



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 384/1991

State Of Rajasthan

-----Appellant

Versus

Abdul Jabbar S/o Shri Nishar Ahmed R/o Jodhpur, Police Station
Sadar Kotwali Jodhpur, District Jodhpur.

-----Respondent

Connected With

D.B. Criminal Revision Petition No. 17/1992

Saleem S/o Ramjan, R/o Near Rajmahal High Secondary School,
Miyon ka Gher, Jodhpur

-----Appellant

Versus

1. Abdul Jabbar S/o Shri Nishar R/o Near Rajmahal High
Secondary School, Miyon ka Gher, Jodhpur.
2. State of Rajasthan

-----Respondent

For State : Mr. Mahipal Bishnoi, PP

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order

12/08/2024

By the Court (Per, Hon'ble Shree Chandrashekhar, J.) :

The State of Rajasthan is in appeal against the judgment of acquittal dated 14th August 1991 passed in Sessions Case No.94/1988.

2. Salim who is the informant of FIR No.49/88 registered at Police Station, Sadar Kotwali, Jodhpur has filed D.B. Criminal Revision No.17/1992 against the aforesaid judgment of acquittal of Abdul Jabbar.

3. The prosecution case that the accused caused death of Hanifa by assaulting her with fists was not found proved in course



of the trial. Dr. Jagdish Jugtawat who was examined as P.W.-10 observed a minor injury over forehead of Hanifa and no other external injury was detected over her dead body. The Sessions Court in its judgment dated 14th August 1991 referred to Modi on "A Text book of Medical Jurisprudence and Toxicology" (20th Edition) to render its opinion that rupture of spleen can occur only if the victim is hit with considerable force sufficient to break the ribs but no such evidence was brought on record. The learned trial Judge referred to the evidence of the witnesses, more particularly, P.W.-1 Salim Kamruddin, P.W.-11 Mohammad Yusuf and held that these witnesses did not tender such evidence in support of the prosecution story that Abdul Jabbar caused death of Hanifa with fist blows and therefore the prosecution case was not proved.

4. On the basis of the *fardbeyan* of Salim dated 25th May 1988, a crime was registered vide FIR No.49/ 1988 on 25th May 1988 at Police Station Sadar Kotwali. During the trial, the prosecution examined 12 witnesses out of whom Dr. Jagdish Jugtawat who conducted the postmortem was examined as P.W.-10 by the prosecution. The prosecution story as reported to the police by Salim through his *fardbeyan* is that Abdul Jabbar used to quarrel with him objecting to the prosecution witnesses using his land. In the evening of 25th May 1988, the accused abused the informant's mother and thrashed the informant on the ground when he raised objection. The informant further stated that the accused attempted to hit him over his head with a stone but he retreated behind and the stone fell on his legs. In the meantime, his mother Hanifa came there and tried to intervene whereupon the accused abused her and declare that he would kill her and started



assaulting her with fists around her abdominal area. On hearing *halla*, Salim Kamruddin, Insaf Ali and Sattar Khan came there and tried to rescue Hanifa who on account of beating by the accused had become unconscious. She was taken to the hospital and a report was given in the Police Station and FIR No.49/1988 was registered under Sections 307 and 323 of the Indian Penal Code.

5. The prosecution produced P.W.-1 Salim Kamruddin, P.W.-2 Insaf Ali, P.W.-3 Qayum, P.W.-6 Sattar Khan, P.W.-9 Salim (complainant) and P.W.-11 Mohammad Yusuf as the eye witnesses. However, P.W.-4, P.W.-7 and P.W.-8 were declared hostile at the instance of the prosecution. According to P.W.-5, who is the husband of Hanifa, he went to the Police Station on the information given to him by his son Mohammad Yusuf. On the other hand, the defence set up a case of a false implication because the prosecution witnesses had their greedy eyes over his land which he had refused to part with them. On behalf of the accused, four witnesses, namely, D.W.-1 Hanwant Chand Bhansali, D.W.-2 Devi Singh, D.W.-3 Bismilla and D.W.-4 Dr. Dharmendra Sharma were examined in support of his defence.

6. After having examined the materials on record, we hold that the trial Judge rightly found that P.W.-1, P.W.-9 and P.W.-11 made statements in the Court not consistent with the prosecution story as stated in the fardbeyan of Salim. The trial Judge further found that P.W.-3 and P.W.-11 were not the witnesses who were referred to in the First Information Report and moreover there are serious inconsistencies in the testimony of the prosecution witnesses. The trial Judge did not find the testimony of P.W.-9 wholly reliable and,



more particularly, sufficient to record conviction of the accused for murder.

7. In a murder trial, the Court is required to examine the evidence of the witnesses very carefully and such examination must necessarily pertain to an inquiry as to whether the witness was a chance witness or real person on the scene of the crime. We find that there was a serious attempt by the defence to challenge the presence of some of the material witnesses and such challenge was not mere speculative. This Court is alive to the legal position that the maxim "*falsus in uno falsus in omnibus*" is not a sound rule to apply in the conditions in our country, but then, when it is found that a witness has given false evidence to certain particulars it becomes the duty of the Court to scrutinize his evidence with care and caution.

