

A.F.R.
Reserved on 07.05.2022
Delivered on 19.07.2022

Case :- GOVERNMENT APPEAL No. - 1990 of 1985

Appellant :- State of U.P.

Respondent :- Narendra Singh

Counsel for Appellant :- A.G.A.,

Counsel for Respondent :- U.K. Saxena, Kamal Kishor Mishra,
Satish Trivedi, Satya Prakash Srivastava

Hon'ble Om Prakash-VII,J.

Hon'ble Narendra Kumar Johari,J.

(By : Om Prakash-VII, J.)

1. This appeal against acquittal by appellant State is directed against the impugned judgment and order dated 22.4.1985 passed by Special Judge (E.C. Act)/ Additional Sessions Judge, Jalaun at Orai in S.T. No. 143 of 1980 (State Vs. Narendra Singh and another), P.S. Kotwali Orai, district Jalaun by which the accused respondents have been acquitted of the charges under Sections 302/34, 302 IPC.

2. At the very outset, it is very relevant to mention here that during pendency of Appeal, accused respondent No.2 Ramesh has died. Accordingly, by the order dated 27.11.2021, this Court passed order directing abatement of Government Appeal as against the accused respondent no.2.

3. Now, we are proceeding to consider the government appeal in respect of rest of the accused respondent i.e. Narendra Singh.

4. Brief facts of the case, in nutshell, are that informant and his brother Bhanu Pratap Singh had gone to the Court on 16.7.1980 for taking certified copy of certain judgment. At about 02.00 - 02.15 p.m. after finishing their court work they were going towards Orai market. Near the Orai Jhansi Bus Stand at the gate of Kutchahri they were joined by Taqdir

Singh, Bal Ram Tewari and Ram Swarup Singh. While going to the Orai market, Informant Ram Lakhan Singh and his brother Bhanu Pratap Singh accompanied by the aforesaid three witnesses reached the Konch Bus Stand. At about 02.25 p.m. accused Narendra Singh, Ramesh and one Surendra Singh Yadav saw them all. Accused Ramesh alarmed Surendra Singh that the enemy was coming and on seeing this Surendra exhorted the accused Narendra to kill Bhanu Pratap Singh. Bhanu Pratap Singh seeing these persons tried to run away but before that he was fired at by the accused Narendra Singh and Ramesh with country made pistol and a pistol. Informant Ram Lakhan Singh and the aforesaid witnesses challenged the accused persons but they made their escape good under the cover of fire by them. Then the informant found that his brother Bhanu Pratap Singh was dead. The aforesaid murder by the accused persons, namely, Narendra Singh and Ramesh was committed due to old enmity between the accused Narendra Singh and the informant. The accused Ramesh and Surendra Singh were the party-men of the accused Narendra Singh. Informant Ram Lakhan Singh prepared F.I.R. and lodged the same at the police station concerned. Necessary formalities i.e. Panchayatnama etc. were prepared and the dead body of the deceased Bhanu Pratap Singh was sent for post mortem. Investigation started and after completion of investigation charge sheet against Narendra Singh, Surendra Singh and Ramesh was submitted. Accused Surendra Singh died during trial. Trial started against accused respondents Narendra Singh and Ramesh.

5. Accused persons appeared and charge under Sections 302/34 and 302 IPC was framed in the trial court against them. Accused have denied the charges framed against them and claimed their trial.

6. Trial proceeded and on behalf of prosecution, eight witnesses i.e. PW-1 Ram Lakhan Singh (informant), PW-2 Bal Ram Tiwari, PW-3 Constable Mani Ram, PW-4 Constable Ram Kishore, PW-5 Constable Ram Gopal, PW-6 Dr. G.C. Mishra, who conducted the post mortem on the dead body of deceased, PW-7 Sub-Inspector D.N. Chaturvedi, PW-8 Sub-Inspector Yagya Datt Rai, PW-9 Constable Har Narain Singh were examined.

7. After closure of prosecution evidence, statement of accused persons under Section 313 Cr.P.C. was recorded in which they denied the allegations and stated that they have been falsely implicated due to enmity. Deceased was a notorious Gunda and a known criminal having his criminal history. He was leader of the dacoits engaged in road hold-up and therefore he was killed by the then Kotwal Devraj Singh through his men. They produced one head constable named Sobran Singh in their defence as DW-1. This witness brought the road gang register to show that the deceased Bhanu Pratap Singh was registered as leader of road gang engaged in dacoity by road hold-up in the police record.

8. Having heard the learned counsel for the parties and going through the record, the trial court found that the prosecution has not fully succeeded in bringing home the charges against the accused respondents beyond reasonable doubt and acquitted the accused respondents.

