[2021] 2 S.C.R. 293

RAJENDRA @ RAJAPPA AND ORS.
v.
STATE OF KARNATAKA

(Criminal Appeal No. 1438 of 2011)

MARCH 26, 2021

[SANJAY KISHAN KAUL AND R. SUBHASH REDDY,* JJ.]

Penal Code, 1860 – s. 302 r/w 149 – Murder pursuant to armed assault – Deceased was assaulted with axe, stick, pickaxe and stone when he was coming back from work alongwith his wife (PW1) and elder brother (PW2) – Six accused – A-1 died – Trial court acquitted A-2 to A-6 – High Court reversed acquittal of A-2 to A-5 and convicted them u/s.302 r/w s.149, however, confirmed acquittal of A-6 – On appeal by A-2 to A-5 (appellants), held: Trial court erred in disbelieving the evidence of PWs-1 to 3 only on the ground that they were relatives of the deceased, forgetting that PW-1 was daughter of A-1 and PW-3 was A-1's wife – No reason for PW-3 to depose against her own husband making such serious allegations – Depositions of PW-1 to PW-3 when considered alongwith the documentary evidence on record and medical evidence of PWs-10 and 14, made it clear that their evidence was natural, trustworthy and acceptable – Injuries found in the post-mortem report were attributable to overt acts of A-2 to 5, as stated in the complaint – Contradictory portion of the statement of PW-14 not significant to discard the total evidence on record – As the view taken by the trial court was not at all a possible view and the findings ran contrary to the evidence on record, the High Court rightly reversed the judgment of the trial court by convicting A-2 to A-5 – From the evidence on record, it is clear that the assault was intentional which resulted in the death of deceased, and A-2 to A-5 had a common object, as such the High Court rightly convicted them u/s.302/149, IPC etc.

Code of Criminal Procedure, 1973 – s.378 – Scope of – Appeal against acquittal recorded by trial court – Held: Unless the view taken by the trial court is not a possible view, normally the High Court should not interfere with the acquittal recorded by the trial court.

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* Author

Evidence – Witness – Credibility of – Held: Only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses.

Dismissing the appeal, the Court Held:

1. **In various authoritative pronouncements, this Court has circumscribed the scope of appeal under Section 378 CrPC, in cases where appeal is preferred against acquittal recorded by the trial court. Further, it is a settled proposition that unless the view taken by the trial court is not a possible view, normally the High Court should not interfere with the acquittal recorded by the trial court. There cannot be any straight-jacket formula to apply readily for the cases in appeals arising out of acquittal recorded by the trial court. Whether the view taken by the trial court is a possible view or not; whether the findings recorded by the trial court are in conformity with the evidence or not; are the matters which depend upon facts and circumstances of each case and the evidence on record. By re-appreciating evidence on record if appellate court comes to conclusion that findings recorded by the trial court are erroneous and contrary to law, it is always open for the appellate court, by recording good and compelling reasons for interference and overturn the judgment of acquittal by converting the same to that of conviction. [Para 10]**

2. **In this case, the deceased; PWs-1 to 3; and accused were closely related. The trial court disbelieved the evidence of PWs-1 to 3 only on the ground that they are relatives of the deceased, forgetting the fact that PW-1 is the daughter of A-1 and PW-3 is no other than the wife of A-1. In Ex.P-1 itself PW-1 has stated that there was dispute between her deceased husband and his elder brother (PW-2) on one side and her father (A-1) and his brothers on other side in respect of sharing of tapping of toddy trees. Further, PW-1 who was accompanying the deceased at the time of the incident, has stated in her evidence that at about 06:00 a.m. she, her deceased husband and also PW-2, together went to attend coolie work and when they were returning to their house, at about 11:30 a.m. assault was made near the hostel. It is quite natural that in rural areas, going to work in early hours and coming back to their home**

around 11-11:30 a.m. to have their food. She has also clearly stated in her deposition that A-1 (who is now dead) hit with axe on the left cheek of the deceased, A-3 hit the deceased with bedaga (a sharp-edged agricultural instrument) on his head, A-4 assaulted with club on the head of the deceased, and A-5 also assaulted the deceased with axe on his head. If one examines the testimony of PW-1 closely, it is clear that it is consistent with her allegations in her complaint – Ex.P-1. [Para 11]

