

Judgement reserved on 21.02.2022**Judgement delivered on 15.03.2022**

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 4858 of 2014

Appellant :- Nokhe Lal

Respondent :- State of U.P. and 2 Others

Counsel for Appellant :- V.K. Gupta, Santosh Kumar Tiwari

Counsel for Respondent :- Govt. Advocate

Hon'ble Vivek Kumar Birla,J.

Hon'ble Subhash Vidyarthi,J.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Santosh Kumar Tiwari, learned Amicus Curiae, for the appellant and Shri Ratan Singh, learned A.G.A. for the respondents.

2. By means of the instant appeal under Section 372 of the Criminal Procedure Code (herein after referred to as "Cr.P.C.") the informant-appellant has challenged the judgement and order dated 01.10.2014 passed by learned Additional Sessions Judge, Court No. 1/Special Judge, Dacoity Affected Area, Mahoba in Special Case No. 47 of 2004 (State Vs. Hari Ram Prajapati and another) arising out of Case Crime No. 196 of 2004 under Sections 387, 307/34, 452, 323/34 and 427 IPC, Police Station Kabrai, District Mahoba, whereby both the accused have been acquitted giving them the benefit of doubt.

3. Briefly stated, facts of the case are that the informant-appellant gave a report in the concerned Police Station on 11.05.2004 at 20:45 hours stating that when on the same day at about 4:00 p.m., he was coming to Kabrai from his home, the

accused-respondent No. 3 (Dhirendra Singh) blocked the passage by parking his motorcycle in front of Jagdish's house, where the passage is narrow. The informant was going on his motorcycle and he stopped there. Dhanni, Rajju, Hariram Prajapati (the accused-respondent No. 2 and Dhirendra Singh (the accused-respondent No. 3) caught hold of the informant and made him sit there and they assaulted the informant by but of a gun, kicks and fists and said that they will set him free only when he pays Rs. 10,000/-. They threatened to kill him with a gun and country made pistols. Upon finding an opportunity, the informant ran towards his home and Dhanni fired towards the informant with a 315 bore country made pistol with the intention to kill him. However, the shot missed the informant's temple and he had a narrow escape. The informant ran and entered the house of Prakash and the aforesaid people attempted to get the door of the house opened. Thereafter, they entered the informant's house and assaulted the informant's mother Achchhi Devi and sister Sudha with kicks, fists and shoes and destroyed the house-hold goods namely deg (a utensil), CD, TV, Battery and other goods of his shop, which resulted in a loss of about Rs. 5,000/-. The accused threatened that if the informant makes a report of it, it will not be good for him. The incident was witnessed by Shaukilal, Bhawanideen and Deshraj Pradhan and they saved him.

4. On the aforesaid allegation, a Case Crime No. 196 of 2004 under Sections 387, 452, 323, 504 and 506 IPC was registered against the accused-respondents. A case under Section 10/12 of Dacoity Affected Area Act was registered against Dhanni. After investigation, a charge sheet for commission of the offences under Sections 387, 307/37, 452, 323/34, 427 IPC was submitted in the Court against the accused-respondents.

5. PW-1, informant-appellant Nokhe Lal, reiterated the allegations made in the FIR and he further stated that the Sub Inspector visited his home on the following day and saw the broken

goods. He prepared a list and gave the goods in the custody of his father. He produced the broken goods, namely, a stabilizer, a CD player and a table fan, a tin box, picture tube of a TV etc. before the Court and said that those were the goods which had been broken by the accused-persons. He and his mother has been medically examined in the Government Hospital at Mahoba.

6. In his cross-examination, PW-1 stated that he had stopped his motorcycle about 3 meters before the platform where the accused persons made him sit. The accused-persons had hit him with sticks, butts and kicks. They had hit him 10-15 times with sticks and 10-12 times with butts. They had hit him on his back and below the shoulder but not on his head and face. However, the assault did not cause any injury mark or bleeding. They did not hit him hard but hit him slowly. He reached the house of Prakash Vishwakarma at about 4:15 p.m. During the entire period, he kept on shouting but nobody came there. The witnesses Shauki Lal and Bhawani Deen came after the incident. The place of incident is surrounded by residential area. After about 1/2 to 1 minute since arrival of the witnesses, the informant got free from the accused persons and ran away.