9. Aggrieved with the said judgment and order dated 22.4.1985, the State Government has preferred the present appeal.

10. Vide order dated 5.5.1987 the leave to appeal application was allowed and the appeal was admitted.

11. Heard Shri Raj Kamal Srivastava, learned AGA appearing

for the State as well as Shri Satish Trivedi, learned Senior Counsel assisted by Shri Kamal Kishore Mishra, learned counsel for the accused respondent.

12. Castigating the impugned judgment and order, learned learned AGA has submitted that prosecution has established the guilt of the accused respondents beyond reasonable doubt. It was further submitted that findings recorded by the trial court in the impugned judgment and order are perverse and illegal. It was a day hours incident. There are eye account witnesses. Presence of PW-1 and PW-2 at the place of occurrence at the time of incident is natural and probable. Finding of the trial court placing the PW-2 Balram Tiwari in the category of 'unreliable witness' is against the facts and evidence. Referring to entire evidence adduced by the prosecution it was further submitted that deceased and witnesses disclosed in the F.I.R. were returning together from the District Court and as and when they reached near the place of occurrence, accused persons opened fire upon the deceased. This fact has been proved by the prosecution beyond reasonable doubt. Medical evidence fully supports the oral version. F.I.R. was lodged promptly. It was also submitted that PW-2 Balram Tiwari is a reliable witness and his statement finds support with the statement of PW-1 and medical evidence. There was no reason to falsely implicate the accused respondents in this case. Charges framed against the accused respondents are proved. It was lastly submitted that the findings recorded by trial court in the impugned judgment and order are not based on correct appreciation of facts and evidence and suffer from infirmity and illegality warranting interference by this Court. In support of his submissions, learned AGA placed reliance on a decision of Apex Court in **Vadivelu Thevar Vs. The State of Madras, 1957 AIR 614.**

13. In reply, learned Senior Counsel appearing for the accused respondent has submitted that the accused had not committed the present offence. Referring to the findings recorded by the trial court in the impugned judgment and order it was further submitted that PW-2 Balram Tiwari in his cross examination done by the accused Narendra has admitted that he received information about the incident in the District Court premises and thereafter this witness and PW-1 both went to the place of occurrence. To substantiate this argument, learned Senior Counsel appearing for the accused respondent referred to the statement of PW-1 and further submitted that this witness has also stated in the beginning part of examination-in-chief that he was returning from the District Court alongwith Takdir Singh, Balram Tiwari and Ram Swarup Singh. No other person was alongwith them. It was further submitted that F.I.R. was lodged after due consultation. Witnesses disclosed in the F.I.R. were planted after calling them from their houses. They were said to be present at the place of occurrence after the incident and Investigating Officer was also present there but their statements under Section 161 CrPC were not recorded immediately. Prosecution has also not produced the FSL report. Thus, place of occurrence is also not established in this case. Referring to cross-examination of PW-1 it was also submitted that witnesses disclosed in the F.I.R. were the witness in a number of cases initiated on behalf of informant. They are pocket witness of the police. In fact they were not present on the spot nor they had seen the incident. It was also submitted that it was blind murder case. Deceased was hardened criminal. A number of criminal cases were pending against him and due to this reason he was done to death by some unknown person. It was next contended that at this

time age of accused respondent Narendra Singh is about 80 years. He was aged about 45 years at the time of recording of statement under Section 313 CrPC. Prosecution was not able to prove its case beyond reasonable doubt against the accused respondent. There is no infirmity, illegality or perversity in the impugned judgment and order warranting interference by this Court. Findings of trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law. View adopted by the trial court is also a possible view.

14. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record and evidence carefully.

15. Before proceeding to discuss the submissions raised by the learned counsel for the parties, we may mention the findings of the trial court on material points in the impugned judgement and order, which are as under:

(i). PW-1 and PW-2 are not the eye account witnesses. They were present at the time of incident in the District Court premises and had received information about the incident there.

(ii). Prosecution was not able to prove the place of incident.

(iii). It was a blind murder case.

(iv). PW-1 being the real brother of the deceased is interested witness.

(v). PW-2 is pocket witness of the police and he appeared as witness in several cases initiated on behalf of prosecution.

16. After outlining the findings recorded by the trial court in the impugned judgement and order on material points, we are proceeding to deal with the submissions advanced by the learned counsel for the parties.

