[2023] 11 S.C.R. 1135 : 2023 INSC 749

SURESH THIPMPPA SHETTY

v.

THE STATE OF MAHARASHTRA

(Criminal Appeal No. 1541 of 2010)

JULY 26, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

Issue for consideration: Appellants-accused (A4 and A2) were convicted u/s.302, s.120B, IPC and sentenced accordingly. Whether High Court was justified in dismissing the appeals filed by them and upholding their conviction.

Administration of Criminal Justice – Reasonable doubt as to the involvement of the appellants in the crime – Conviction unsustainable:

Held: There is sufficient material on record giving rise to reasonable doubt as to the involvement of the appellants in the crime – Appellants were able to poke holes in the testimonies of PW1, PW2 and PW7 – This conclusion is only fortified as co-accused A1 and A7 were acquitted and thus, the conspiracy angle dehors the said main conspirators, who are the masterminds as per the prosecution, cannot be said to have been proved beyond reasonable doubt – Undisputedly, the four persons in the car on the fateful date were (1) the deceased; (2) PW1; (3) assailant/shooter, who is absconding, and (4) A3 – Admittedly, the appellants were not present at the spot where the crime was committed i.e., in the car nor any direct/specific role in commission of the offence being attributed to them and thus, their convictions cannot be upheld – Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra reported as [1971] 1 SCR 119 relied on by the High Court does not, in any manner, militate against this Court overturning a conviction when reasonable doubt emanates – Appeals allowed. [Paras 13 and 17]

---

* Author

Administration of Criminal Justice – Reasonable doubt as to the version put forth by the prosecution:

Held: When this Court is confronted with a situation where it has to ponder whether to lean with the Prosecution or the Defence, in the face of reasonable doubt as to the version put forth by the Prosecution, this Court will, as a matter of course and of choice, in line with judicial discretion, lean in favour of the Defence – Life and liberty are not matters to be trifled with, and a conviction can only be sustained in the absence of reasonable doubt – The presumption of innocence in favour of the accused and insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities – Rather, their origin is traceable to Articles 21 and 14 of the Constitution of India – The presumption of innocence is a human right. [Paras 18 and 20]

Firozuddin Basheeruddin v. State of Kerala **(2001) 7 SCC 596 – held inapplicable.**

State of Uttar Pradesh v. Krishna Gopal **(1988) 4 SCC 302 : [1988] 2 Suppl. SCR 391;** *Sanjay Dubey v. State of Madhya Pradesh* **2023 SCC OnLine SC 610;** *Narendra Singh v. State of Madhya Pradesh* **(2004) 10 SCC 699 : [2004] 3 SCR 1148;** *Ranjeetsing Brahmajeetsing Sharma v. State of Maharashtra* **(2005) 5 SCC 294 : [2005] 3 SCR 345;** *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh,* **(1978) 1 SCC 240 : [1978] 2 SCR 371 – relied on.**

Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra **AIR 1971 SC 885 : [1971] 1 SCR 119;** *State of Madhya Pradesh v. Dharkole,* **(2004) 13 SCC 308 : [2004] 5 Suppl. SCR 780 – referred to.**

Coffin v. United States, **156 US 432 (1895) – referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1541 of 2010.

From the Judgment and Order dated 05.11.2009 of the High Court of Bombay in CRLA No.50 of 2003.

With

Criminal Appeal No. 2346 of 2011.

Vinay Navre, Sr. Adv., P. R. Rajhans, Amarnath Gupta, Jayant Kumar, Janmejay Verma, Ms. Hardikaa, Vishal Arun, Dr. Sushil Balwada, Kaushal Yadav, Nandlal Kumar Mishra, Srilok Nath Rath, Ms. Reena Rao, Kashyap Kumar Dwivedi, Advs. for the Appellant.

Rahul Chitnis, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Advs. for the Respondent.

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. These appeals are directed against the common Final Judgment and Order dated 05.11.2009 (hereinafter referred to as the "Impugned Judgment") passed by a Division Bench of the High Court of Judicature at Bombay (hereinafter referred to as the "High Court") in Criminal Appeals No. 50 of 2003 (Accused No. 4/A4 – Suresh Thipmppa Shetty) and 522 of 2003 (Accused No. 2/A2 – Sadashiv Seena Salian) respectively, whereby the High Court dismissed the appeals filed by the appellants herein and upheld the conviction order(s) passed by the Sessions Court. The State's appeal against the acquittal of 4 co-accused i.e., A1, A5, A6 and A7 (Criminal Appeal No. 496 of 2003) as also Criminal Appeal No. 86 of 2003 by the Accused No. 3/A3 (Ganesh alias Annu Shivaram Shetty, who later passed away), were dismissed by the Impugned Judgment.