7. PW-2 Smt. Achchhi Devi is mother of the informant Nokhe Lal, she stated that on the date of the incident at about 4:00 p.m., the accused-persons entered her house, assaulted and injured her and broken the goods kept in the shop. In her cross-examination, PW-2 stated that the house of Saukhi Lal Prajapati and Kamtu Dhobi are adjacent to her house and there are several residences near her house. The distance between her house and Prakash Vishwakarma's house is the same distance as the distance between the court room and the road and the Court made a noting that the distance between the Court and the road is about 200-250 yards.

8. PW-4 Smt. Sudha is the informant's sister, she stated that the accused-persons came to the shop, they hit her mother Achchhi Devi with butts of a country made pistol. They slapped her and broken

down the T.V., Fan, C.D. and other goods of the shop. Afterwards, she came to know that they have fired at her brother. The accused-persons took away the jewellery of her and of her sister-in-law.

9. PW-5 Prakash Vishwakarma has denied the incident having been taken place. He said that he has no knowledge of the incident and he did not either see or hear about it. He was declared to be hostile and in his cross-examination he denied having made any statement under Section 161 Cr.P.C.

10. PW-3 Dr. Mahendra Singh Katiyar has conducted the medical examination of Smt. Achhchhi Devi who has proved that the appellant Nokhe Lal was not found to have been suffered any injury. His mother Smt. Achchi Devi wife of Nanhu had reported that there was some swelling and bluishness on her hip.

11. The defence has produced two witnesses who have denied the incident and have made statements regarding animosity between the informant and the accused.

12. The learned Court below has rightly noted that PW-1, 2 and 4 are informant, his mother and sister respectively which belong to the same family and are interested witnesses and, therefore, their evidence is to be scrutinized very carefully. The informant-appellant has alleged in the report (Ex.A-1) that the accused-respondents threatened him against lodging a report but in his evidence PW-1 has stated that he went alone immediately afterwards to lodge the report. The conduct of PW-1 in going alone to lodge FIR immediately after having been threatened by the accused persons appears to be unnatural. PW-1 has alleged that the accused persons had hit him with but of a gun, stick and kicks but the same did not leave marks or cause bleeding. The accused had not hit him hard but had hit him slowly. PW-3 who conducted medical examination of PW-1 did not found any injury on the person of PW-1, which makes the prosecution case as well as veracity of the evidence of PW-1 and PW-2 doubtful.

13. PW-1 has stated that the medical examination of his sister was also conducted on the same day whereas the sister PW-4 Smt. Sudha has stated that she was not medically examined. No report of PW-4 is available on record and no statement in this regard has been made by PW-3. From this prosecution witnesses appear not to be trustworthy.

14. PW-1 has stated that he had gone to the Police Station alone, however PW-2 stated that her daughter had also gone to the Police Station with her. GD (Ex.A-5) mentions that the informant (PW-1) came with (Smt. Achchhi Devi-PW-2). Thus the version of PW-1, PW-2 and the narration in the GD, all contradict each other which indicates entries in the GD have been concocted.

15. PW-1 has alleged that Dhanni (co-accused) fired with a 315 bore country made pistol. Neither there is any witness of this incident nor was any empty cartridge recovered from the spot which could prove the informant's averment. The statement of PW-4 (informant's sister) that the accused persons hit her mother Smt. Achchhi Devi with but of country made pistol and thrown away the goods of the shop and take away the jewellery and other articles of marriage of PW-4 and her sister-in-law is not corroborated by the statements of PW-1 and PW-2 and appears to be false and unnatural.