3. **Ex.P-6 is the post-mortem examination report in which the external injuries on the dead body of the deceased were mentioned. If the complaint made by PW-1 and her testimony are considered along with the injuries found in Ex.P-6 – post-mortem report, it makes it clear that the said injuries referred in the post-mortem report are attributable to overt acts of the accused nos. 2 to 5, as stated in the complaint. PW-1 has not made any improvements, omission or contradiction, so far as it relates to details of occurrence of the incident in the manner alleged in the complaint – Ex.P-1 and as deposed by her in the examination-in-chief. As PW-1 is a rustic villager, discrepancies in timelines, as to the time when she was examined by PW-14 (doctor) for the said injuries cannot go to the root of the prosecution case and further it is to be noted that she sustained injury on the said date and she was examined by PW-14. The deposition of PW-1 appears to be truthful and trustworthy. PW-2, the elder brother of the deceased has also stated in his evidence narrating the incident in the same lines as that of PW-1. PW-2 is also an injured witness in the incident and PW-10 (doctor) examined him for the said injury and Ex.P-4 is the wound certificate pertaining to injuries suffered by PW-2, issued by PW-10 – Senior Specialist in District Hospital. The contents of the wound certificate and oral evidence of PW-2 also establish that the injured PW-2 was brought to the hospital by his wife with a history of assault on him on the same day by A-1 and others. PW-3 is none other than the wife of A-1 who died during the pendency of trial and mother of PW-1. There is absolutely no reason for PW-3 to depose against her own husband making such serious allegations. If the depositions of PW-1 to PW-3 are considered along with the documentary**

evidence on record and medical evidence of PWs-10 and 14, it is crystal clear that their evidence is natural, trustworthy and acceptable. [Para 11]

4. Though the evidence of PWs-1 to 3 is consistent, reliable and trustworthy, the trial court, only by referring to minor contradictions, disbelieved the whole of their testimony. The findings, as recorded by the trial court in support of the acquittal, are contrary to evidence on record and the testimony of PWs-1, 2 and 3. Thus such findings, being perverse and erroneous, it is always open for the appellate court to reverse such findings on re-appreciation of evidence on record. [Para 11]

5. As regards the contradictory portion of the statement of PW-14 with reference to entries under Ex.P-6 wherein it was recorded that undigested food was found in the stomach, it is to be noticed that in Ex.P-6 itself reveals that the intestine of the deceased was full of faecal matter, therefore, death must have occurred between 3 to 12 hours prior to the postmortem examination, which supports the prosecution case. In that view of the matter, the contradictory portion of the statement of PW-14 needs to be discarded and not significant to discard total evidence on record. [Para 11]

6. Having regard to the evidence on record, as the view taken by the trial court was not at all a possible view and the findings run contrary to the evidence on record, the High Court has rightly reversed the judgment of the trial court by convicting the appellants (A-2 to A-5). Further contention of the appellants that in any case the conviction under Section 302, IPC be modified to that of conviction under Section 304-II, IPC, has no merit. From the evidence on record, it is clear that the assault was intentional which resulted in the death of the deceased and all accused – A-2 to A-5 – had a common object, as such the High Court has rightly convicted the accused for offence punishable under Section 302/149, IPC etc. [Para 11]

Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra **(2000) 8 SCC 457 : [2000] 3 Suppl. SCR 104 – relied on**

Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra **(1973) 2 SCC 793 : [1974] 1 SCR 489;** *Kanhaiya Lal & Ors. etc. v. State of Rajasthan etc.***(2013) 5 SCC 655 :**

[2013] 6 SCR 361; *V.N. Ratheesh v. State of Kerala* (2006) 10 SCC 617 : [2006] 3 Suppl. SCR 314; and ***Moti & Ors. v. State of U.P.*** **(2003) 9 SCC 444– referred to**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1438 Of 2011

From the Judgment and Order dated 22.02.2011 of the High Court of Karnataka Circuit Bench at Gulbarga in Criminal Appeal No. 1812 of 2005

Ms. Kiran Suri, Sr. Adv., S.J. Amith, Ms. Aishwarya Kumar, Krishna Kumar, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellants.

Shubhranshu Padhi, Ashish Yadav, Rakshit Jain, Vishal Banshal, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. This criminal appeal is filed by the accused nos.2 to 5 in Sessions Case No.162 of 2003 on the file of Fast Track Court-IV, Gulbarga, aggrieved by the judgment and order of conviction and sentence dated 22.02.2011 in Criminal Appeal No.1812 of 2005 passed by the High Court of Karnataka (Circuit Bench at Gulbarga).