THE FACTUAL PRISM:

3. Briefly put, relevant details of the story run thus:

3.1 The prosecution alleges that the original accused A1, A2 and A7 were in the Colaba Police Station lockup from 23.09.1994 to 29.09.1994. The allegation is that they entered into a criminal conspiracy between the period from 23.09.1994 to 12.05.1995 to

abduct and murder Mahendra Pratap Singh (hereinafter referred to as the "deceased").

3.2 12.05.1995 became the fateful day. One Sharda Prasad Singh, a businessman, is stated to be in the petroleum business. His office was located at Express Highway, near the Regional Transport Office, Ghatkopar. He has five sons. They were carrying out the business jointly. One of the sons of the said Sharda Prasad Singh was the deceased. The prosecution states that A1 and A7, who are real brothers, running Saroj Petro Chemicals Limited as also a transport business, had a business rivalry with the deceased and thus, conspired to abduct and murder him. Their head office was at Chembur and they used to manufacture thinner and solvents at Thane.

3.3 PW2 was a rickshaw-driver. A2 booked his rickshaw for going to the Jawaharlal Nehru Port Trust. A2 and A3 came to Hotel Garden. They asked PW2 to take the rickshaw on the Highway. Thereafter, they changed direction and got down and selected a spot for the assassination of the deceased and returned to the hotel.

3.4 On 12.05.1995, PW1 as usual had been to his business. At about 6 PM, the deceased informed him that one person is expected from Bangalore with money and they would go to Navi Mumbai. Then, both in a Maruti 1000 vehicle, driven by the deceased reached Hotel Garden, Panvel at about 7.30 PM. They parked their vehicle at the parking lot. After enquiring with the receptionist, they went to the 1st Floor and entered Room No. 106, where A3 was inside. On enquiry by the deceased, A3 informed that as the air-conditioner was not working, Sethji (the person who the deceased had come to meet) had gone to Hotel Welcome. Thereafter, A3 tried to contact Sethji by the telephone/intercom but was unable to.

3.5 Then, A3 left the room to call Sethji. After about 5 minutes, he returned and informed that Sethji was expected at Hotel Garden itself. Thereafter, the assailant/shooter, who absconded, came and informed that Sethji had gone to Farmhouse and the deceased and others were called there. 4 persons got into the Maruti 1000,

being (1) the deceased; (2) PW1; (3) assailant/shooter, and (4) A3, and proceeded to the Farmhouse. A3 and the shooter/assailant got the car, being driven by the deceased stopped at a location, stepped out and later A3 and the assailant/shooter again got back in the car and the shooter/assailant killed the deceased.

3.6 It is alleged that A2, on the side, had already booked a Maruti Van to proceed to Panvel from a travel agency. Further, that A4, A3 and A2 proceeded in Maruti Van driven by PW7 to Hotel Garden.

3.7 A4, it is alleged, had with 2 others visited the site of occurrence prior to the incident by hiring rickshaw. PW3 (Ranjan Shankar Behra, the hotel receptionist) has identified A4 being in the hotel room with A3 and A2.

3.8 First Information Report, namely Crime No. 132/1995, was lodged on 13.05.1995. Investigation commenced and culminated into a chargesheet against 10 persons – 3 were discharged and 7 stood trial. Tabular summation of the assailed convictions, granted by the Sessions Court on 27.11.2002 is apposite:

Sl. No.	Position	Convicted Under	Punishment
1	A4	Section 302 r/w Section 120-B of the Indian Penal Code, 1860[1]	Rigorous Imprisonment[2] for Life and INR 50,000 Fine (1 year RI in default)
2	A2	Section 120-B, IPC	5 years' RI and INR 50,000 Fine (1 year RI in default)
		Section 302 r/w Section 120-B of IPC	RI for Life and INR 50,000 Fine (1 year RI in default)

4. Aggrieved by order dated 27.11.2002 rendered by the Sessions Court, the present appellants (A4 and A2), A3 and the State of Maharashtra preferred separate appeals before the High Court. As noted above, the Impugned Judgment dismissed all the appeals. In the meantime, A3

1 Hereinafter referred to as "IPC".

2 Hereinafter referred to as "RI".

passed away. Aggrieved, now on account of the Impugned Judgement, the appellants have preferred the instant appeals before this Court.

SUBMISSIONS BY THE APPELLANTS:

5. According to learned counsel for the appellants, as per the prosecution story and the witnesses, they (A4 and A2) were not the two persons who accompanied the deceased in the car wherein ultimately, he was shot and thus, only upon the conspiracy theory having been proved, could they have been convicted. Learned counsel submitted that in the present case, the chain of events does not show any conspiracy as the main accused being A1 and A7, who were brothers, and who were said to have been in rivalry with the deceased had hatched the plan. They hired the other/remaining accused to eliminate the deceased. It was further contended that as per the complaint by the uncle of the deceased who is said to have accompanied him in the car, the two accused who had sat behind in the car on the pretext of taking the deceased to meet one Sethji, who had offered some business deal with the deceased, after one of the said two co-accused having shot the deceased in the car, the complainant/PW1 (Chandrabhan Singh Srinath Singh) is said to have been ordered to run away from the place (which he did), failing which he would be shot.

