Supreme Court of India
State Of U.P vs Punni & Ors on 4 January, 2008
Author: T Chatterjee
Bench: C.K.Thakker Tarun Chatterjee

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          CASE NO.:
Appeal (crl.)  463 of 2001

PETITIONER:
State of U.P.

RESPONDENT:
Punni & Ors.

DATE OF JUDGMENT: 04/01/2008

BENCH:
C.K.Thakker Tarun Chatterjee

JUDGMENT:
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J U D G M E N T TARUN CHATTERJEE, J.

1. This is an appeal against the judgment and order dated 21st of May, 1999 passed by the learned Judge of the High Court of Judicature at Allahabad in Criminal Appeal No.2921 of 1980 whereby the High Court had allowed the appeal of the accused/respondents and set aside the judgment and order dated 29th of November, 1980 passed by the Additional Sessions Judge, VIth Court at Etah in Sessions Trial No.406 of 1978 (State of U.P. vs. Punni and 5 others) convicting the accused/respondents of the offences under Sections 399 and 402 of the Indian Penal Code (for short the IPC) and sentencing each one of them to undergo rigorous imprisonment for a period of 4 years and 2 years respectively and further convicting each one of them under Section 27 of the Arms Act and sentencing them to undergo rigorous imprisonment for a period of 6 months. However, all the aforesaid sentences were ordered to run concurrently.

2. The relevant facts leading to the filing of this appeal may be narrated, in a nutshell, which are as follows: -

3. The case of the prosecution, inter alia, was that on 15th of October, 1977, one Ram Charan Singh, Station Officer (S.O.) - Police Station Sikanderpur Vaish, Assistant Sub-Inspector (A.S.I.) Gaya Prasad along with constables Bhanwar Singh, Lakhan Singh, Mulaim Singh, Dina Nath, Jamuna Prasad, Rajendera Singh and Head Constable Hajari Singh were returning to the Police Station from the Patrol duty. When they reached near village Nagla Abdal at about 8 p.m., a reliable informer notified the S.O. Ram Charan Singh that the gang of Punni Habda shall assemble in the grove of Pandit Lakhan Singh of Rani Damer at about 1:00 am to commit dacoity and would loot Nagla Karan. On receiving this information, the S.O. and the A.S.I. had called for two witnesses, namely, Nakdey and Sri Pal from village Nagla Abdal and also procured their licenced firearms through Constable Bhanwar Singh. Thereafter, they came to village Rani Damer wherefrom witnesses, namely, Ranvir, Ram Prakash, Deo Singh and Soran were also taken with them. Out of these

witnesses, Ram Prakash (PW 2) was carrying his licensed gun. Thereafter, all of them came to the Madha of Pradhan in village Rani Damer where the witnesses were told the purpose of calling them and the necessary instructions pertaining to dacoity prevention scheme were given. A search was also made on all the persons present to ensure that none possessed any illegal weapons. Thereafter, two parties were formed by the S.O., one in his leadership, which comprised Ram Prakash (PW 2) and the other in the leadership of Gaya Prasad, A.S.I. (PW 1). At 11.00 p.m., the two parties had reached near the grove of Pandit Lakhan Singh. The party headed by the S.O. positioned themselves on the north of the grove while the other party positioned on the east of the grove. While they were waiting there, some persons entered the grove and started conversing and smoking Biri and cigarette. One of them was over heard saying Nagla chhota hi hai. Ustad nahin aaye hain. Darney ki koyee bat nahin hai. Chalo Chalkar loot lengey. On hearing this conversation, the S.O. and the witnesses were convinced that the assembled persons were a gang of dacoits and that they had assembled there to commit dacoity. The S.O. then challenged the dacoits telling them that they were under siege and commanded them to surrender their weapons, lest they would be done to death. A V.L.P. shot was fired by the Head Constable, whereupon these persons started to run away from that site. The police party arrested 6 persons while 3 managed to escape. The arrested persons were questioned and they revealed their names to the police. On search being taken, one gun and 8 live cartridges were recovered from Punni, one Tamancha and 4 live cartridges were recovered from Munshi, one Tamancha and 5 live cartridges and one torch were recovered from Saligram, one Tamancha and 3 live cartridges were recovered from Sultan, one Bhala and a torch were recovered from Ram Murti, all without licence, and a Bamboo lathi was recovered from Ram Bharose. The empty V.L.P. shot, half burnt pieces of Biris and match sticks were also collected. The recovery memos were prepared on the spot and the collected articles were sealed in separate bundles. Thereafter, the police party returned to the Police Station alongwith the accused and the recovered articles. On 16th of October, 1977, a chik report was prepared in accordance with the dictation given by the S.O. and a case was registered under Sections 399 and 402 of the IPC and separate cases were registered under Sections 25 and 4/25 of the Arms Act. The investigation was completed and the charge sheets were prepared and submitted to the concerned Magistrate who had committed the case to the Court of Sessions.

