BABU RAM AND OTHERS

v.

STATE OF UTTAR PRADESH

February 1, 1983

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Appeal against acquittal — Interference by the High Court — If two views about a particular circumstance are possible, interference by the High Court with the conclusions arrived at by the Sessions Court is not permissible unless the conclusions were not possible — Criminal Procedure Code, 1973, Section 378—Evidence Act (1 of 1872), Section 3—Appreciation of evidence—Criminal trial — Circumstantial evidence —Powers of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, Section 2.

In the State appeal against acquittal, appellant Babu, his father Munna and Tulaiyan were convicted by the High Court of Allahabad and sentenced to life imprisonment.

The prosecution case as unfolded in the First Information Report and the evidence is that Dhani Ram, the deceased who was living with his father-in-law in village Kuretha came on 7th of October 1969 to the house of his father Ajudhya in village Therro for getting his lands ploughed. On the 8th October 1969 at about 9 A.M., he along with his father left village Therro for village Kuretha for getting seeds from one of Dhani Ram's friends. When the two reached the field of Malkhan which is said to be near the temple of Ram Kund, the appellants came out from inside the *Jhunri* field of Malkhan and started beating Dhani Ram with lathis. While Tulaiyan, appellant No. 3 caught hold of Ajudhya and prevented him from having his son Dhani Ram rescued, the other two continued to beat him to death pursuant to the F.I.R. filed at 5.30 p.m. at the police station which was about 12 miles away, Sub Inspector Prem Narain reached the spot at 3 A.M. on 9th October, found the dead body of Dhani Ram lying between the fields of Halkha and Malkhan, sent it for postmortem and after investigation filed the chargesheet.

The prosecution produced three witnesses—Ajudhya, father of deceased as PW 1, Arjun PW 2 and Kashi Ram PW 3, both PW 2 and PW 3 being neighbours of PW 1 and of the same caste to prove the case along with the post mortem report which showed the stomach and bladder of the deceased empty and the large intestine with faceal matter.

All the appellants entered a plea of non-guilty. Babu's defence was that the case was foisted against him as he had earlier on 17th of July 1969

filed a complaint under section 498 I.P.C. against Dhani Ram, his brother Ghurka, their maternal uncle Halka and one Ram Charan for enticing Babu's wife away. Tulaiyan took the plea that he was being implicated as he was one of the witnesses in the earlier case under section 498 I.P.C.

On appraisal of evidence the Sessions Judge came to the conclusion that the evidence produced by the prosecution was too feeble to base any conviction on that. In his opinion there was no motive on the part of the appellants, and the witnesses could not be said to be independent and they were mere chance witnesses. He further found that the probability of Dhani Ram being attacked while it was dark before he had evacuated or taken his breakfast could not be weeded out and in all probability the occurrence had taken place not at the place alleged by the Prosecution. On these findings he acquitted all the accused.

On appeal, however, the High Court set aside the order of acquittal and convicted the appellants under section 302 read with section 34 I.P.C. and sentenced each of them to undergo imprisonment for life. Hence the appeal under section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1971.

Allowing the appeal, the Court

HELD : 1:1 The appellate court should be slow in disturbing the finding of fact of the trial court and if two views are reasonably possible of the evidence on the record, it should not interfere simply because it feels that it would have taken a different view if the case had been tried by it, because the trial judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. [335 F-G]

State of U.P. v. *Samman Dass*, [1972] 3 S.C.R. 58, followed.

1:2 In the instant cases a perusal of the evidence produced and the two judgments of the courts below make it clear that the conclusions arrived at by the Sessions court were fully justified and should not have been lightly set aside by the High Court. The cumulative effect of the various circumstances in the opinion of the Sessions Judge did throw doubt on the prosecution case and if the learned Sessions Judge in the circumstances did not think it safe to rely upon the evidence produced on behalf of the Prosecution, he committed no error either as to the time of occurrence or the venue of the occurrence, or the motive for murder, or the motive of PW 1 to implicate the appellants by treating the witnesses as interested and/or chance witnesses. [336 D-E, 334 B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 25 of 1976.

