

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

**Cr. Acq. Appeal No.35/2008**

**Date of decision : May 21, 2008**

<b>State</b>	<b>Vs.</b>	<b>Mukesh Kumar Vishkarma &amp; Anr.</b>
Coram		
<i>Hon’ble Mr. Justice Virender Singh</i> <i>Hon’ble Mr. Justice Y.P. Nargotra</i>		
Appearing counsel:		
For appellant(s)	:	Mr. B.S. Salathia, Addl. Adv. General.
For respondent(s)	:	
i)	Whether approved for reporting in Press/Media	: <b>Yes / No</b>
ii)	Whether to be reported in Digest/Journal	: <b>Yes / No</b>

Respondents Mukesh Kumar Vishkarma and Ajay Kumar alias Sonu (hereinafter to be referred to as accused) were booked in FIR No.61/2003 registered at Police Station, Samba for the offences under sections 302/34 RPC. Vide impugned judgment of learned Additional Sessions Judge, Jammu, dated 25-01-2008, they have earned acquittal for the said charges, aggrieved thereof the State has preferred the instant appeal.

We have heard Mr. Salathia at length and also gone through the impugned judgment minutely.

We do not feel the necessity of describing the prosecution case in detail once again, as the same is depicted in the impugned judgment itself. However, in short, the case of the prosecution is that a

headless body of male was found nearby bushes in Nullah at SIDCO Complex, near Grid Station. It was subsequently identified as that of Dashrath Yadav. He was working in a factory known as Evergreen. During investigation, needle of suspicion pointed towards both the accused. Pursuant to their disclosure statements, certain recoveries were also effected from them. The motive projected was that accused Mukesh owed Rs.3,000/- and accused Ajay Kumar owed Rs.2,000/- to the victim and in order to escape their liability, they killed him on the night intervening 16<sup>th</sup>/17<sup>th</sup> of April, 2003.

The case of the prosecution is resting upon circumstantial evidence and in order to strengthen the charge, the prosecution examined certain witnesses, which included Chanser Yadav, the real brother of the deceased.

The important witnesses produced by the prosecution were PW Bharat Ram and PW Parshotam Singh, who had allegedly seen the victim in the company of the accused. Bharat Ram PW used to work in Grid Station near SIDCO Complex, which was opposite to Evergreen Industry. No doubt, this witness had stated that he saw the deceased in the company of two persons, but he did not reveal that who those persons were. He rather flatly refused to identify the accused. He was declared hostile. In short, he did not toe the line of the prosecution. Similarly, the other PW Parshotam Singh, who was a shopkeeper near SIDCO Complex, did not complete chain of last seen evidence. This witness has been dubbed by the learned trial Court as

the planted one to buttress the case of the prosecution. The learned trial Judge has entered into a detailed discussion while discarding his evidence. We have gone through the same.

So far as motive is concerned, the learned trial Court has not believed PWs Chanser Yadav and Mohan Lal.

The other important plank on which the prosecution relied heavily was the disclosure statement allegedly made by both the accused and the recoveries thereto. The learned trial Court, while discussing the aspect of section 27 of the Evidence Act, came to a categoric finding that the recoveries allegedly effected were not free from doubt. The main recoveries were of 'Sua' and 'Iron Blade', the alleged weapons of offence besides 'Pant and Shirt' from Ajay Kumar accused. The witnesses to the aforesaid recoveries were PWs Chanser Yadav, the real brother of the deceased, and one Charanjeet Singh. Charanjeet Singh did not support the case of the prosecution. He was declared hostile. Finding the discrepancies in the disclosures and the alleged recoveries of articles, the learned trial Court observed that mere coming into being the memos of recoveries on file are not the sufficient proof of their reliability.

Investigation conducted by PW Charanjeet Singh has also not found to be in the right direction.

Scope of interference by a Court in a judgment of acquittal has been enumerated by the Hon'ble Apex Court in a latest judgment rendered in case '**State of Madhya Pradesh Vs. Bacchudas**', 2007

**Criminal Law Journal 1661**, in which their Lordship in para 9 of the judgment has observed thus:

“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 compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been

unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by the Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793); *Ramesh Babulal Doshi v. State of Gujrat* (1996 (9) SCC 225); *Jaswant Singh v. State of Haryana* (2000 (4) SCC 484); *Raj Kishore Jha vs. 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(1) SCC 527) and *Sachchey Lal Tiwari v. State of U.P.* (2004 (11) SCC 410).”

We have appreciated the case on hand following the ratio of the aforesaid judgment and at the same time kept in view the settled proposition of law that in a case resting upon circumstantial evidence, conviction can be passed only when all the incriminating facts and circumstances are found to be pointer towards the guilt of the accused and if any of the main plank connecting the accused in the commission of the offence is stumbling or not found to be clearly established, it breaks down the case of the prosecution.

Having re-scanned the entire evidence of the prosecution case in the light of the evidence led by it on every material aspect, we do not find any substantial or compelling reasons for disturbing the well-reasoned judgment of acquittal, as we do not find any infirmity, unreasonableness or perversity in it.

Resultantly, the present appeal is dismissed being devoid of any merit in it.

**JAMMU**  
**May 21, 2008**  
**T.Arora, PS**

***(Y.P. Nargotra)***  
***Judge***

***(Virender Singh)***  
***Judge***