8. A challenge to truthfulness of the prosecution witnesses has been made on the ground that there are serious discrepancies in the testimonies of the witnesses with the medical evidence. In "*Maniram v. State of U.P.*" (1994)SUPP 2 SCC 289 the Hon'ble Supreme Court held that the prosecution evidence is considered wanting in the most material part of the case if the direct evidence is not supported by expert evidence. In the present case, the testimony of the prosecution witnesses is not in tune with the medical evidence. Rather, the prosecution evidence has been found to a certain extent inconsistent with the medical evidence and that would be a fundamental defect in the prosecution case.

9. P.W.-10 Dr. Jagdish Jugtawat who conducted postmortem examination over the dead body of Hanifa on 26th May 1988 found one external injury of the nature of abrasion of the size of 1.5 cm



x 0.2 cm over right side of her forehead. However, he also observed 1800 ml. blood inside the abdomen and there were two injuries on the spleen, which was of the size of 12.5 cm x 8 cm x 2 cm. The doctor deposed that Hanifa passed away around 11.55 pm on 25th May 1988 and the injuries found on her person were ante-mortem in nature. He further stated that the injuries found on the dead body could be caused by blunt weapon as also by fist blow. However, in the cross-examination, P.W.-10 stated that the injury found over forehead of Hanifa can be caused due to fall on the surface. The doctor also agreed to the suggestion of the defence that till the time the spleen inflates double in size and comes out of the ribs it cannot get ruptured on account of normal blow.

10. Modi in "A Textbook Of Medical Jurisprudence And Toxicology" (20th Edition) writes that the spleen may get ruptured due to severe fist blows over the abdominal area provided on account of blows given by the accused the ribs of the victim had broken and the broken ribs caused rupture of the spleen. The learned writer writes at page 601 that the rupture of a normal spleen is very rare unless caused by considerable crushing or grinding force, such as, the passing of a carriage or a motor car over the body. Modi further writes that a normal spleen may sometimes be ruptured by the broken ends of a rib which may be fractured by a severe kick or by a blow from a blunt weapon. Moreover, an enlarged spleen becomes soft and brittle and therefore it may rupture from a fall or from violence of a very slight degree. Sometimes, the enlargement of a spleen is so great that it may rupture spontaneously from the contraction of the



abdominal muscles during sneezing, coughing, vomiting or straining particularly if the spleen is abnormally mobile.

11. Modi has written as under:-

"On account of its situation, rupture of a normal spleen is very rare unless caused considerable crushing and grinding force, such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases, it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib, which may be fractured by a severe kick or by a blow from a blunt weapon. A spleen subjected to traction forces may be torn from its pedicle.

An enlarged spleen becomes softened and brittle. Hence, it is liable to rupture from a fall or from violence of a very slight degree. In such cases, the abdominal wall may not show any external mark of injury. During a period of eight years, Modi met with 36 cases of rupture of the spleen as a result of falls and blows. Of these cases, six showed marks of bruising on the anterior wall over the splenic region and in one, the left ninth and tenth ribs were fractured. Ruptures usually take place in its concave or inner surface, and cause death rapidly from haemorrhage owing to its great vascularity. There may be frequently more than one rupture from a single blow, and its substance may rupture leaving the thickened capsule intact. In such a case, death may be delayed for some days, as the capsule limits the rupture or prevents excessive bleeding, and the small quantity of blood, which has already effused under the capsule forms into a clot, and presses on the rupture and prevents further bleeding. However, with the sudden muscular exertion or excitement, the clot is disturbed, further bleeding occurs and death takes place immediately.

Rupture of an enlarged spleen from very slight violence is a common occurrence in districts where malaria and kala azar prevail. Sometimes, the enlargement is so great that its length is more than 35 cm and its breadth more than 20 cm, while the weight is often more than 1.8 kg.

An enlarged spleen may sometimes rupture spontaneously from the contraction of the abdominal muscles during the act of sneezing, coughing, vomiting or straining, particularly if the spleen is abnormally mobile. Rare cases have also been reported in which it is claimed that a perfectly healthy normal spleen has ruptured spontaneously. It is difficult to believe that a normal spleen can rupture suddenly without apparent cause. It is, however, possible that occasionally, in certain individuals and at certain phases, a healthy normal spleen may rupture from minimal trauma. If the capsule is intact in such a case, the symptoms may be delayed for hours or days, and when eventually the patient



collapses he has forgotten the original and causative injury so that the spleen appears to have ruptured spontaneously.

Wounds of the spleen are rare, but may be caused by a stabbing or cutting instrument or by a foreign body piercing accidentally its pulp."