From the Judgment and Order dated the 17th September 1975 of the Allahabad High Court in Government Appeal No. 163 of 1971.

A *S.K. Mehta* and *M.K. Dua* for the Appellant.

Dalveer Bhandari, H.M. Singh and *Ranbir Singh Yadav* for the Respondent.

The Judgment of the Court was delivered by

B

MISRA, J. The present appeal under s. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against the judgment of the High Court of Allahabad dated 17th September, 1975 setting aside the order of acquittal passed by the Sessions Judge and convicting the appellants under s. 302 read with C s. 34 IPC and sentencing them to undergo imprisonment for life.

It appears that wife of Babu, appellant No. 1 had been enticed away. He, therefore, filed a complaint on 17th of July, 1969 against Dhani Ram, the deceased, his brother Ghurka, their maternal uncle Halka and one Ram Charan under s. 498 IPC. The prosecution D case as unfolded in the first information report and the evidence is that Dhani Ram, deceased, used to live at the house of his father-in-law in village Kuretha. On 7th of October, 1969 he came to the house of his father Ajudhya in village Therro for getting his lands ploughed. Next day at about 9 A.M. he along with his father left village Therro for village Kuretha. His father was going there for E getting seeds from one of Dhani Ram's friends. When the two reached the field of Malkhan, which is said to be near the temple of Ram Kund, the three accused came out from inside the *jhunri* field of Malkhan and started beating Dhani Ram with lathis. Tulaiyan, appellant No. 3 caught hold of Ajudhya, the father of Dhani Ram and prevented him from having his son rescued. The other two F continued beating Dhani Ram to death. The first information report was lodged at the police station at a distance of about 12 miles at 5-30 P.M. by Ajudhya. Sub-Inspector Prem Narain reached the spot at 3 A.M. on 9th October. He found the dead body of Dhani Ram lying on the way between the fields of Halka and Malkhan. G He prepared the challan of the dead body and a letter for postmortem and sent the dead body for postmortem. Thereafter he investigated the case and submitted the chargesheet against the three appellants.

H The accused denied the charge. Babu said that the case was started against him as he had filed a complaint under s. 498 IPC against Halka and three others. Tulaiyan in his defence said that he had

been implicated as he was a witness for Babu in the criminal case under s. 498 IPC. A

According to the doctor, who conducted the postmortem, the death had taken place at about 48 hours before postmortem. He, however, admitted that there could be a difference of two to four hours either way in the duration given by him. Postmortem report showed the stomach and bladder of Dhani Ram empty. There was faecal matter at places in the large intestine. There was also faecal matter stuck to the *addah dhoti* which Dhani Ram was wearing. B

The prosecution produced three witnesses to prove its case. On appraisal of evidence the Sessions Judge came to the conclusion that the evidence produced by the prosecution was too feeble to base any conviction on that. In his opinion the witnesses could not be said to be independent and they were mere chance witnesses. He further found that the probability that Dhani Ram was attacked while it was dark, before he had evacuated or taken his breakfast could not be weeded out and in all probability the occurrence had taken place not at the place alleged by the prosecution. On these findings he acquitted all the accused. C D

On appeal, however, the High Court set aside the order of acquittal and convicted the appellants under s. 302 read with s. 34 IPC and sentenced each of them to undergo imprisonment for life. E

The circumstances which weighed with the Sessions Court for disbelieving the evidence of the prosecution, in our opinion, appear to be weighty. According to prosecution, Dhani Ram had come to help his father in ploughing his fields on 7th October, 1969, but from the evidence on record it is clear that he came in the evening of 7th October to village Therro and left the same for village Kuretha the next day at 9 A.M. It does not stand to reason that Dhani Ram would leave for a different village at a distance of about 5 or 6 miles without easing himself or without taking his breakfast. But, as the doctor in postmortem examination had found the stomach and bladder of the deceased Dhani Ram to be empty, this gave a handle to Ajudhya to depose in the evidence that Dhani Ram had not taken breakfast while leaving village Therro for village Kuretha. The presence of the faecal matter in the large intestine does indicate that Dhani Ram had not evacuated. Therefore, the possibility that Dhani Ram was done to death early in the morning before he had evacuated is not weeded out. Ajudhya, F G H

P.W. 1, in his deposition has clearly stated that Dhani Ram used to ease himself just after getting up from the bed but he was not in a position to say whether on that fateful day Dhani Ram had gone to ease himself just after getting up from sleep. If Dhani Ram was in the habit of going out to ease himself early in the morning just after getting up, there seems to be no reason why he would not go to ease himself on that day if he was to go to his father-in-law's house.

