

1[

Crl.A.No. 1137 OF 2000
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
ITEM No.103 Court No. 11 SECTION IIA

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. 1137/2000@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

Gokul & Ors. ... Appellant (s)

VERSUS

State of Madhya Pradesh ... Respondent (s)
(With appln. for exemption from filing O.T. and
with office report)

Date : 27/02/2002 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.P.SETHI
HON'BLE MR. JUSTICE K.G.BALAKRISHNAN

For Appellant (s) Mr. S.B.Sanyal, Sr.Adv.
Mr. Prakash Shrivastava, Adv.
Mr. R.C.Asthana, Adv.

For Respondent (s) Ms. Vibha Dutta Makhija, Adv.
Ms. Bharti Tyagi, Adv.
Mr. Satish K.Agnihotri, Adv.

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

L.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Mr. S.B.Sanyal, learned senior counsel for the appellants started his arguments at 2.00 p.m. and concluded at 2.50 p.m. Thereafter, Ms. Vibha Dutta Makhija, learned counsel for the respondent-State argued till 3.05 p.m.

The appeal insofar as it relates to Gokul and Pritam is dismissed. The appellants, namely, Gangaram, Shivlal, Komal and Babulal are acquitted and directed to be set at liberty forthwith unless required in some other case.

The appeal is partly allowed in terms of the signed order.

.SP1
Anita (V.P.Tyagi)
Court Master

(Signed order is placed on the file.)

.PA
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

occurrence were probable, the High Court was not justified in disturbing the findings returned by the trial court. There is no denial of the fact that under the normal circumstances, the High Court would not disturb the finding of fact, if the view taken by the trial court is found to be probable but if the conclusions arrived at by the said court are found to be erroneous or based upon inadmissible evidence or excluding the evidence which was otherwise, admissible, or based on surmises or conjectures, it is the duty cast upon the high court to intervene as the mandate of law is to undo miscarriage of justice and not to defeat it under the cloak of technicalities.

In the instant case, the trial court ignored the statement of PW-12 on the assumption that his statement was contradictory and that he could not have recognised the accused persons on account of the darkness. We have perused the statement of the aforesaid witness minutely and find no contradictions in his deposition. He categorically stated that while returning from Kabul's shop after buying bidi, he heard loud shouts from Pritam's house which diverted his attention. He saw that deceased Kallu was tied down in the room of the Mutiya and was being beaten by Pritam, Mutiya, Panna and Gokul, accused. It is not disputed that PW-12 was a resident of the village being

...4..

.PA

- 4 -

acquainted with the accused persons and the occurrence had taken place at moon lit night. It is also in evidence that the aforesaid witness had also recognised the accused person by their voices. Merely because he did not go for the rescue of the Kallu could not be made a ground to hold that he had not seen the occurrence and was not an eye witness. We find no reason to disbelieve PW-12. His statement has been found to be consistent which inspires our confidence. We agree with the finding of the High Court that the approach adopted by the trial court in appreciating the prosecution evidence was perverse.

Relying upon the statement of PW-12, we find that four persons, namely, Pritam, Mutiya, Panna and Gokul had beaten the deceased as a result of which he died. The aforesaid witnesses has not named any other accused. He has not even mentioned that any other person except the aforesaid accused was present at the time when he saw the deceased being beaten. There is no direct evidence connecting the other accused with the commission of crime of murder.

Learned counsel appearing for the respondent-State however, submitted that there is sufficient evidence on record to connect the accused with the commission of the

...5..

.PA

- 5 -

crime as the other accused persons are stated to have prevented the witnesses from entering the house of Mutiya. The trial court has found many contradiction in the statements of aforesaid witnesses. We, however, feel that involvement of other accused persons has not been established by the prosecution beyond the shadow of doubt. If any other accused was present, PW-12 must have seen him. If some people collected at the scene of occurrence after the incident, they can not be held responsible for the main occurrence. There is nothing on record to show as to when the other accused persons reached to prevent the witnesses

from entering the house of Mutiya. We find that the other accused persons are entitled to be given the benefit of doubt.

We are of the opinion that the High Court was justified in interfering with the judgment of acquittal passed by the trial court but we find that there was no material to connect the appellants, namely, Gangaram, Shivlal, Komal and Babulal with the commission of the crime for which they have been convicted and sentenced.

Accordingly, this appeal is partly allowed by setting aside the judgment of the High Court by which appellants, namely, Gangaram, Shivlal, Komal and Babulal ...6..

.PA

have been convicted for offence under Section 147, 302 read with Section 149 I.P.C. and sentenced to imprisonment for life. Two of the appellants, namely, Gokul and Pritam and two other accused namely, Mutiya and Panna are held guilty for the commission of the offence punishable under Section 302 read with 34 of the I.P.C. Their conviction under section 147 is not justified. It is stated at the bar that both Mutiya and Panna have since died. The appeal insofar as it relates to Gokul and Pritam is dismissed. The appellants, namely, Gangaram, Shivlal, Komal and Babulal are acquitted and directed to be set at liberty forthwith unless required in some other case.

.SP1

.....J.
(R.P.Sethi)

.....J.
(K.G.Balakrishnan)

New Delhi,
February 27, 2002.