

(2014) 01 AHC CK 0164
Allahabad High Court
Case No: G.A. No. 2102 of 1981

State of U.P.

APPELLANT

Vs

Sotan

RESPONDENT

Date of Decision: Jan. 29, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 323

Citation: (2014) 2 ACR 1415

Hon'ble Judges: Rakesh Tiwari, J; Kalimullah Khan, J

Bench: Division Bench

Advocate: G. Haider, G.P. Yadav and S.P. Singh, Advocate for the Appellant; A.N. Mulla, I.N. Mulla and S.N. Mulla, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Kalimullah Khan, J.

This criminal appeal u/s 378, Cr. P.C. has been filed against six accused, namely, 1. Sotam @ Totan, 2. Dina Nath, 3. Makkhu, 4. Bachcha, 5. Daljit and 6. Khaderu against the impugned judgment and order dated 19.5.1981, passed by learned IV Additional Sessions Judge, Varanasi, in Sessions Trial No. 317 of 1980, State v. Sotam @ Totan, Crime No. 84 of 1980 under Sections 147, 148, 149, 302, 324 and 323, I.P.C., P.S. Rohania, District Varanasi, whereby learned trial court has acquitted all the aforesaid accused.

2. The impugned judgment and order has been challenged on the ground that it is against the law and facts of the case. The judgment being perverse has caused miscarriage of justice.

3. During pendency of this criminal appeal, accused Sotam @ Totan had died, as a result of which, appeal against him has stood abated, vide order dated 16.11.2005, therefore this judgment now pertains to rest five accused respondents.

4. Written report (Ex. Ka-1) was lodged by Ramashanker at police station Rohania, district Varanasi with an accusation that on 14.5.1980, at about 2.00 p.m., he alongwith his brother Raj Narain was irrigating his sugarcane crop from the tube well. Accused Sotam @ Totan, Dina Nath and Makkhu armed with lathis reached there and cut the nali of the tube well in order to irrigate their own field. First informant, Ramashankar, and his brother protested, whereupon they rushed up to assault them with lathies, however, informant and his brother ran away and went to their house. The prosecution case is that accused Sotam @ Totan, Dina Nath, Makkhu, Bachcha, Daljit and Khaderu armed with lathies and ballam chased them up to their door and thereupon to commit their murder. Ramashankar and his brother Raj Narain raised alarm and went to the roof of their house. Prosecution witnesses, Raja Ram, Bedi, Khemman, Arjun and others intervened. Shiv Nath, the uncle of Ramashankar, was sitting at his door. He wanted to run away but he was overpowered by Daljit accused. Bachcha and Makkhu belaboured Shiv Nath, who fell down. Jagarnath was belaboured by Sotam @ Totan and Dina Nath with lathis. Rajaram was assaulted with ballam by Khaderu. It is further stated that in the F.I.R., Ramashankar and Rajnarain threw brickbats from their roof with the result Sotam and Daljit sustained injuries at their person. Shivnath died on the spot. Ramashankar dictated the report to Basudev Prasad of his village, who scribed the same. He went to the police station alongwith the injured persons and lodged the report. Chick report was drawn and the case was registered in the general diary dated 14.5.1980 at 16.00 hours. Investigation followed. The injured persons, namely, Jagannath and Raja Ram were examined by Dr. O.P. Pandey, Medical Officer of P.H.C., Gangapur, Varanasi. Inquest on the body of Shivnath (hereinafter called the deceased), was prepared alongwith the other relevant papers and the dead body was sent to mortuary for post-mortem examination. The post-mortem was conducted by Dr. H.M. Agrawal. After completing the investigation, I.O. submitted the charge-sheet against all the six accused. The case was committed to the Court of Sessions for trial. Accused were charged for the offence punishable under Sections 147, 148, 302/149, 323/149 and 324/149, I.P.C.

5. They denied the charges and claimed their trial.

6. In order to prove its case, prosecution examined Ramashankar (P.W. 1), Raja Ram (P.W. 2), Bedi (P.W. 3), Raj Narain (P.W. 4), Dr. O.P. Pandey (P.W. 5), Vishram Tripathi (P.W. 6), Ram Bali Rai (P.W. 7), Dr. H.M. Agrawal (P.W. 8) and Shivesh Chandra Mishra (P.W. 9).