2. Sessions Case No.162 of 2003 is a case chargesheeted by Shahbad Police Station in the State of Karnataka against the appellants-accused under Sections 143, 147, 148, 324, 326, 307, 302 read with 149 of Indian Penal Code (IPC). For the aforesaid offences, they were tried by the Fast Track Court-IV at Gulbarga and by judgment dated 20.06.2005, the appellants/accused nos.2 to 5 and accused no.6 were acquitted for the charges framed against them. As the accused no.1 died during the pendency of the proceedings, case was abated against him.

3. Aggrieved by the acquittal of the appellants, the respondent-State has preferred Criminal Appeal No.1812 of 2005 before the High Court of Karnataka. The High Court, by the impugned judgment

and order dated 22.02.2011, has allowed the appeal partly and convicted the appellants/accused nos.2 to 5 for various offences they were charged with, and confirmed the acquittal of the accused no.6 (Smt. Shantabai). All the appellants were sentenced for various offences as under :

(i) R.I. for a period of three months and to pay fine of Rs.3,000/- each. In default, to undergo S.I. for a period of one month for the offence under Section 143 IPC.

(ii) R.I. for a period of one year and to pay fine of Rs.4,000/- each. In default, to undergo S.I. for a period of three months for the offence under Section 148 r/w Sec.149 of IPC.

(iii) R.I. for a period of one year and also to pay fine of Rs.5,000/- each. In default, to undergo S.I. for a period of four months for the offence under Section 324 r/w Sec.149 IPC.

(iv) R.I. for a period of two years and to pay fine of Rs.6,000/- each. In default, to undergo S.I. for a period of five months for the offence under Section 326 r/w Sec.149 of IPC.

(v) Life imprisonment and also to pay fine of Rs.8,000/- each. In default, to undergo S.I. for a period of one year for the offence under Section 302 IPC r/w Sec.149 of IPC.

4. Stated in brief, the necessary facts and the case of the prosecution for the disposal of this appeal are as under :

- The complainant (PW-1) Sheshamma, is the wife of the deceased. That on 02.02.2003 the complainant and her husband went to coolie work in the morning and when they were returning along with firewood bundle and PW-2 was following them, at about 11:30 a.m. when the complainant and her husband came near the Government Hostel, all the accused A-1 to A-6 armed with axe, stick, pickaxe and stone, attacked the deceased and thereby inflicted fatal wounds on his person by assaulting him with weapons which they were carrying. It is further alleged that the complainant rescued her husband, went behind the hostel, the accused followed them and A-1 assaulted the deceased with axe on left cheek, A-2 assaulted with *bedaga*, A-3 assaulted with stick, A-4 assaulted with club, A-5 assaulted with axe. A-1

is the father of the complainant; A-2 and A-4 are uncles of the complainant; A-3 and A-5 are sons of A-1's sister and A-6 is one of the sisters of A-1. It is alleged in the complaint that all the accused have attacked the deceased and started abusing him saying that, inspite of telling not to pass from the front of their houses and to show their faces, they have come towards the side of the accused. Further, it is stated in the complaint that when she and her husband tried to escape and ran away from the back side of the hostel, all the accused followed them and attacked them. Further, it is stated that as her husband sustained grievous injuries he died on the spot and said incident was witnessed by her mother Sayamma and her sister Rathnamma, Mahesh and their villagers Haji, Hussain have also seen. In her complaint, she prayed to take action against the accused.

- The police, after investigation of the case and after completion thereof, filed chargesheet against the accused under various sections, as stated already.
- After committal of the case to the Fast Track Court-IV, Gulbarga, as accused no.1 was reported dead, case against him was abated. After hearing the accused, the charge was framed against the appellants under Sections 143, 147, 148, 324, 326, 302, 307 read with 149, IPC. The accused pleaded not guilty and claimed trial.
- The prosecution, to prove its case examined 22 witnesses, i.e., PW-1 to PW-22 and got marked 15 documents as exhibits, i.e. P-1 to P-15 and material objects - MO-1 to MO-13 were marked. No witness was examined in defence, but 10 documents – Ex.D-1 to D-10 were marked.