6. However, learned counsel pointed out that his conduct does not inspire confidence as he did not go to the nearest Police Station but instead is said to have gone to the residence of one Bharatbhai Shah who was not there but his brother-in-law was present, who accompanied him to the house of the deceased, where his family members were informed and when they reached the place of occurrence, they found that the police had already arrived on the spot. Another aspect, which learned counsel for the appellants pointed out, was that it is against normal human behaviour that a person after committing such a serious offence would leave an eyewitness alive, to later get exposed and risk getting convicted, especially for offence(s) with serious penal consequences.

7. Learned counsel urged that there is absolutely no evidence available to link the appellants to the crime as no connection whatsoever has surfaced during the entire investigation and trial apropos them having

conspired as no other conspiracy theory has even been considered by the prosecution. It was further contended that once the so-called main conspirators, at whose behest the murder has taken place, have been acquitted, there being no theory, much less proof, of any motive for the appellants to commit the crime in question; in any view of the matter, benefit of doubt was required to be given to them. It was contended that the surfacing of PW7 (Shivshankar Mongalal Tiwari) after more than six months of the occurrence itself brings serious doubts about credibility in the statement as he has stated that he has not mentioned the factum of occurrence of the crime in question to anybody, which is highly improbable.

8. Another indicator concerning the testimony of PW7, as pointed out by the learned counsel for the appellants is that if the incident took place at 8:15 PM, and minute details are being disclosed by him when he was at a distance of 150 feet, the same is palpably difficult to believe. Moreover, the weapon having not been recovered nor there being collection of the clothes worn by PW1 showing that he has blood stains, when admittedly after being shot, the deceased's neck had tilted on his shoulder, also points to the said witness not being at the spot and the whole story so far as the appellants are concerned is fabricated, per the learned counsel.

9. Learned counsel for A2 further took the stand that despite some money confiscated from the bank account and fixed deposit of A2, there is nothing to connect the said money to A1 and A7 who are said to have been the masterminds in hatching the conspiracy with motive.

10. Learned counsel summed up stating that even the alleged rivalry between the deceased on the one hand, and A1 and A7 on the other, was not proved before the trial court, which resulted in the acquittals of A1 and A7.

11. Learned counsel for the appellants submitted that in cross-examination, PW2 (Vinayak Shivaji Sawant) has not identified A4. PW2 also admits that he was shown photographs of A2 and A4 on many occasions. It was also contended that the assailant/actual shooter is still absconding and has not been apprehended and only to cover up lapses, the police after

six months have set up PW7 to somehow implicate the appellants. In his deposition, PW7 has stated that he heard crackers being burst which means that there were multiple sounds whereas there is a categorical statement made by PW1, who was in the car that two shots were fired by a small weapon and thus, there could not have been multiple sounds from the same firing, which indicates that it could not have been from a small weapon, which would not make repeated sound(s).

SUBMISSIONS OF THE RESPONDENT:

12. Per contra, learned counsel appearing for the State (sole respondent) in both appeals supported the Impugned Judgment. He tried to persuade us not to interfere. He submitted that the Sessions Court has clearly discussed the role of the appellants based on the testimony of the witnesses and they have also been identified by the prosecution witnesses. Thus, it was contended that the conspiracy was clearly established. Furthermore, it was submitted that the Impugned Judgment has also discussed the deposition of the prosecution witnesses, including the room service personnel/hotel staff of different hotels who have recognised A2, which further proves that there was a criminal conspiracy between the appellants. It was contended that there was also discussion based on the testimony of the witnesses about the bank transaction of A2. Reliance was placed by learned counsel on the decision in ***Firozuddin Basheeruddin v State of Kerala,*** **(2001) 7 SCC 596** for the proposition that conspiracy can also be established based on circumstantial evidence and that though not being a specific crime, but on the basis thereof, a conspirator can also be held responsible for a crime committed by co-conspirator in furtherance of the objective of the conspiracy.

ANALYSIS, REASONING AND CONCLUSION:

13. The High Court relied on the judgment of a 3-Judge Bench in ***Noor Mohammad Mohd. Yusuf Momin v State of Maharashtra,*** **AIR 1971 SC 885** to hold that *'criminal conspiracy can be proved by circumstantial evidence'*[3]. On a careful appreciation of ***Noor Mohammad Mohd. Yusuf***

3 Paragraph 51 of the Impugned Judgment.

Momin (*supra*), while in agreement with the law laid down therein, we are not able to see how the prosecution's case is strengthened with its aid. ***Noor Mohammad Mohd. Yusuf Momin*** (*supra*) does not, in any manner, militate against this Court overturning a conviction when reasonable doubt emanates.