7. Ramashankar (P.W. 1) is the first informant. He has proved the written report, Ex. Ka-1. Raja Ram (P.W. 2) is one of the injured and has corroborated the statement of (P.W. 2) in support of the F.I.R. Bedi (P.W. 3) is a witness of an eye account who deposed that when accused started running away from the door of the informant, prosecution witnesses Ramashankar and Raj Narain started throwing brick pieces, dhela and stones upon them. Raj Narain (P.W. 4) is the brother of informant,

Ramashankar and he has supported the prosecution story in toto. Vishram Tripathi (P.W. 6) has proved the chick report and registration of the case. Bali Ram (P.W. 7) has deposed that he has taken the body of the deceased to the mortuary from the place of occurrence. Shivesh Chandra Mishra (P.W. 9) is the Investigating Officer, who has proved the investigation. Dr. O.P. Pandey (P.W. 5) had examined the injuries on the person of Jagarnath on 14.5.1980, at 7.30 p.m. and had found the following injuries on his person:

1. Stitched wound 8 cm. long on scalp, 10 cm. above rt. Ear, painted with yellow coloured medicine.
2. Contusion 4 cm. x 2 cm. on dorsum of base of rt. Index finger.
3. Contusion 1 cm. x 1 cm. on dorsum on left mid. Finger, base.
4. Complains of pain left scapular region back.

All injuries were simple in nature and were caused by some blunt weapon like lathi. The injuries were fresh in duration.

8. The same day at 8 p.m., he had examined the injury of Raja Ram and had found the following injuries on his person--

1. Incised wound 1.5 cm. x 5 cm. x .5 cm. over back of rt. Elbow lower part, caused by sharp object, wound fresh and simple.

The injury of Raja Ram was caused by some sharp edged weapon, like ballam. The injury was fresh in duration. There was an abrasion in an area of .5 cm. below the injury No. 1. He proved the injury reports (Exs. Ka-2 and Ka-3). He stated that the injuries on the persons of these two injured could be caused the same day at 2 p.m.

9. Dr. H.M. Agrawal (P.W. 8) was Medical Officer, S.S.P.G. Hospital, Varanasi on 15.5.1980. On that day at about 2.45 p.m. he had conducted the post-mortem examination on the dead body of Shivnath, son of Lakhan, resident of Darekhun, P.S. Rohania, District Varanasi and had found the following ante-mortem injuries on his person:

1. Lacerated wound anteroposterior 4 cm. x 0.8 cm. x bone deep on mid line of head 8 cm. above bridge of nose.
2. Contusion on whole of forehead left side of face in area of 27 cm. x 20 cm. with left eye black.

On internal examination, he found the following injuries:

Scalp.--Fracture on frontal bone strictly to right side of mid line extending to anterior cranial fossa 15 cm. long.

Membranes.--Congested. Clotted blood present over the membranes up to 5 mm. thick more so near fracture.

Brain.--Thin layer of clotted blood present over the surface of brain up to 2 mm. Thickness. Decomposing.

Heart.--Empty both chambers.

Stomach.--Contains 500 gms. Of partially digested food material. Piece of vegetables recognizable.

Small intestine.--Upper part contains partially digested food material-lower part contains fecal matter.

Large intestine.--Partially empty.

10. In his opinion, the death was caused due to shock, which was the result of injury No. 1. He has stated that on account of injury No. 1, skull bone was fractured. He had taken the blood stained clothes of the deceased and had sealed them and sent the same through constables to the police station. He proved the post-mortem report. In his opinion, the injury No. 1 was sufficient in the ordinary course of nature to cause the death of deceased and that the injury No. 1 could cause instantaneous death. He also stated that it was possible that the deceased would have died at about 2 p.m. on 14.5.1980.

11. The accused were examined u/s 313, Cr. P.C. They denied the prosecution allegations. Accused Sotan stated that on the alleged date of occurrence, he was irrigating his sugar cane crop from the southern nali of the said tubewell. Shivnath, Jagarnath and Roop Narain obstructed the flow of the water and diverted it towards their own field to irrigate their vegetable crop. Sotan hurled abuses and went to his house. When Sotan and Daljit were returning from Shahabad Bazar and when they reached near the house of deceased on the road, Shivnath, Jagarnath and Raja Ram started belabouring both of them with gandasa and lathi. Jagarnath had gandasa while Raja Ram and Shivnath had lathies. Sotan and Daljit exercised their right of private defence with their lathis as a result of which Raja Ram, Jagarnath and Shivnath sustained injuries. Sotan, Khaderu and Daljit went to the police station where they narrated the entire incident to Daroga Ji who asked them to sit there in the police station. They further stated that they had shown their injuries to Diwan Ji. In the meantime, Arjun and Udal alongwith other persons of prosecution side arrived at the police station and got accused persons detained in the lockup. The report of accused were not taken down. They were not subjected to medical examination. However, after being challaned, accused Sotan and Daljit were examined by the Medical Officer, District Jail, Varanasi. In their defence, accused have examined Dr. R.S. Arya, Medical Officer, District Jail, Varanasi as D.W. 1. The aforesaid doctor has deposed that he examined the injuries of Sotan accused on 16.5.1980 at 6.30 a.m. and had found the following injuries on his person:

1. Abrasion 1 cm. x 1/2 cm. on the left side back of head.

2. Incised wound 3 cm. x 1/2 cm. x 1 cm. deep on left side lower part of back, sacral area, up and down in direction. Margins are sharp.

