

CRAA No.172/2013

State V. Rajesh Kumar and ors.

Hon'ble Mr Justice Alok Aradhe, Judge
Hon'ble Mr Justice Tashi Rabstan, Judge

For Petitioner/appellant(s) : Mr. Ehsan Mirza, Dy.AG
For respondent (s) : Mr. Rohan Nanda, advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

Per-Alok Aradhe,J:

Heard on the question of admission.

2. This criminal acquittal appeal has been filed against the judgment dated 14.05.2013 by which the respondents have been acquitted in respect of the offences under Sections 302/307/34 of the RPC and 4/25 of the Indian Arms Act.
3. The prosecution story in nutshell is that on 24.05.2011 an information was received at 9.30 pm in Police Station, Ramgarh from reliable sources that at 9.00 pm Jaswant Singh @ Jassa and Jhankar Singh have been injured by some person on account of old enmity with the intention to murder them and Jaswant Singh has succumbed to his injuries on the spot whereas Jhankar Singh grievously injured and shifted to hospital by some persons. On receipt of the aforesaid information, FIR No.26/2011 for the commission of offence under Sections 302/307 RPC was registered and the investigating officer took the possession of the body of the deceased Jaswant Singh for the purpose of autopsy. The statements of the witnesses under Section 161 CrPC were recorded on 25.05.2011. The prosecution in

order to prove its case examined as many as 21 witnesses, namely, PW-1/ Jasbir Singh, PW-2/ Pawan Kumar, PW-3/Gurmeet Singh, PW-4/Babu Ram, PW-5/Sukhvinder Singh, PW-6/ Bhola Ram, PW-7/ Nanak Chand, PW-8/Dr. Anjum Choudhary, PW-9/ Durga Dass, PW-10/ Kirpal Singh, PW-11/ Harish Kumar, PW-12/Avtar Singh, PW-13/Jankar Singh, PW-14/Omkar Nath, PW-15/Jagir Singh, PW-16/ Jatinder Singh, PW-17/Pawan Dev Singh, PW-18 Sat Pal, PW-19/Ramesh Lal, PW-20/Bajinder Singh, PW-21/ Kuldeep Kumar.

4. The trial Court vide impugned judgment has acquitted the respondents of the offences alleged against them. Learned Dy.AG submitted that there were independent witnesses with regard to disclosure statement as well as recovery of weapon of offence and the doctor has opined that the deceased has suffered wound on the chest. It is further submitted that respondents are habitual offenders and the trial court has failed to view the evidence on record in its correct perspective which has resulted in erroneous findings and the consequent judgment. On the other hand, learned counsel for the respondents submitted that there are no eye witnesses to the incident and the statement of two alleged eye witnesses namely Harish Kumar and Avtar Singh is not worthy of reliance as, as per the version of the investigating officer, the deceased had died instantaneously and therefore there was no question of him telling the witness namely Harish Kumar and Avtar Singh that he was assaulted by the respondents. It is also submitted that there is no evidence on record to show that the respondents are habitual offenders. It is further submitted that the trial Court has passed the impugned judgment on the basis of meticulous appreciation of evidence on record which does not call for any interference.
5. We have considered the submissions made on both sides and have perused the record. It is pertinent to mention here that PWs-Jasbir Singh, Gurmeet Singh, Babu Ram, Sukhwinder Singh, Bhola Ram, Nanak Chand, Durga

Dass, Kirpal Singh have turned hostile and nothing incriminating could be elicited from their cross examination by the prosecution. PW-Jhankar Singh is an eye witness to the incident. It is pertinent to mention here that he in his statement under Section 161 CrPC has stated that his father was injured with a Kirch by the accused whereas only knife has been recovered as weapon of offence. In the cross examination, the aforesaid witness has stated that there is a difference between knife and Kirch. In his evidence, PW-Jhankar Singh has further deposed that PW-Kirpal Singh and others came on spot and they left for Vijaypur hospital in the vehicle but PW-Kirpal Singh while contradicting the above deposition of PW Jhankar Singh has deposed that he had only seen the deceased Jaswant Singh all alone lying on the ground on spot. Thus, the aforesaid statement of PW-Kirpal Singh renders the evidence of PW-Jhankar Singh that he was present on the spot unreliable. Statement of PW-Jhankar Singh has been recorded by the I.O, on 04.06.2011 whereas the date of incident is 24.05.2011. No explanation has been offered for delay in recording the statement of the aforesaid eye witness under Section 161 of the CrPC. PW-Avtar Singh who is the son of the deceased Jaswant Singh has deposed that after having heard a noise he had gone on spot and had seen his father bleeding profusely and was lying on the road in a ditch. Thereafter, Harish, Kirpal Singh and he had shifted the deceased to the hospital and on the way the deceased Jaswant Singh told him that he was injured by three persons namely Surinder Lal, Rajesh Kumar and Deepak Kumar. PW-Harish Kumar has also stated that while the deceased was being taken to the hospital, he told that he had been injured by the Punjabi.

6. It is pertinent to mention here that investigating officer in his evidence has stated that as per his investigation, the deceased has not made any statement before his death as he died on the spot. Eye witnesses Sukhvinder Singh and Jhankar Singh had told him for the first time on the day when the IO

recorded their statement that they had seen the occurrence. The witnesses to the seizure memo of the dead body who were present on the spot were not summoned. He has also admitted that he has not written the contents of the arrest memo but arrest memo bears his signatures. It is further admitted by him that time and place of arrest have wrongly been mentioned in the arrest memo. It is also admitted that statement of Avtar Singh was not recorded on 24.05.2011 but was recorded on 25.05.2011. In a reply to the question put by the Court, the investigating officer has admitted that he has not investigated the case. It is pertinent to mention here that PW-Sukhvinder Singh has turned hostile to the prosecution who was cited as eye witness. The testimony of Jhankar Singh has already been held to be not worthy of reliance. No attempt was made by the investigating officer to collect the medical evidence with regard to injury allegedly sustained by PW-Jhankar Singh in the incident. Even the MLC No. of the injured PW Jhankar Singh has not been disclosed on the record. It is also pertinent to mention here that PW-Jhankar Singh who is the son of the deceased and is an eye witness, neither his statement has been recorded under Section 164-A CrPC nor any explanation has been given by the prosecution in this regard.

7. The Trial Court has recorded the findings, which are based on meticulous appreciation of evidence available on record. It is well settled in law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the Trial Court is also a reasonable view of the evidence on record and the findings recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse. (**See Ram Swaroop and others. Vs. State of Rajasthan, (2002) 13 SCC 134, Vijay Kumar v. State by Inspector General, (2009) 12 SCC 629 and Upendra Pradhan vs. State of Orissa (2015) 11 SCC 124.**)

8. From perusal of the judgment of the Trial Court, we find that the findings recorded by the trial Court can neither be termed as perverse, contrary to the evidence or erroneous, therefore, no case for interference in this acquittal appeal is made out. In the result, the appeal fails and is hereby dismissed.

(Tashi Rabstan)
Judge

(Alok Aradhe)
Judge

Jammu
31.10.2017
Raj Kumar