4. The accused/respondents after appearance pleaded not guilty and claimed to be tried. It was contended by the accused/respondents that they were falsely implicated in the case. The witnesses and Thakurs took Begar from them and when they declined to comply with their demand, they connived with the police to implicate them. The witnesses were the Dalals of the Police and the Police had enmity against them. The main ground of attack of the accused/respondents was the non-examination of the S.O., which, according to them, was fatal. No injuries were caused to the police party and therefore, the case was not probable. The respondent, Ram Bharosey, was examined as a witness and he sought to show that he was not on good terms with the co-accused Munshi and one Ram Chadra who was the brother of another co-accused Ram Murti. In order to show enmity, certified copies of some police FIRs were submitted by Ram Bharosey. Thus, it was highly improbable for him to form a gang with them to commit dacoity. Therefore, according to the respondents, they were falsely implicated in the case and they should have been acquitted.

5. The Additional Sessions Judge, VIth Court at Etah relying on the evidence of the two witnesses, namely, PW1 and PW2 and after rejecting the testimony of the accused Ram Bharosey convicted the six accused for the offences under Sections 399 & 402 of IPC and Section 27 of the Arms Act and sentenced them in the manner indicated herein earlier. Feeling aggrieved by the said decision of the Additional Sessions Judge, VIth Court at Etah, an appeal was preferred by the accused/respondents which, by the impugned order was allowed and the said judgment of the Additional Sessions Judge, VIth Court at Etah was set aside. It is this order of the High Court, which is impugned in this appeal.

6. Since this is a case where the High Court acquitted the accused/respondents thereby setting aside the order of conviction of the Additional Sessions Judge, VIth Court at Etah, it would be appropriate to consider the findings arrived at by the Additional Sessions Judge, VIth Court at Etah as well as by the High Court. The Additional Sessions Judge, VIth Court at Etah convicted the accused/respondents, inter alia, on the following findings: -

(i) On each broad and important aspect of the case, the two witnesses PW 1 and PW 2 had given cogent evidence proving the case and that their testimonies fully answered the test of credibility.

(ii) PW 2 Ram Prakash had no reason to give false evidence against the accused.

(iii) The accused were arrested on the spot and there was nothing to show that they were arrested from their houses.

(iv) The properties were recovered from their possession and the V.L.P. shot was fired.

(v) PW 1 and the S.O Ram Charan Singh were present throughout and the examination of the S.O. would not have brought any improvement.

(vi) The accused had only country lethal weapons and if their weapons could not be put to use, the case of the prosecution could not be thrown out.

(vii) The accused Ram Bharosey did not deny the charges after entering the witness box.

(viii) The defence could not point out any infirmity in the prosecution case and the case stood fully proved beyond doubt. On the aforesaid findings made by the Additional Sessions Judge, VIth Court at Etah, the accused/respondents were convicted under sections 399 and 402 of the IPC and also under section 27 of the Arms Act.

The High Court, as mentioned herein earlier, had set aside the conviction on appeal. While setting aside the conviction, the High Court, inter alia, recorded the following findings: -

(i) The S.O. Ram Charan Singh was not examined, although the FIR of the case was dictated by him.

(ii) The I.O. of the case was also not examined at the trial.

(iii) None of the adjoining grove holders or land holders were said to have been present in the grove at the time of occurrence although the site plan prepared by the investigating officer shows that the grove of Lakhan Singh was surrounded on three sides by groves.

(iv) The accused/respondents were said to have been caught on the spot without any resistance or struggle on their part.

(v) There were discrepancies in the examination-in-chief and cross examination of PW 1 as to the time of his departure from the police station and also as to the fact of his leaving the station with SO Ram Charan Singh.

(vi) There were contradictions in the testimony of PW 1 and the FIR as to the fact of their leaving the police station alone or with others.