16. PW-2 Smt. Achchhi Devi had stated that the accused broke down the goods when the informant had gone to the Police Station for lodging a report. The mention of breakage of goods done by the accused persons in the report Ex.A-1 indicates that the entire prosecution story is planned, concocted and fabricated else this fact could not have been mentioned report (Ex.A-1). From this analysis of the aforesaid facts, learned Court below passed the judgment and order dated 01.10.2011 acquitted the accused persons from all the charges. The appellant-informant has challenged the aforesaid order on the ground that PW-1, PW-2, PW-3, PW-4 and PW-7 have proved the prosecution story but the evidence adduced from the

complainant/informant's side was not considered by the Court below. The grounds of challenge to the judgement and order dated 01.10.2014 taken by the informant/appellant are reproduced herein below:-

- “1. Because, the court below has not considered the evidence on record.
2. Because, the prosecution has successfully proved the case.
3. Because, the P.W.1, P.W.2, P.W. 3, P.W. 4 and P.W.7 have proved the prosecution story but the court below has not considered.
4. Because the evidence adduced by the complainant/informant side was not considered by the court below.
5. Because, the prosecution has fully proved that the Opp. Parties have committed alleged crime. But the court below has ignored and overlooked the evidence against the Opp. Parties/respondents which is unfair and improper.
6. Because, the eye witnesses in First Information Report namely Saukhi Lal, Bhawanideen and Deshraj have not been examined before the court below.
7. Because, without considering the fact and circumstances of the case and evidence produced by the prosecution, the trial court has acquitted the accused person illegally.”

17. Shri Santosh Kumar Tiwari, learned Amicus Curiae has placed reliance on a decision of Hon'ble Supreme Court in the case of **Sunil Kumar Vs. State (Govt. of NCT Delhi), (2003) 11 SCC 367** in which relying upon earlier decision in **Vadivelu Thevar v. State of Madras, AIR 1957 SC 614**, the Hon'ble Supreme Court has held that:-

“8. In *Vadivelu Thevar v. State of Madras* this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under: (AIR p. 619, paras 11-12)

“Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.

(3) *Neither wholly reliable nor wholly unreliable.*

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.”

18. He has also relied on a judgement of Hon'ble Supreme Court in the case of **Amar Singh Vs. Balwinder Singh, (2003) SCC 518**, wherein the Hon'ble Supreme Court has held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. There can be no dispute to the aforesaid proposition of law but the same does not apply to the facts and circumstances of the present case where the prosecution witnesses themselves have made contradictory statements regarding material facts relating to the incident and where PW-5 in whose house the PW-1 is said to have taken shelter has categorically denied the incident.

19. A perusal of the judgement and order dated 01.10.2014 indicates that the learned Court below has thoroughly examined the statements of all the prosecution witnesses. It is settled law that when witnesses are related persons, although their testimony is admissible and form basis of conviction of the accused-persons, the testimony of interested witness has to be examined with extra care and caution.

20. Upon scrutiny of the statements of the PW-1, PW-2 and PW-4,

serious discrepancies have come to light. PW-1 has stated that he had gone to the Police Station alone, however PW-2 stated that her daughter had also gone to the Police Station. GD (Ex.A-5) mentions that the informant (PW-1) came with (Smt. Achchhi Devi-PW-2). Thus the version of PW-1, PW-2 and the narration in the GD, all contradict each other which indicates entries in the GD have been concocted.

21. This finding of the learned Court below is based on a thorough and proper analysis of the prosecution evidence. The finding arrived at after a thorough analysis of the entire admissible evidence placed on record cannot at all be termed as perverse.

22. In *Jayamma v. State of Karnataka, (2021) 6 SCC 213*, the Hon'ble Supreme Court has reiterated the manner in which the High Court should exercise its power of scrutiny in an appeal filed against an order of acquittal, in the following words: -

“the power of scrutiny exercisable by the High Court under Section 378 Cr.P.C. should not be routinely invoked where the view formed by the trial court was a “possible view”. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to reappraise the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact.”

23. A perusal of the grounds taken in the memo of appeal indicates that the order of the learned Court below has not been assailed on the ground that it is perverse. During the submission also, learned Amicus Curiae could not demonstrate that the findings of the learned Court below are perverse.

24. In these circumstances, in view of the law laid down by

Hon'ble Supreme Court in the case of **Jayamma (supra)**, we find that the appellant has failed to make out any ground for admission of the appeal. The appeal is accordingly **dismissed** at the stage of admission itself.

Order Date :- 15.03.2022

Jaswant

(Subhash Vidyarthi, J.)

(Vivek Kumar Birla, J.)