5. After appreciating the ocular and documentary evidence on record, the trial court has acquitted all the accused from the charges with the following observations :

- The deceased died due to brain hemorrhage on account of multiple head injuries suffered by him;
- As per the evidence, deceased died 6 to 8 hours earlier to the postmortem examination;

- PW-1 to PW-5 being close relatives of the deceased, they were inimical with each other before the incident, therefore, their evidence has to be considered with great care and caution;
- The name of PW-6, the only independent witness, is not mentioned in the complaint;
- It is not clear, at what time injuries were sustained or the incident took place;
- The nature of injuries and details of the same are not consistent;
- There are different versions in the oral and documentary evidence and they do not tally with each other;
- Key witnesses to the incident were not examined;
- The weapons used for the offence do not find a mention in the complaint itself;
- Discrepancies in the statement of PW-1 and as she has not disclosed about the earlier Sessions case which was going on against her husband, PW-2 and their father.

6. On appeal by the State, the High Court, while confirming the conviction of the accused no.6, has convicted accused nos.2 to 5 by the impugned judgment and order. The High Court, in the impugned judgment, has mainly held that PW-1 is a truthful witness and her testimony is quite consistent and supports the case of the prosecution. The High Court believed the oral evidence of PW-1 and PW-2 who are injured witnesses. High Court noted that PW-1 is no other than the daughter of accused no.1 and PW-3 – Smt. Sayamma – is none other than the wife of accused no.1 – Devendrappa. They have deposed in clear terms about the occurrence on the day of incident. Having regard to the consistent evidence of PWs-1 to 3 as to the occurrence of the incident, which is in the manner alleged in the complaint – Ex.P1, High Court found that the trial court has committed serious error in disbelieving their evidence, for the charges levelled against the accused. The High Court also considered the testimony of Medical Officer PW-14 and held that the occurrence of incident of assault on the deceased by the accused resulting in spot death of the deceased, is proved beyond reasonable doubt. Further, by observing that in view of such evidence, motive for the

commission of murder of the deceased by accused assumes little importance. However, referring to the evidence of PWs-1 to 3 it is held that even the motive is established as much as there was a dispute between the parties in respect of tapping of toddy trees, therefore, accused developed ill-will against the deceased. By recording a finding that the evidence on record was not properly appreciated by the trial court, the High Court has found that the prosecution has proved the case against the accused nos.2 to 5 and they are guilty of committing murder of the deceased and causing injuries to PWs-1 and 2. It is further held that all the accused – A-2 to A-5 – have had shared common object of causing the death of the deceased, as such all are liable to be convicted for the offences alleged against them.

7. In this appeal, Ms. Kiran Suri, learned senior counsel appearing for the appellants-accused has submitted that the trial court, by considering the entire evidence on record and by noticing the material discrepancies in the evidence on record, has rightly held that the prosecution has not proved the guilt of the accused beyond reasonable doubt. It is submitted by learned counsel that the view taken by the trial court was a possible view. In that view of the matter, the High Court committed error in reversing the well reasoned judgment of the trial court. The learned counsel has placed reliance on a judgment of this Court in the case of **Shivaji Sahabrao Bobade & Anr.v. State of Maharashtra**[1] wherein this Court has considered the scope of appeal against acquittal under Code of Criminal Procedure 1898. Reference is also made to the judgment of this Court in the case of **Kanhaiya Lal & Ors. etc. v. State of Rajasthan etc.**[2] wherein this Court has considered scope of appeal under Section 378 of Code of Criminal Procedure, 1973 and has held that unless there are substantial and compelling reasons, judgment of acquittal cannot be overturned. Further, reference is also made to a judgment of this Court in the case of **V. N. Ratheesh v. State of Kerala**[3] wherein this Court has held that the order of acquittal shall not be interfered with because the presumption of innocence of the accused is

1 (1973) 2 SCC 793
2 (2013) 5 SCC 655
3 (2006) 10 SCC 617

further strengthened by acquittal. By further referring to the medical evidence and ocular evidence on record, it is submitted by learned counsel that evidence of PW-14 (Medical Officer) and the contents of Ex.P-6, i.e., postmortem report run contrary to the deposition of PW-1 and that in view of such material contradictions, the High Court ought not have interfered with the judgment of the trial court. Further, it is submitted, having regard to the evidence of PW-14 who conducted the autopsy on the dead body of the deceased and the Ex.P-6 – postmortem examination report which revealed that stomach contained undigested rice like food particles, as such it was held that deceased might have died about 18 hours prior to his postmortem examination, clearly falsifies the case of the prosecution that the deceased was assaulted by the accused at about 11:30 a.m. on 02.02.2003. To buttress the said submission, the learned counsel has relied on a judgment of this Court in the case of **Moti & Ors. v. State of U.P.**[4]. Lastly, it is submitted that in any event it is not a case for conviction under Section 302 IPC as there was no intention to kill the deceased, and if her submissions are not accepted on merits of the matter, she made a request to modify the conviction to one under Section 304-II, IPC.