(vii) The S.O. had claimed in the FIR that an informer had given the information that dacoity would be committed in Nagla Karan at 3 am but PW 1 did not testify to the giving of any such information by the informer.

(viii) There were contradictions in the cross examination of PW 1 and the medical evidence as to the fact of receiving of danda blows on the body of the accused.

(ix) There appeared substance in the defence plea that the accused Ram Bharosey could not have joined hands with Munshi and Ram Murti for committing dacoity on account of their enmity.

The High Court thus concluded that all these circumstances tended to show that the accused had been bundled together by the police and implicated in the case of assembly and preparation to commit dacoity.

7. Before we consider whether the High Court was justified in reversing the order of conviction of the Additional Sessions Judge, VIth Court at Etah, and passing an order of acquittal in appeal, we may briefly highlight the issues raised before us. The Learned Counsel for the appellant argued that the High Court had erred in taking the adverse view on account of non- examination of the I.O. when the A.S.I. Gaya Prasad had adduced the entire sequence of events in a natural and convincing manner. He also sought to argue that the reasons of acquittal recorded by the High Court were erroneous and against the weight of the evidence proved on record. On the other hand, the learned counsel for the accused/respondents sought to argue that the High Court, while acquitting the accused and reversing the judgment of the Additional Sessions Judge, VIth Court at Etah, who convicted them, had taken into consideration all the aspects of the matter and the evidence on record and came to a conclusion that the judgment of the Additional Sessions Judge could not be accepted, after giving proper and cogent reasons for the same. Accordingly, the learned counsel for the accused/respondents sought for dismissal of the appeal by this Court.

8. Having heard the learned counsel for the parties and after examining the submissions made by them and also the judgment of the High Court as well as of the Additional Sessions Judge, VIth

Court at Etah and the other materials on record, including the findings and the reasoning given by the Additional Sessions Judge as well as the High Court, we do not find any ground to hold that the High Court was not justified in setting aside the order of conviction and passing an order of acquittal in appeal. While doing so, the High Court had given due reasons after considering the entire materials and the evidence on record and had also given the reasons as to why the non-examination of the S.O. and the I.O. was fatal in the facts and circumstances of the case. In our view, the High Court was justified in holding that it was necessary for the prosecution to prove the case made out under Section 399 and 402 of the IPC beyond reasonable doubt and to examine the S.O. and the I.O. for unfolding the prosecution story. The High Court had also given its reasons, in our view, correctly, that the evidence of PW 1 and PW 2 on which, strong reliance was placed by the Additional Sessions Judge in order to pass an order of conviction could not be relied upon. On the question of non- examination of the S.O. and the I.O., which led to an adverse inference being drawn by the High Court against the prosecution, the fact that the same was fatal would also be clear from a decision of this court in the case of Habeeb Mohammad vs. State of Hyderabad [AIR 1954 SC 51] in which this Court at paragraph 11 observed as follows: -

"It is said that the state of things above described arose because of a supposed obligation on the prosecution to call every available witness on the principle laid down in such a case as Ram Ranjan Roy v. Emperor (I.L.R. 42 Ca. 422.), to the effect that all available eye-witnesses should be called by the prosecution even though, as in the case cited, their names were on the list of defense witnesses. Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defense. If it does so confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross- examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution."

9. Relying on the aforesaid observations of this Court in the above-mentioned case, we, therefore, agree with the findings and the reasoning of the High Court, while setting aside the order of conviction, on the question of non-examination of the S.O., who was the architect of the facts of the case. In Ram Prasad & Ors. Vs. State of U.P. [1974 (3) SCC 388], this court has held that in case the court finds that the prosecution has not examined the witnesses for reasons not tenable or not proper, the court would be justified in drawing an adverse inference against the prosecution. In view of the non-examination of the S.O. and the I.O. and also in view of the glaring discrepancies pointed out by the High Court in its judgment, as noted herein earlier, we are, therefore, in agreement with the High Court that in the facts and circumstances of the present case and on the evidence on record, the order of acquittal was reasonably possible to arrive at and that being the position, we do not find any reason to interfere with the judgment of acquittal in the exercise of our jurisdiction under Article 136 of the Constitution. At the risk of repetition, we may also reiterate that the High Court, after consideration of all the evidence and materials on record had come to a conclusion of