The Sessions Judge also came to the conclusion that the place of occurrence was not the one as alleged by the prosecution in the first information report. In the FIR it has been stated that assault on Dhani Ram had been made at the field of Malkhan near Ram Kund Temple. According to the Sub-Inspector the dead body and the blood were found near the field of Malkhan which is at a distance of more than a furlong from Ram Kund Temple. Ajudhya, P.W. 1, stated before the court of Sessions that attack on Dhani Ram was made when he and Dhani Ram reached the field of Malkhan. He further added that Ram Kund Temple is also at that very place. From this statement it is apparent that the assault on Dhani Ram was made just near the temple. Kashi Ram, P.W. 3, also deposed before the committing Magistrate that he heard noise near Ram Kund Temple. He did not say before the committing Magistrate that when he reached the field of Malkhan he saw the occurrence. But, in the court of Sessions he denied that he had made the aforesaid statement before the committing Magistrate. However, it was proved from Exrt. Kha. 5 that he did depose before the committing Magistrate that when he reached near the temple he heard the noise.

The prosecution case in the initial stage was that the assault had been made near Ram Kund Temple. Of course, it was also mentioned in the FIR that the field of Malkhan was nearby. The Sub-Inspector did not take care to find out if any of the fields of Malkhan was near the temple. There might be some other field of Malkhan near the temple and the reference to that field might have been made in the first information report.

The injuries on Dhani Ram also indicated that practically all the injuries were on his face and there were hardly any injuries on any other part of his body. This also suggests that the injuries had been caused while Dhani Ram was lying on the ground.

The other two witnesses, Arjun and Kashi Ram deposed that they saw the occurrence from near the *nallah*. This *nallah* is far away

from the temple. A person standing at that place could not see the *marpeet* going on near the temple, as will be clear from a reference to the site plan attached to the paper book. The learned Sessions Judge observed that the place of occurrence was perhaps shifted to make it appear that the witnesses standing near the *nallah* could see the *marpeet*.

Even assuming that the assault had taken place near the field of Malkhan, the learned Sessions Judge was of the view that the witnesses had not seen the assault and that Arjun and Kashi were mere chance witnesses on their own showing. They were alleged to be going to village Dhanora for purchasing seeds and on the way they happened to see the occurrence. Arjun and Kashi were Gadarias to which caste Ajudhya also belonged and were next door neighbours of Ajudhya. They were on friendly terms, meeting everyday. They came into the witness box only to help Ram Charan, one of the accused in the case under s. 498 IPC, who also belonged to the same caste of Gadarias as the two witnesses. In the opinion of the learned Session Judge the fact that the other two witnesses, namely, Arjun and Kashi were also going to another village Dhanora for seeds and they happened to see the occurrence was too much of a coincidence. No owner of any of the fields in the vicinity has been produced as a witness on behalf of the prosecution.

The blood-stained earth said to have been taken from near the field of Malkhan was sent to the chemical analyst and the serologist but the report of the serologist has not been produced before the court, and, therefore, it cannot be said that the blood recovered from the site was human blood.

The learned Sessions Judge was also of the view that the accused had no motive to murder Dhani Ram inasmuch as in the complaint under s. 498 IPC it was said that Ra n Charan and Ghurka had enticed away the wife of Babu but they kept her at the house of Dhani Ram. Ajudhya, the father of the deceased, stated before the investigating officer that Babu etc. accused in the present case were under the impression that Dhani Ram had kept the woman at his house and had enticed her for his *Mama* Halka. But before the Sessions Court in cross-examination he admitted that the wife of Babu had been enticed away by Ghurka and Ram Charan and then they did not keep the girl with them but sent her to her *Maika*. Next day he, however, deposed that Dhani Ram himself had told him that the woman had come to his house. He kept her for some time

A and then sent her to her *Maika*. The woman had returned to Babu before the murder had taken place. However, the case under s. 498 IPC was pending at the time of the murder of Dhani Ram and Ajudhya and his family members might have availed of the opportunity to implicate Babu, who was complainant in that case, and his brother Munna and Tulaiyan who were witnesses in that case. B Ajudhya might have got them behind the bars so that there might not be any body left to do *pairwi* in that case.