8. On the other hand, learned counsel appearing for the State of Karnataka, by taking us to the various findings recorded by the trial court as well as the High Court, has submitted that the findings in support of acquittal recorded by the trial court are perverse and erroneous. It is always open for the appellate court to reappreciate the evidence and reverse such findings. It is contended by learned counsel, though PWs-1 to 3 are rustic villagers and when deposing after a long lapse of time from the date of incident, the minor discrepancies will occur and same is no ground to discard their evidence. It is submitted that the evidence of PWs-1 to 3 is trustworthy and natural. Inspite of the same, by misconstruing the evidence, the trial court discarded their testimony only on the ground that all are interested witnesses as they are related. It is submitted that even the accused was related to PWs-1 to 3 and merely because they are related, same is no ground to discard their evidence. By referring to

4 (2003) 9 SCC 444

the various findings recorded by the High Court, learned counsel has submitted that the findings recorded in support of conviction by the High Court are in conformity with the evidence on record, as such there are no grounds to interfere with the same. Lastly, it is submitted that if the view taken by the trial court is a possible view, having regard to the evidence on record, it is not open for the appellate court, unless there are compelling and strong grounds made out for interference but at the same time when the findings recorded by the trial court are not in conformity with the evidence on record, perverse and erroneous, it is always open for the High Court to reverse the same. It is submitted that in view of the common object shared by the accused to commit murder of the deceased there are no grounds to interfere with the conviction recorded under Section 302 read with 149 IPC etc., as recorded by the High Court.

9. The learned counsel for the appellants placed reliance on judgments of this Court in the case of **Shivaji Sahabrao Bobade**[1] wherein the scope of the appeal preferred against acquittal is considered by this Court. In the said case this Court has considered the scope of appeal against acquittal, as a matter of practice. Incidentally, in the said case, this Court has also held that while appreciating evidence in criminal trials, as far as the nature of depositions by rural witnesses is concerned, courts not to judge their evidence by same standard of exactitude and consistency as that of urban witnesses. In the judgment in the case of **V. N. Ratheesh**[3] power of the appellate court in appeals against acquittal is considered by this Court. Similarly in the judgment in the case of **Kanhaiya Lal**[2] this Court has held that while dealing with appeals against acquittals unless there are substantial and compelling reasons and good and sufficient grounds and very strong circumstances, interference is not called for.

10. It is true that in various authoritative pronouncements, this Court has circumscribed the scope of appeal under Section 378 of the Cr.PC, in cases where appeal is preferred against acquittal recorded by the trial court. Further, it is also settled proposition that unless the view taken by the trial court is not a possible view, normally the High Court should not interfere with the acquittal recorded by the trial court. There cannot be any straight-jacket formula to apply readily for the cases in appeals arising out of acquittal recorded by

the trial court. Whether the view taken by the trial court is a possible view or not; whether the findings recorded by the trial court are in conformity with the evidence or not; are the matters which depend upon facts and circumstances of each case and the evidence on record. By reappreciating evidence on record if appellate court comes to conclusion that findings recorded by the trial court are erroneous and contrary to law, it is always open for the appellate court, by recording good and compelling reasons for interference and overturn the judgment of acquittal by converting the same to that of conviction.

11. In this case, it is to be noted that the deceased; PWs-1 to 3; and accused were closely related. The trial court has disbelieved the evidence of PWs-1 to 3 only on the ground that they are relatives of the deceased, forgetting the fact that PW-1 Smt. Sheshamma is the daughter of accused no.1 and PW-3 is no other than the wife of accused no.1. It is clear from the evidence on record that they are rustic villagers and incident happened when they were returning to their house after attending the coolie work. In Ex.P-1 it self PW-1 has stated that there was dispute between her deceased husband and his elder brother Husanayya (PW-2) on one side and her father (accused no.1 – Devendrappa) and his brothers on other side in respect of sharing of tapping of toddy trees. As a result of such dispute, her senior and junior uncles were telling her that she should not come towards the side of their house. Further, PW-1 Smt. Sheshamma, who was accompanying the deceased at the time of the incident, has stated in her evidence that at about 06:00 a.m. she, her deceased husband and also PW-2 – Husanayya, together went to attend coolie work and when they were returning to their house, at about 11:30 a.m. assault was made near the hostel. It is quite natural that in rural areas, going to work in early hours and coming back to their home around 11-11:30 a.m. to have their food. She has also clearly stated in her deposition that A-1 – Devendrappa (who is now dead) hit with axe on the left cheek of the deceased, A-3 – Dattayya hit the deceased with *bedaga* (a sharp-edged agricultural instrument) on his head, A-4 – Manik assaulted with club on the head of the deceased, and A-5 – Basayya also assaulted the deceased with axe on his head. If we examine the testimony of PW-1 closely, it is clear that it is consistent with her allegations in her complaint – Ex.P-1.