14. In ***State of Uttar Pradesh v Krishna Gopal,*** **(1988) 4 SCC 302,** the Court held:

'25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: "The Mathematics of Proof-II": Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]:

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not

an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.'

(emphasis supplied)

15. The principle in ***Krishna Gopal*** (*supra*) was reiterated in ***State of Madhya Pradesh v Dharkole,*** **(2004) 13 SCC 308**. On the above anvil, the prosecution story does not inspire confidence to enable sustenance of the impugned convictions.

16. Insofar as reliance placed by learned counsel for the State on the judgment in ***Firozuddin Basheeruddin*** (*supra*) is concerned, this Court would only observe that the same encapsulated a different factual scenario – the main persons responsible for the death of the deceased in that case were convicted. However, in the present case, the prosecution story's main conspirators stand acquitted. This is one stark difference in the foundational facts of the said case and the present one. But this is sufficient to safely conclude that ***Firozuddin Basheeruddin*** (*supra*) would not apply to the case at hand. Recently, this Court in ***Sanjay Dubey v State of Madhya Pradesh,*** **2023 INSC 519**[4], restated the position that is no longer res integra:

'18. … It is too well-settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases

4 2023 SCC OnLine SC 610.

are authorities only for what they actually decide. We do not want to be verbose in reproducing the relevant paragraphs but deem it proper to indicate some authorities on this point ***– Sreenivasa General Traders v State of Andhra Pradesh, (1983) 4 SCC 353 and M/s Amar Nath Om Prakash v State of Punjab, (1985) 1 SCC 345 - which have been reiterated, inter alia, in BGS SGS Soma JV v NHPC Limited, (2020) 4 SCC 234, and Chintels India Limited v Bhayana Builders Private Limited, (2021) 4 SCC 602.'***

17. Having considered the matter in extenso, including examining the facts and applicable law, we are of the clear view that sufficient material is available on record, which has come out during the trial giving rise to reasonable doubt as to the involvement of the appellants in the crime. The appellants have been able to poke holes in the testimonies of PW1, PW2 and PW7. Our conclusion is only fortified as A1 and A7 have been acquitted and thus, the conspiracy angle dehors the said main conspirators, who are the masterminds as per the prosecution, cannot be said to have been proved beyond reasonable doubt. Moreover, no alternative theory qua conspiracy has been even suggested, much less proved, by the prosecution. Undisputedly, the four persons in the car on the fateful date were (1) the deceased; (2) PW1; (3) assailant/shooter, who is absconding, and (4) A3. In the background of the admitted position that the appellants were not present at the spot where the crime was committed i.e., in the car nor any direct/specific role in commission of the offence being attributed to them, their convictions cannot be upheld.

18. On a deeper and fundamental level, when this Court is confronted with a situation where it has to ponder whether to lean with the Prosecution or the Defence, in the face of reasonable doubt as to the version put forth by the Prosecution, this Court will, as a matter of course and of choice, in line with judicial discretion[5], lean in favour of the Defence. We have borne in mind the cardinal principle that life and liberty are not matters to be trifled with, and a conviction can only be sustained in the absence of reasonable doubt. The presumption of innocence in

5 Although in the context of bail jurisprudence, for a working idea as to what 'judicial discretion' entails, peruse the views of a learned Single Judge (sitting as Judge-in-Chambers) of this Court in ***Gudikanti Narasimhulu v Public Prosecutor, High Court of Andhra Pradesh,*** **(1978) 1 SCC 240.**

favour of the accused and insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities. Rather, their origin is traceable to Articles 21 and 14 of the Constitution of India. Of course, for certain offences, the law seeks to place a reverse onus on the accused to prove his/her innocence, but that does not impact adversely the innocent-till-proven-guilty rule for other criminal offences.

19. In Coffin v United States, 156 US 432 (1895), the United States' Supreme Court held:

'The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.'

20. We see no quarrel with the afore-noted statement as the same applies on all fours to our criminal justice system. The presumption of innocence is also a human right, per the pronouncement in ***Narendra Singh v State of Madhya Pradesh,* (2004) 10 SCC 699*. In Ranjeetsing Brahmajeetsing Sharma v State of Maharashtra,* (2005) 5 SCC 294**, a 3-Judge Bench of this Court, at Paragraph 35, had opined that '… *Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor*. …'

21. Accordingly, for reasons aforesaid, these appeals stand allowed. The appellants are discharged from the liabilities of their bail bonds. If any fine(s) pursuant to the orders of the Sessions Court or High Court were deposited by/realised from either appellant, they shall be entitled to refund of the same.

Headnotes prepared by : Divya Pandey

Result of the case : Appeals allowed.