2025 INSC 1442

Non-Reportable

IN THE SUPRME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 809 OF 2014

RAJ PAL SINGH

…APPELLANT(S)

VERSUS

RAJVEER & ORS.

…RESPONDENT(S)

J U D G M E N T

N.V. ANJARIA, J.

The appellant is the original complainant who by preferring this appeal, seeks to call in question judgment and order dated 10.10.2012 of the High Court of Allahabad in Criminal Appeal No.8119 of 2007, whereby the High Court set aside the judgment and order of conviction dated 23.11.2007 passed by the Court of learned Additional District Judge, Ghaziabad in Sessions Trial Case No.291 of 1997 against the Respondent Nos. 1 to 3 herein for the offence under Section 302

read with Section 34 of the Indian Penal Code, 1860 and sentencing them to life imprisonment with imposition of fine of Rs.1,50,000/- each and in default to undergo further imprisonment for two years.

2. As the High Court acquitted the respondent Nos.1 to 3, the appellant-complainant is aggrieved.

3. The appellant-complainant happens to be the father of one Praveen Kumar serving as a captain in the Indian Army, when Praveen was allegedly murdered by the Respondent Nos. 1 to 3. The prosecution story runs to state *inter alia* that one Major Adjutant Akash Johar wrote a letter on 31.05.1996 to the District Magistrate, Ghaziabad mentioning about the hardships faced by the appellant concerning the family dispute regarding the division of land with appellant and his brother – uncle of the victim Praveen, Dharam Pal - Respondent No. 2 herein and one V.S.Verma, and that Dharam Pal was in possession of private arms and used to threaten Captain Praveen's father - the appellant herein.

3.1 It was stated that on 07.06.1996, the village *Chowkidar* informed the Police in writing that around 7 a.m. the Panchayat

was to be held in the village for resolving the property dispute between Dharam Pal and Raj Pal, who were real brothers. During the Panchayat meeting, Praveen Kumar and his father – Raj Pal Singh - the appellant herein, reached at the place, which led to heated exchanges. Dharam Pal left the Panchayat and proceeded towards his house.

3.2 It was further stated that said captain Praveen and his father-in-law, armed with rifle and hockey-stick respectively, followed Dharam Pal, that Dharam Pal fired upon Praveen from his gun. Praveen sustained gunshot injury. He was taken to hospital in serious condition by the appellant and other members of the family. The information was registered as Crime Case No.19 of 1996 alleging offence under Section 307, IPC, at Bahadur Garh Ghaziabad Police Station.

3.3 The Appellant submitted an application on 08.06.1996 before the Police stating that his elder brother's son - Rajveer was dissatisfied with the partition of the properties taken place between the Appellant – Raj Pal and his two brothers named Vijay Pal and Dharam Pal. It was stated that Complainant was residing alone in his house and his son Praveen was employed

in military service as Captain and that he had informed his son about the hostile attitude of Dharam Pal and his son.

3.4 It was further stated that said Praveen reached home on 07.06.1996 and on the same day, he left for Hapur Village to attend marriage. On next day, that is, 08.06.1996 at around 8 a.m., Praveen Kumar returned home after attending the marriage. At that time, Dharam Pal, his son Rajveer and Sudhir forcibly dragged Praveen Kumar towards the first floor from the parking area with an intention to kill him. It was alleged that Sudhir had with him a country-made pistol.

3.5 As Praveen started shouting, other persons named Raj Pal Singh – appellant herein, Jal Singh, Omkar Singh and Balbir Singh rushed to the spot to save him. Sudhir, who had country-made pistol, threatened to shoot. Dharam Pal instigated Rajveer to kill and Rajveer shot at Praveen from the licensed gun of Dharam Pal. The injured Praveen was declared dead when taken to the Military Hospital. The Crime Case No.19 of 1996, registered earlier for the offence under Section 307, IPC, was converted into offence under Section 302 r/w Section 34, IPC.

