Apart from those two reasons which weighed with the Trial Court, in our view following circumstances are also crucial:

(a) According to the prosecution, the incident in question had occurred in the morning of 30.04.1995 and was witnessed by PW-1 who immediately arrived at the scene of occurrence.

It has come in the testimony of PW-1 that on the day in

question, there was a marriage in the adjoining village on account of which most of the villagers had gone and were not available. He further stated that it was with great difficulty that he could lift the dead body of his father and get it on a truck to be brought before the Police. If that be so, in normal circumstances, the clothes of the person would certainly be having blood stains. The record does not indicate that such blood stained clothes were actually seized and produced on record. This has to be seen in the light of the fact that the Trial Court did not accept the case of prosecution that the incident in question occurred in the morning of 30.04.1995 but it actually happened on the previous day.

(2) Leaving aside the fact that wife of Kamla Chamar who was examined as PW-5 did not support the case of prosecution, two ladies from the house of the deceased who were cited as witnesses were also not examined by the prosecution. No reason is available on record as to why Lakshmi Bai and Radha Bai were not examined by the prosecution. They were cited as witnesses and were associated with test identification parade. Non-examination of such persons, who according to the prosecution were readily available and had witnessed the occurrence, would certainly be a factor in favour of the accused.

In the totality of these circumstances, in our considered view, the accused are entitled to benefit of doubt.

We, therefore, allow this appeal, set aside the judgment and order under appeal and acquit the appellants' of the charges

levelled against them.

The record indicates that the appellants are undergoing sentence. They shall be released forthwith, unless their custody is required in connection with any other crime or proceedings.

A copy of this order shall be immediately transmitted to the jail in question for appropriate action.

.....J.

(UDAY UMESH LALIT)

.....J.

(DEEPAK GUPTA)

NEW DELHI
JUNE 15, 2018

ITEM NO.101

COURT NO.5

SECTION II-A

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). 1552/2010

HALKE RAM & ANR.

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 15-06-2018 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE DEEPAK GUPTA
(VACATION BENCH)

For Appellant(s) Ms. Archana Pathak Dave, AOR
Mr. Rohan Sharma, Adv.

For Respondent(s) Ms. Bansuri Swaraj, Adv.
Mr. Gagan Narang, Adv.
Ms. Swrupama Chaturvedi, Adv.
Mr. B.N. Dubey, Adv.

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

The appeal is allowed and the judgment of the High Court is set aside.

The appellants shall be released forthwith unless their custody is required in connection with any other crime or proceedings.

Pending application, if any, stands disposed of.

(SONALI SAUND)
SENIOR PERSONAL ASSISTANT

(JAGDISH CHANDER)
COURT MASTER

(Signed order is placed on the file)