12. Therefore, in the context of the statement elicited from P.W.-10 that the spleen may rupture on fist blows around the abdominal, we may indicate what Nariman, J had observed in "Queen v. Ahmed Ally (1869) 11 Sutherland W R Cr.25", that; "the evidence of a medical man or other skilled witnesses, however, eminent, is ordinarily a matter of mere opinion".

13. On the similar lines is the decision in "State of HP v. Jai Lal & Ors." (1999) 7 SCC 280 wherein the Hon'ble Supreme Court held that:-

"An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions."

14. This we need to keep in mind that the statement of the witnesses recorded in course of the investigation under Section 161 of the Code of Criminal Procedure cannot be a basis to convict the accused and that too for a serious offence of murder. The statement of a witness under Section 161 of the Code of Criminal Procedure is used merely to contradict a witness with his previous statement. Therefore, the stand taken by the revisionist that the prosecution witnesses made cogent statements before the police and that shall be sufficient to record conviction of Abdul Jabbar cannot be accepted. In "Omkar Namdeo Jadhao v. Second



Additional Sessions Judge" (1996)7 SCC 498, the Hon'ble Supreme Court held that the Court should not come to a conclusion only on the basis of the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure. As to failure of the informant about reporting vital aspects of the case including presence of some of the witnesses, we are inclined to observe that such omissions would seriously affect the foundation of the prosecution case. Wigmore in his "Treatise on Evidence" has observed that failure to assert a fact when it would have been natural to state amounts in effect to an assertion of non-existence of the fact.

15. This is too well settled a legal proposition that to convict an accused for the offence of murder the prosecution must bring its case within the four corners of one of the four clauses in section 300 of the Indian Penal Code. We must also consider that the acquittal of the accused by the trial Court raises a double presumption of innocence in favor of the accused. Secondly, wherever two views are possible the High Court shall be denuded of its power to interfere with the judgment of acquittal. In "*Kalyan v. State of U.P.*" (2001)9 SCC 632 the Hon'ble Supreme Court held that normally the view of the trial Court as to the credibility of the witnesses must be given proper weight and consideration because the trial Court is supposed to have watched the demeanor and conduct of the witnesses and is in a better position to appreciate their testimony. In "*Kalyan*" the Hon'ble Supreme Court held as under :-

8. *The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which*



an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witnesses and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In Kali Ram v. State of H.P. [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773] this Court observed that the golden thread which runs through the web of administration of justice in a criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on p. 157 of 'The Proof of Guilt' by Glanville Williams, 2nd Edn.:

'I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a



million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.'

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of *Shivaji Sahabrao [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : AIR 1973 SC 2622]* as is clear from the following observations:

'Certainly it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distinction between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'

16. The High Court in dealing with an appeal against acquittal exercises similar powers as an appellate Court while dealing with an appeal against conviction. The High Court can therefore re-appreciate the evidence and come to a different conclusion but it must keep in mind that interference with a judgment of acquittal can only be for compelling reasons. Section 378 of the Code of Criminal Procedure does not provide any limitation to the powers of the Court while dealing with the judgment of acquittal. However, by judicial pronouncements certain limitations have been put on the powers of the Appellate Court to reverse the judgment of acquittal. In "*Bhadragiri Venkata Ravi v. High Court of A.P.*" (2013)14 SCC 145 the Hon'ble Supreme Court held as under :-

"25. *This Court has time and again laid down parameters for interference by a superior court against the order of acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence.*



Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

17. We find that the trial Judge rightly disbelieved P.W.-1, P.W.-2, P.W.-3, P.W.-6, P.W.-9 and P.W.-11 on account of serious inconsistencies in their statements and the prosecution story as narrated by Salim in the First Information Report. The prosecution case that Salim, Insaf Ali, Qayum, Sattar Khan and Mohammad Yusuf proved the motive behind the crime was not accepted by the trial Judge. No evidence was laid during the trial that Hanifa was attacked by Abdul Jabbar with such considerable force that would have broken the ribs and caused rupture of spleen. The suggestion elicited on behalf of the defence that due to assault by fists over the abdominal area the victim may suffer injury in the spleen shall not prove the case of the prosecution that Abdul Jabbar was guilty of intentionally causing death of Hanifa. In our opinion, the prosecution evidence contained more chaff than grains and the Sessions Court rightly acquitted Abdul Jabbar of the charge framed under Sections 302 and 323 of the IPC.

18. The criminal appeal is therefore dismissed and, consequently, criminal revision is also dismissed. Abdul Jabbar is discharged of liability of the bail bonds furnished by him pursuant to the order passed by this Court.

19. D.B. Criminal Appeal No. 384/1991 and D.B. Criminal Revision Petition No. 17/1992 stand dismissed.

(YOGENDRA KUMAR PUROHIT),J (SHREE CHANDRASHEKHAR),J

97-98 AjaySingh
Whether fit for reporting : Yes/No