4. Heard learned counsel Mr. Vishwa Pal Singh for the appellant and learned counsel Mr.Mushtaq Ahmed for the respondents.

5. The trial Court, upon considering the evidence led before it, convicted the respondent nos.1 to 3 herein for the offence under Section 302 r/w Section 34, IPC, and sentenced them as above. In the appeal, the High Court appreciating the evidence on record *inter alia* noticed the oral evidence by informant – Raj Pal (PW-1) and Jal Singh (PW-2), who were the eyewitnesses, then deposed on the incident *inter alia* that when the family returned from the marriage party by car at around 8 a.m., Dharam Pal, Rajveer and Sudhir dragged Praveen. At that time, all the three had caught hold of Praveen and after dragging Praveen, pulled and pushed him up the staircase.

5.1 According to the story told by PW-1 and PW-2, Sudhir threatened them with country-made pistol which was in his hands. The witnesses further stated that Dharam Pal instigated his son Rajveer to fire at Praveen and that Rajveer fired at Praveen from the gun of his father Dharam Pal. Praveen fell down having been injured by the gunshot. It was then stated that

Dharam Pal hit Praveen by hockey-stick. It was deposed that at that time, villagers arrived at the spot and the accused persons ran away. The injured Praveen was taken to the Military Hospital where he was declared dead.

5.2 In addition to the above witnesses, Col**.** Ms. Savitri Datti, Senior Registrar Military Hospital (PW-4), Sub-Inspector Man Singh (PW-5) who had prepared the inquest report, and one Devi Deen (PW-6) who had registered the report submitted by the *Chowkidar* of the village, were examined. Lt. Colonel Dr.Sandeep Rastogi (PW-7) stated that before Praveen could be admitted in the hospital he was already dead. *Chowkidar* named Tunda (PW-8) who submitted the report dated 08.06.1996 before the police station was examined. He stated that he had not seen the act of firing. The other witnesses included the Record Keeper (PW-9) in the hospital and one Sub-Inspector - Vijay Kumar Singh (PW-10) who recorded the statement of the witnesses and the Second Investigating Officer Inspector Rajiv Kumar (PW-11).

5.3 Amongst the different witnesses included Charan Singh (DW-1), who was a resident of the same village and one Lal

Singh (DW-2), who stated that there was enmity between the accused and the complainant.

5.4 The medical evidence is in the form of Dr.V.K. Bajpayee (PW-3), who performed the postmortem. The postmortem report prepared by him on 09.06.1996 indicated the following ante-mortem injuries, (i) Wound of penetrating firearms bullet in left thigh 3cm x 2 cm x muscle deep in upper portion of left thigh, outer side blackish colour with friction. Direction was below and forward and was upper side. (ii) Wound of penetrating many pellets in the area of 10 cm x 6 cm in front of right thigh 0.33 cm x0. 6 cm to 0.66cmx 0.5cm c muscle deep. 15cm x towards right knee below forward and inward. (iii) One incised wound 4cm x 1 cm in the upper portion of the head towards right 10 cm above. (iv) One scrap wound 4cm x 3 cm x in upper backside of the right hand. In the opinion of the Doctor, the death of deceased Praveen occurred due to shock and haemorrhage.

5.5 In their statement recorded under Section 313, CrPC, the accused persons denied the charges stating that they were falsely implicated due to enmity. Dharam Pal stated in his

statement under Section 313, CrPC, that on 07.06.1996, when the *Panchayat* was taking place, the complainant and his supporters started assaulting the accused persons and, therefore, he left the *Panchayat* to go to his room on the first floor of the house when he heard the sound of gunshot. The statement of Rajveer was that he was employed as Professor in Shimbhawli College, staying at that place since last 12 years and was not present in the village at the time of the incident. The third accused - Sudhir stated in his statement under Section 313, CrPC that he was a distant relative of Rajveer and was not present when the incident took place. He stated that he was a student of B.Sc. in the very college where Rajveer was Professor. All of them stated that they had been falsely implicated in the case.

