

Supreme Court of India
Lunaram vs Bhupat Singh & Ors on 27 February, 2009
Author: . A Pasayat
Bench: Arijit Pasayat, Asok Kumar Ganguly

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 405 OF 2009
(Arising out of SLP (CrI.) No. 1524 of 2008)

Lunaram . . .Appellant

Versus

Bhupat Singh and Ors. . . Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Division Bench of the Rajasthan High Court at Jodhpur directing acquittal of the respondents 1, 2 and 3. The learned Special Judge, SC and ST, Prevention of Atrocities Case, Balotara had convicted the respondents and sentenced them which was set aside by the High Court as noted above.

3. Background facts in a nutshell are as follows:

Complainant Luna Ram lodged an FIR in Police station, Bakhasar at about 8.30 a.m. On 31.08.1998, complainant reported that almost two months back he alongwith Sugala, Tila and Lila went to Dhanera, Gujarat, for a job. On 30.08.1998, they came to Sanchoe in a Jeep and, thereafter, by another Jeep, they went to village Madhav. At around 7.15 P.M., they boarded a Bus from Village Madhav and reached Sata at around 9.30 P.M. From Sata, accused Bhupat Singh, Amrit @ Amiya, Ganu Singh @ Ganpat Singh, Pratap Singh and Kamiya boarded the bus. After just leaving village Sata, Bhupat Singh, Rai Singh, Pratap Singh and Ganu Singh came near their seat, as they all four were sitting on the last seat of the bus. Rai Singh stated that they will kill all the four. Bhupat Singh caught Lila by holding his neck and, thereafter, Rai Singh, Pratap Singh and Ganu Singh threw Lila out of bus. Complainant hid himself out of fear. Thereafter, Sugala and Tila were also thrown out of bus as when he left the bus at village Bakhasar, Sugala and Tila were not found in the bus. The reason of fight by the accused was also stated to be that almost 10-15 days back, buffaloes belonging

to Pratap Singh and Ganu Singh damaged crop of Nagji and, at that time, when Ladha was taking those buffaloes, then Rai Singh had beaten Ladha. The complainant further stated that he reached his place at about 12 to 1 O'clock in night and stated all those facts to Nagji and following morning, it was found that Lila died, whereas Tila and Sugala received injuries. On the basis of the report, FIR was lodged under Sections 302, 307 and 352, 323 read with Section 34 of the Indian Penal Code, 1860 (in short the `IPC') and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short `SC/ST Act'). The Police, thereafter, conducted investigation and, thereafter, filed challan in the Court of Chief Judicial Magistrate, Barmer, from where, the matter was committed to the trial Court. Charges were framed against four accused under Sections 302, 307, 323 read with Section 34 of IPC and Section 3(2) (5) of SC/ST. The charge was read over to the accused who denied the charge and claimed trial.

At the trial, 27 witnesses were produced and thirty-six documents were exhibited by the prosecution to prove their case, whereas, in defence, statement of one witness was recorded and eight documents were produced. Statements of the accused were recoded under Section 313 of the Code of Criminal Procedure Code, 1973 (in short the `Code'). The learned trial Court convicted accused Bhupat Singh, Ral Singh and Amiya under Section 302/34 of IPC and Section 3(2)(5) of SC/ST Act. They were sentenced to life imprisonment and fine of Rs.500/- each, in default of payment of fine, to further suffer one month's imprisonment. They were also convicted under Section 323 IPC, and sentenced to one month's imprisonment and a fine of Rs.50/- each, in default of payment of fine, to further suffer one week imprisonment. These accused were, however, acquitted from Section 307 read with Section 34 IPC. Accused Dashrath Giri @ Baba was acquitted completely.

The High Court noted that the evidence of PWs 9, 10 and 11 did not have any credibility. It was full of omissions and contradictions which affected the credibility of their evidence. Contradictions and omissions were held to be not of any minor nature.

4. In support of the appeal, learned counsel for the appellant submitted that the evidence of PWs 9, 10 and 11 should not have been discarded by the High Court, particularly as they were injured eye witnesses.

5. Learned counsel for the accused on the other hand supported the judgment, particularly with reference to the evidence of doctor who stated that the scenario as described by the prosecution witnesses was not physically and practically possible.

6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to

re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.*, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793), *Ramesh Babulal Doshi v. State of Gujarat* (1996 (9) SCC 225), *Jaswant Singh v. State of Haryana* (2000 (4) SCC 484), *Raj Kishore Jha v. State of Bihar* (2003 (11) SCC 519), *State of Punjab v. Karnail Singh* (2003 (11) SCC

271), *State of Punjab v. Phola Singh* (2003 (11) SCC 58), *Suchand Pal v. Phani Pal* (2003 (11) SCC 527) and *Sachchey Lal Tiwari v. State of U.P.* (2004 (11) SCC 410).

7. In *Chandrappa and Ors. v. State of Karnataka* (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

8. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post mortem and examined the witnesses

had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence.

9. The appeal is dismissed.

.....J.

(Dr. ARIJIT PASAYAT)J.

(ASOK KUMAR GANGULY) New Delhi, February 27, 2009