

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(s). 1838 OF 2008

NATHU & ORS.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

O R D E R

Calling in question the legal propriety of conviction and order of sentence passed by the High Court of Judicature at Allahabad reversing the judgment of acquittal passed by the learned Sessions Judge in Sessions Trial No.194 of 1982 acquitting the accused of the charges punishable under Section 302 IPC read with Section 149 of Indian Penal code and Sections 324/149 IPC, this appeal has been preferred.

Criticising the impugned judgment of conviction, it is submitted by Mr. Ajit Sharma, learned counsel for the appellants that the High Court has erroneously exercised the jurisdiction to reverse the conclusion arrived at by the learned trial Judge despite the fact that the view expressed by the trial court was a plausible one. Learned counsel further submitted that there are material contradictions in the testimony of the eye witnesses and the same had been adequately scrutinised by the trial Court and on the said base the conclusion was arrived at but on unacceptable grounds, the High Court has reversed such conclusion.

Mr. Ameet Singh, learned counsel for the State, per contra, submitted that the appreciation by the trial Court is absolutely perverse inasmuch as it has given undue weight to the minor discrepancies and, in fact, the version of the eye witnesses have been discarded without any basis. The further stand of the counsel for the State is that the view expressed by the learned trial court is not a plausible one and, therefore, the High Court correctly interfered with the judgment of acquittal.

To appreciate the rival submissions raised at the Bar, we have carefully perused the judgment of the trial Court as well as that of the High Court and scrutinised the evidence on record. On a perusal of the evidence on record, it is demonstrable that the eye-witnesses were the actual eye-witnesses and they have stated so in a categorical manner about the role played by the acquitted persons alongwith the accused persons.

Be it noted, during the pendency of the appeal, two of the accused persons have breathed their last. The learned counsel has submitted that there are material contradictions in the testimony of the eye-witnesses but, we are afraid, such a submission does not deserve acceptance inasmuch as they are in the realm of minor discrepancies and cannot earn the status of material one. The High Court on a scrutiny of the evidence on record has believed the version of eye-witnesses and we are not inclined to differ therefrom as it based on proxy reasoning. It is well settled in law that the power of the Appellate Court while dealing with a judgment of acquittal is not a narrow one and it has ample power to scrutinise and reconsider the whole evidence, and if it finds that the appreciation of evidence by the learned trial Judge is absolutely perverse and the conclusion

could not have been founded on such appreciation, definitely it can unsettle such a view.

In view of the aforesaid premised reasons, we do not perceive any merit in this appeal and accordingly the same stands dismissed.

.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
MAY 15, 2013
ITEM NO.106
COURT NO.2
SECTION II

.....J.
[DIPAK MISRA]

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). 1838 OF 2008

NATHU & ORS. Appellant (s)

VERSUS

STATE OF U.P. Respondent(s)

(With appln(s) for bail,suspension of sentence on behalf of appellant Nos.1, 2 and 3 respectively)

Date: 15/05/2013 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) Mr. Ajit sharma,Adv.
Mr. Raghav Tandon,Adv.
Mr. Manish K.Bishnoi,Adv.

For Respondent(s) Mr. Ameet Singh,Adv.
Ms. Alka Sinha,Adv.
Mr. Anuvrat Sharma,Adv.

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

The appeal is dismissed, in terms of the signed order.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)