The cumulative effect of the various circumstances enumerated above, in the opinion of the Sessions Judge, did throw doubt on the C prosecution case and if the learned Sessions Judge in the circumstance did not think it safe to rely upon the evidence produced on behalf of the prosecution, he committed no error.

The High Court, however, negativated the suggestion that Ajudhya was interested in falsely implicating the three accused in D this case so as to prevent them from doing *pairwi* in the criminal case under s. 498 IPC instituted by Babu. The High Court observed :

> "...that complaint was against Dhani Ram, Halka, E Ram Charan and Ghurka. In that complaint neither Ajudhya nor any other eye witnesses produced on behalf of the prosecution had been arrayed as accused. There is nothing on the record to show that Ajudhya was taking any interest in the criminal litigation instituted by Babu Ram. It is difficult to believe that while promptly lodging F the first information report Ajudhya was thinking in terms of implicating persons who could do *pairwi* against Dhani Ram and others. If at all, Ajudhya would be interested in seeing that the real assailants of his son are brought to book."

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The observation made by the High Court would be correct if Ajudhya and the two witnesses had really seen the occurrence. But if they were not on the scene of occurrence they might draw on their imagination and try to implicate persons on whom they had a sus- H picion. In our opinion the High Court was not justified in coming to a different conclusion if the conclusion drawn by the Sessions Judge was a plausible and possible one.

Arjun, P.W. 2. and Kashi Ram, P.W. 3 were Gadarias by caste. Ajudhya was also Gadaria by caste. Arjun and Kashi Ram were just next door neighbours of Ajudhya and they were on friendly and visiting terms. Two of the persons accused in the complaint filed by Babu were also Gadarias by caste. The learned Sessions Judge in the circumstances branded those witnesses as not independent. As observed earlier, the High Court, however, held that they would not be interested in implicating false persons merely on the ground that they were next door neighbours. The High Court further took the view that no question was put to the witnesses that Malkhan had two fields, one adjoining Ram Kund temple and the other at a short distance away from the other. It was not for the accused to prove that there was another field of Malkhan but it was for the prosecution to prove by conclusive evidence that Malkhan had only one plot and no other plots.

About the time of occurrence also the High Court reversed the finding of the Sessions Court that the possibility was that Dhani Ram was done to death in the early hours of 8th October before he had gone to ease himself. The reasons given by the Sessions Court appear to be more plausible on the materials on the record. In any case, even if two views were possible, the High Court should not have interfered with the conclusions arrived at by the Sessions Court unless the conclusions were not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the Appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate Court, therefore, should be slow in disturbing the finding of fact of the trial court and if two view are reasonably possible of the evidence on the record, it is not expected to interfere simple because it feels that it would have taken a different view if the case had been tried by it. This Court in *U.P. State* v. *Samman Dass*(1) dealing with a similar situation laid down the following postulates :

> "There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of

(1) [1972] 3 S.C.R. 58.

A the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the trial judge, the appellate court should take into account the fact that the trial judge had the advantage of
B looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and ... should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy—though unwittingly it may be—or
C is afraid of the logical consequences, if that benefit was not given."

We have closely perused the evidence produced in the case and also gone through the two judgment of the Sessions Court as well as the high Court, and after hearing the counsel for the parties at
D some length we are satisfied that the conclusions arrived at by the Sessions Court were fully justified and should not have been lightly set aside by the High Court.

For the reasons given above the appeal must succeed and it is accordingly allowed and the judgment of the High Court dated
E 17th September, 1975 is set aside and that of the Court of Sessions is restored.

S.R. *Appeal allowed.*

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