6. The High Court, in appreciating the above cluster of evidence in their interaction, found that it was conspicuous that in the report dated 08.06.1996, which was filed by complainant Raj Pal on 12.06.1996, nothing was mentioned about the inflicting of injury on Praveen by hockey-stick by any of the accused including Dharam Pal, though it was mentioned that

accused had hockey-stick with him. The role of Dharam Pal, as mentioned in the said report, was only that he and Sudhir, with the help of arms which they had been allegedly carrying, acted to restrain the complainant and other village people when they tried to interfere with the act of dragging of Praveen.

6.1 It did not come out from the evidence, even inferentially, that any of the accused had any weapon, much less the pistol or gun in their hand when they were dragging Praveen towards the stairs. According to the story projected, at the time when the accused persons were pulling Praveen on the staircase, a country-made pistol was with Sudhir. While the complainant stated that he saw all the accused pushing and dragging Praveen, he could not pinpoint as to whether the clothes of Praveen Kumar were torn.

6.2 The dragging of Praveen by Dharam Pal did not inspire credence, inasmuch as the High Court rightly observed that Dharam Pal was 65-year-old person and was a cancer patient, for whom it was not possible to pull and drag Praveen – an armyman. Furthermore, as per the story, the complainant noticed that Sudhir had with him country-made pistol in his

hand when all the accused were dragging Praveen towards the staircase from the parking area.

6.3 The staircase had the width of three to five feet and the dragging was done nearly for 20 steps, noted the High Court. Upon appreciation of the evidence, the same was found to be not credible as it was not possible to believe that a serving captain in the Indian Army, who was a young man, could be dragged in the manner as suggested, by three persons.

6.4 It was noticeable also that the First Information Report did not mention that Dharam Pal had any hockey-stick in his hand at the time of the dragging of Praveen. It is also not disclosed as to wherefrom such hockey-stick, if any, was brought. Similarly, Jal Singh (PW-2) also admitted in his evidence that he was not aware as to how and from where Sudhir had picked up the country-made pistol.

6.5 While Jal Singh (PW-2) stated that he saw Sudhir to be in possession of pistol at the time of dragging of Praveen, it was not suggested in the evidence anywhere as to wherefrom Sudhir got the pistol. The High Court reasoned that if the suggestion was that Rajveer had gone to collect the country-made pistol, it

would imply that there were only two persons who held Praveen and dragged him, which was even further unbelievable since one of them was 65 years of age suffering from cancer.

6.6 The reading of the evidence suggested, rightly observed the High Court, that none of the accused persons had any firearm in their hands at the time they were allegedly dragging Praveen Kumar towards and thereafter, upwards the staircase. PW-2 suggested that the staircase was not in L-shape but had a turning.

6.7 It is also noticed by the High Court in the report of *Chowkidar* of the village (PW-8), it was the information given about the time at the first point of time, what was mentioned was that Praveen Kumar followed Dharam Pal and after Dharam Pal left the Panchayat, Dharam Pal fired upon Praveen in defence. However, the report submitted by the complainant – father - appellant herein, the role of firing was not attributed to Dharam Pal but it was stated that upon exhorting of Dharam Pal, Rajveer had fired upon Praveen Kumar.

7. In other words, in acquitting the respondents, the following aspects weighed with the High Court,

(a) The entire story of the prosecution did not inspire credibility and was highly improbable when it was claimed that a serving captain in the Indian Army - Praveen Kumar, was dragged by three persons for 14 steps and thereafter, pulled him to a staircase which was only three to five feet wide.

(b) One of the accused was aged 65 years and had been suffering from cancer.

(c) The alleged possession of the country-made pistol with Sudhir was not explained. The complainant did not see any weapon with any of the Respondents when they started dragging the deceased. Possession of the pistol and its use by Sudhir are not convincingly born out from the evidence.