fact that the prosecution story as made out to convict the accused/respondents under Sections 399 and 402 of the IPC could not at all be believed and therefore, the order of conviction of the Additional Sessions Judge, VIth Court at Etah was needed to be interfered with. There is one further aspect of this matter. In our view, the High Court was justified in drawing an adverse inference against the prosecution as it had failed to examine the adjoining grove holders or land holders who were said to have been present in the grove at the time of occurrence. That apart, it was rightly pointed out by the High Court that adverse inference ought to have been drawn against the prosecution as admittedly, the persons who were caught on the spot were caught without any resistance or struggle from their side. From the judgment of the High Court, it is also evident that the High Court had found discrepancies in the examination-in-chief and the cross-examination of PW 1 as to the time of his departure from the Police station and also as to the fact of his leaving the station with the S.O., Ram Charan Singh. At this stage, we may further reiterate that the Additional Sessions Judge, VIth Court at Etah, while convicting the accused/respondents had practically relied on the evidence of PW 1, whose evidence, in fact, was rightly not accepted by the High Court in view of the discrepancies found in his evidence. Finally, in our view, the High Court, while reversing the order of conviction, had also noted other contradictions viz., vii, viii and ix, as noted herein earlier, which, in our view, are material contradictions which would lead to acquitting the accused/respondents.

10. Before we part with our discussion on the findings of the High Court while setting aside the order of conviction of the Additional Sessions Judge, VIth Court at Etah, we may note that reliance was placed at the bar on the case of Kashiram and others Vs. State of M.P. [(2002) 1 SCC 71]. In that decision, this court while considering the power of the High Court to interfere with an order of acquittal of the trial court held that when two views are possible, the High Court should not interfere only because it feels that sitting as a trial court, it would have preferred conviction and that the High Court should consider every reason given by the trial court in favour of an acquittal and then dislodge them. It was also held in that decision that while deciding an appeal against an order of acquittal, the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and arrive at its own findings, yet, the salutary principle, which would guide the High Court is if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court, its view would have been one of recording a conviction. It was further held in that decision that as a necessary corollary, it was obligatory on the High Court, while reversing an order of acquittal, to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons and if the High Court failed to discharge this obligation, it would constitute a serious infirmity in the judgment of the High Court. Reliance was also placed on the decision of this court in Kunju Muhammed alias Khumani and another Vs. State of Kerala [(2004) 9 SCC 193] wherein this court has held that the judgment of the trial court acquitting the accused cannot be reversed by the High Court when the findings of the trial court were neither perverse nor they could not be reached by a reasonable person and the view taken by the trial court was the only possible view. However, in the present case, we are not concerned with the situation, which had arisen in the aforesaid two decisions. In this case, the Additional Sessions Judge, VIth Court at Etah, convicted the accused/respondents and such order of conviction was set aside in appeal by the High Court. Therefore, in our view, the principles laid

down in the aforesaid decisions are not applicable to the facts of the present case although, from the aforesaid two decisions, it is at least clear that while dealing with an appeal under Section 378 and 386 of the Code of Criminal Procedure, the salutary principle which would guide the High Court is if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court, its view would have been one of recording a conviction. It was, however, made clear in the aforesaid decisions by this court that the High Court while hearing an appeal against an acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction, the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and arrive at its own findings.

11. In any view of the matter, we are of the view that this Court, while dealing with the order of acquittal of the High Court, would not ordinarily interfere with the findings of the High Court unless it is satisfied that such finding is vitiated by some glaring infirmity in the appraisement of evidence or such finding was perverse or arbitrary. (See State of U.P. vs. Harihar Bux Singh [AIR 1974 SC 1890]. In State of Punjab vs. Ajaib Singh [(1995) 2 SCC 486], this Court, on the same lines, held that if the order of acquittal was not perverse or palpably erroneous, this Court would not interfere with such finding of the High Court acquitting the accused/respondents from the offences charged against them. While considering the scope of Article 136 of the Constitution as to when this Court is entitled to interfere with an order of acquittal, this court observed in State of U.P. vs. Babul Nath [(1994) 6 SCC 29] as follows :

At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. In view of our discussions made herein above, we do not find any ground to interfere with the decision of the High Court, which on consideration of all the materials on record and the evidence adduced by the parties had acquitted the accused/respondents and therefore, no interference is warranted in the exercise of our power under Article 136 of the Constitution.

12. For the reasons aforesaid, we do not find any reason to interfere with the judgment of the High Court acquitting the accused/respondents. The appeal is thus dismissed. There will be no order as to costs.