17. In this matter, as is evident from the record, incident took place on 16.7.1980 at about 2.45 p.m.. F.I.R. was lodged by PW-1, brother of the deceased, on the basis of written

report - Ext. Ka-1 on 16.7.1980 itself at 3.30 p.m.. Distance between place of occurrence and police station concerned was about one and half furlong. Specific role for causing injuries to the deceased is assigned to present accused respondent and co-accused Ramesh (since dead). PW-1 in his examination-in-chief has stated that he was returning from the Court alongwith Takdir Singh, Balram Tiwari and Ram Swarup Singh. No other person was alongwith them. A lengthy cross-examination was done from this witness wherein he has admitted that number of criminal cases were pending against the deceased started by the police and private person. Though PW-2 has supported the prosecution case in examination-in-chief and in his cross-examination completed in the year 1982 yet no cross-examination was done on the part of accused respondent Ramesh (since dead) at that time. He was recalled on the application moved by the co-accused in the year 1985 for cross-examination and he has specifically stated that at the time of incident he was present in the District Court premises alongwith PW-1 and had received information about the present incident in the Court premises itself and thereafter they went to the place of occurrence. Looking to the statement of PW-2 made in the cross-examination done by accused Ramesh (since dead) the trial court has observed that PW-2 is not a reliable witness. He has not been declared hostile by the prosecution. Statement made by this witness in the cross-examination done by co-accused Ramesh (since dead) placed him in the category of 'fully unreliable witness'. Trial court was also of the view that examination-in-chief of PW-1 itself makes it clear that this witness was also not present at the place of occurrence at the time of incident. On the basis of aforesaid facts, the findings of the trial court recorded in the impugned order are to be analyzed.

18. It is settled principles of law that in the appeal against acquittal the Appellate Court should interfere with the judgment and order of acquittal passed by the Trial Court if it arrives at a finding that the trial Court's decision was perverse or otherwise unsustainable. It is also settled that if the view adopted by the trial court is a possible view and trial court has well discussed the entire facts and evidence in the impugned judgment and order, the Appellate Court should not interfere with the said findings. The Appellate Court will not superimpose its view over the view adopted by the Trial Court in the impugned judgment and order.

19. In this case, as is evident from the record, PW-2 was cross-examined on two occasions, firstly, in the year 1982 and secondly, in the year 1985. In the year 1985 when he was cross-examined on behalf of co-accused Ramesh (since dead) he did not support the prosecution case but he was not declared hostile. If the statement of this witness made in the examination-in-chief and cross-examination both are taken together it is evident that PW-2 cannot be placed in the category of 'fully reliable witness'. He can also not be placed in the category of 'fully unreliable witness'. If such is the position, he can be placed in the category of neither wholly reliable witness nor wholly unreliable witness and in that situation Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony. The trial court has taken into consideration the statement of PW-1 and has compared the same with the statement of PW-2 and was of the view that PW-1 was also not present at the time of occurrence at the place of incident. He himself has admitted in the examination-in-chief that when they were returning from the Court towards the market, deceased was not accompanying them. If the statement of PW-1 in the

examination-in-chief in this case is compared with the cross-examination of PW-2 made in the year 1985 it can safely be held that view taken by the trial court in the impugned judgment and order regarding presence of PW-1 and PW-2 at the place of occurrence at the time of incident is not illegal and perverse. PW-2 has not been declared hostile. Thus, the trial court has rightly taken into consideration the part of cross-examination done in the year 1985 on the part of accused Ramesh (since dead). Had he (PW-2) been declared hostile on the basis of cross-examination done in the year 1985, its impact could be otherwise. The trial court has rightly taken into consideration the cross-examination part of PW-2 done in the year 1985, as he cannot be placed in the category of 'fully reliable witness' and his statement in the cross-examination are self-contradictory. Presence of this witness alongwith PW-1 and other witnesses disclosed in the F.I.R. at the time of incident was not found believable, which is based on correct appreciation of facts and evidence. The trial court while recording the aforesaid facts has discussed the entire evidence in detail and has rightly concluded that PW-1 and PW-2 were not present at the place of occurrence at the time of incident. They were planted later on by the police after due consultation.

20. Prosecution has examined only two fact witnesses i.e. PW-1 and PW-2, however, some other witnesses were disclosed in the F.I.R. but they were not examined. There remains only formal witnesses. Presence of PW-1 and PW-2 at the time of incident is not believable, as discussed here-in-above. Thus, it can safely be held that prosecution was not able to prove its case beyond reasonable doubt. It is pertinent to mention here that prosecution has also not produced the FSL report to establish the place of occurrence. If the findings

of the trial court recorded in the impugned judgment and order are analyzed in consonance with the facts and evidence adduced by the parties in the present matter in light of submissions advanced by the learned counsel for the parties, we are of the view that the view taken by the trial court in the impugned judgment and order is a possible view.

21. Considering the entire aspects of the matter, we are of the view that impugned judgment and order passed by the trial court is well thought and well discussed and trial court has rightly held that prosecution has not succeeded to prove guilt of accused respondent beyond reasonable doubt. The accused respondent is found not guilty for the offence punishable under Sections 302/34, 302 IPC. As such, impugned judgment and order passed by trial court is liable to be upheld and government appeal having no force is liable to be dismissed.

22. Accordingly, present Government Appeal is **dismissed** and the impugned judgment and order passed by the trial court is affirmed.

Order date : 19.07.2022

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