(d) The allegation that Dharam Pal fetched a hockey-stick to strike blows on the head of Praveen was also not explained in the evidence. There was no suggestion as to how and from where Dharam Pal fetched the hockey-stick.

(e) The High Court refused to believe as probable that Rajveer went inside the room, picked up gun, whereas the other two succeeded in holding Praveen down at the staircase.

(f) The Complainant submitted an application dated 08.06.1996 only on 12.06.1996 before the Police. In addition to this discrepancy in the dates, there was no mention in the said complaint regarding the incident, which took place on 07.06.1996. In the said complaint-report, it was stated that Praveen shot Dharam Pal and Dharam Pal shot Praveen, however, Dharam Pal was not attributed with the role of shooting.

(g) The investigation and prosecution were not in the direction of the case disclosed to the effect that Dharam Pal fired at Praveen on 07.06.1996.

8. Thus, the evidence adduced as above by the prosecution suffered from material discrepancies and the whole story put up lacked credence. Although the alleged weapon of offence, the licensed firearm belonging to Dharam Pal - Respondent No. 2,

was recovered, no endeavour appears to have been made to subject the same to expert ballistic examination in order to establish whether the bullets or pellets which caused the fatal injuries had been fired therefrom. Upon a close consideration of the evidence appreciated by the High Court, the reading by the High Court is a plausible reading justifying the conclusion. The view taken by the High Court does not appear to this Court to be in any way unreasonable or one which would warrant substitution by this Court.

9. It is well settled that the guilt of the accused and the commission of the offence by the accused have to be established beyond reasonable doubt. The circumstances should suggest "must or should" and not "may be". It was stated by this Court in **Shivaji Sahabrao Bobade vs. State of Maharashtra**[1]**,** that the distinction between "may be proved" and "must be proved" is not one of mere grammatical, but it is a legal distinction.

9.1 In **Shivaji**[1]**,** the Court observed,

> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.." (Para 19)

[1] [1973 (2) SCC 793]

9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial and compelling reasons" to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor.

9.3 In **Chandrappa and Others vs. State of Karnataka**[2], this Court laid down on the scope of powers of the appellate court to re-appreciate, review or reconsider the evidence and interfere with the acquittal. It was held that where two views are possible on the evidence on record, one taken in favour of the accused acquitting him should not be disturbed by the

[2] [2007 (4) SCC 415]

Appellate Court. In that case, the trial Court had given the benefit of doubt to the accused finding that the prosecution had not examined the material witnesses, that the testimony of the witnesses was unreliable and inconsistent, that the prosecution story was unnatural and that the knife produced before the Court as muddamal article was not the same which was used by the accused in inflicting injuries etc. There were also other circumstances which created doubt about the prosecution story. This Court held that the High Court was in error in interfering with the possible view taken by the Trial Court on the evidence and the reversal of the order of acquittal by the High Court was not justified.

9.4 In **Chandrappa**[2] after elaborate discussion as to how the appellate court should approach the order of acquittal while exercising appellate jurisdiction, certain principles regarding the powers of the appellate court to be exercised against an order of acquittal, were laid down,

> "(i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (ii) The Code of Criminal Procedure, 1973 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.

(iii) 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.

(iv) 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.

(v) 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."
(Para 42)

9.5 It was observed in **Chandrappa**[2] as under,

"...the trial court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well established that if two views are possible on the basis of evidence on record and one

> favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. In this case, a possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside."
>
> (Para 44)

10. When in the present case, the High Court has recorded acquittal of the respondents reversing the decision of the trial Court by appreciating the relevant aspects emerging from the evidence and thereby arriving at a plausible conclusion, acquitting respondent Nos.1 to 3, on such basis, this Court is well-inclined to accept and maintain the same.

11. Consequently, the appeal fails and the same is dismissed.

In view of dismissal of the appeal, interlocutory applications shall not survive.

……..,J.

[K. VINOD CHANDRAN]

……..,J.

[N.V. ANJARIA]

New Delhi;

16.12.2025.