Ex.P-6 is the postmortem examination report in which the external injuries on the dead body of the deceased were mentioned. If the complaint made by PW-1 and her testimony are considered along with the injuries found in Ex.P-6 – postmortem report, it makes it clear that the said injuries referred in the postmortem report are attributable to overt acts of the accused nos.2 to 5, as stated in the complaint. PW-1 has not made any improvements, omission or contradiction, so far as it relates to details of occurrence of the incident in the manner alleged in the complaint – Ex.P-1 and as deposed by her in the examination-in-chief. As PW-1 is a rustic villager, discrepancies in timelines, as to the time when she was examined by PW-14 (doctor) for the said injuries cannot go to the root of the prosecution case and further it is to be noted that she sustained injury on the said date and she was examined by PW-14. The deposition of PW-1 appears to be truthful and trustworthy. PW-2 – Husanayya, the elder brother of the deceased has also stated in his evidence narrating the incident in the same lines as that of PW-1. PW-2 is also an injured witness in the incident and PW-10 (doctor) examined him for the said injury and Ex.P-4 is the wound certificate pertaining to injuries suffered by PW-2, issued by PW-10 – Dr. M.S. Dhadave, Senior Specialist in District Hospital, Gulbarga. The contents of the wound certificate and oral evidence of PW-2 also establish that the injured PW-2 – Husanayya was brought to the hospital by his wife with a history of assault on him on the same day by Devendrappa (A-1) and others. PW-3 – Smt. Sayamma is none other than the wife of accused no.1 – Devendrappa who died during the pendency of trial and mother of PW-1. There is absolutely no reason for PW-3 to depose against her own husband making such serious allegations. If the depositions of PW-1 to PW-3 are considered along with the documentary evidence on record and medical evidence of PWs-10 and 14, it is crystal clear that their evidence is natural, trustworthy and acceptable. The trial court has disbelieved their testimony by referring to some minor contradictions. This Court, in the case of **Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra**[5], has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial.

5 (2000) 8 SCC 457

It is held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

... … …"

Though the evidence of PWs-1 to 3 is consistent, reliable and trustworthy, the trial court, only by referring to minor contradictions, disbelieved the whole of their testimony. Thus, we are of the view that the findings, as recorded by the trial court in support of the acquittal, are contrary to evidence on record and the testimony of PWs-1, 2 and 3. Thus such findings, being perverse and erroneous, it is always open for the appellate court to reverse such findings on reappreciation of evidence on record. As regards the contradictory portion of the statement of PW-14 pointed out by learned counsel with reference to entries under Ex.P-6 wherein it was recorded that undigested food was found in the stomach, it is to be noticed that in Ex.P-6 itself reveals that the intestine of the deceased was full of faecal matter, therefore, death must have occurred between 3 to 12 hours prior to the postmortem examination, which supports the prosecution case. In that view of the matter, the contradictory portion of the statement of PW-14 needs to be discarded and not significant to discard total evidence on record. In view of the foregoing, we are of the view that the judgments relied on by the learned counsel for

the appellants would not render any assistance in support of her case that the High Court has committed error in reversing the acquittal recorded by the trial court. Having regard to evidence on record, as we are of the view that the view taken by the trial court was not at all a possible view and the findings run contrary to the evidence on record, the High Court has rightly reversed the judgment of the trial court by convicting the appellants (A-2 to A-5). Further we also do not find any merit in the contention of the appellants that in any case it is not a case for conviction under Section 302, IPC and same be modified to that of conviction under Section 304-II, IPC. From the evidence on record, it is clear that the assault was intentional which resulted in the death of the deceased and all accused – A-2 to A-5 – had a common object, as such the High Court has rightly convicted the accused for offence punishable under Section 302/149, IPC etc. Thus, we endorse the view of the High Court.

12. For the aforesaid reasons, we do not find any merit in this appeal, same is accordingly dismissed.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: Appeal dismissed.