12. On the same day at 6.45 a.m. he had examined the injuries on the person of Daljit and had found the following injuries on his person:

1. Incised wound 4 cm. x 1/2 cm. x skin deep on top of head left to right in direction. Margins are sharp.

2. Incised wound 3 cm. x 1/2 cm. x skin deep on rt. side head 5 cm. above the root of rt. ear oblique in direction.

3. Contusion 2 cm. x 2 cm. on the aspect of rt. thigh middle part.

13. He has stated that all the injuries of Sotam were about 1-1/2 days old at the time of examination. The injury No. 1 was simple. The injury No. 2 was caused by some sharp edged weapon, like ballam. The injury No. 1 was caused by some blunt weapon. He stated that he noted the injuries in the injury register in his handwriting, the copy of which is Ex. Kha 3. All injuries of Daljit were simple, except injuries No. 1 and 2, which were kept under observation. The injuries 1 and 2 were caused by some sharp edged weapon. The injuries were about 1-1/2 days old at the time of examination. He proved the copy of the injury report. He stated that in sharp edged weapon, gandasa is also included and in blunt weapon, lathi is included. He further stated that the injuries of these two accused could be caused on 14.5.1980 at about 2 p.m.

14. On the basis of the evidence adduced on record, learned trial court found all the six accused not guilty and accordingly recorded a finding of acquittal on the ground that accused had no previous motive to commit the instant crime. Motive suggested by the prosecution is weak in as much as when Sotan has abused the first informant in the field and went to his house, there was no occasion for him to attack on the prosecution party at their house; the abnormal conduct of Ramashankar (P.W. 1) and Raj Narain (P.W. 4) in not making any attempt to rescue the deceased doubts their presence at the spot; no brickbats, glass pieces or stone pieces were recovered or shown to I.O.; injuries on the person of Sotan and Daljit were not caused by brickbats rather as per the medical evidence it was caused by gandasa as stated by accused persons; Raja Ram (P.W. 2) has admitted that incident took place on the road (and not on the door of the first informant); injured Jagarnath has not been examined by the prosecution whose injuries are admitted by accused; the conduct of Investigating Officer is biased in as much as he did not get accused Sotan and Daljit medically examined. Their injuries were not entered into the general diary by the head clerk. The deposition of doctor (D.W. 1) has ruled out the possibility of the prosecution case that accused Sotan and Daljit sustained injuries with the pieces of glass, dhela or stone. He specifically stated that the injuries on the person of accused were caused by gandasa.

15. The perusal of the record shows that the findings of acquittal recorded by learned trial court does not call for any interference.

16. Undisputedly, both the parties have sustained injuries caused by blunt as well as sharp edged weapons although the prosecution admits that two persons, namely, accused Sotam @ Sotan and Daljit had sustained injuries in the same incident but in the F.I.R., it has been specifically alleged that both the aforesaid accused respondents have sustained injuries with clod (dhela) but the evidence of doctor who examined them in jail belies the prosecution version that such injuries were caused by dhela. In fact, accused had sustained incised wound on their head alongwith other parts of the body. The autopsy of the deceased shows that he received two injuries including the one on the head which resulted into fracture of his parietal bone. Number of accused are six while injuries sustained by the deceased is only two. Respondents have taken a case of cross-version and they have specifically pleaded in their statements recorded u/s 313, Cr. P.C. as well as in their suggestions made to the prosecution witnesses in their cross-examination that they were belaboured by prosecution first and thereafter in their defence, they caused certain injuries with lathi to prosecution side including the deceased. A very striking feature is noticed by us that although S.O. concerned, who has been examined as P.W. 9, claims to have arrested both the aforesaid respondents and he has deposed that there were injuries at their person but it is strange as to why, after all, police did not enter those injuries in the general-diary when they were brought to the police station. Not only this, neither any chithi majrubi of these accused respondents were prepared by the head constable concerned nor they were sent for their medical examination. However, as it appears, both the aforesaid accused were arrested on the day of the incident itself i.e., on 14.5.1980, at about 2.00 p.m. and were sent to jail where the jail doctor medically examined them on 16.5.1980, at about 6.45 a.m. The time of occurrence was mentioned at 4.00 p.m. on 14.5.1980 and the duration of the injuries sustained by these two accused was found to be 1-1/2 days old. Since, the factum of sustaining injuries of these two accused is admitted to the prosecution, therefore, this aspect of the matter does not require any further probe and discussion. Suffice it to say that prosecution is not coming with clean hands rather it is suppressing the material fact that there were injuries on the person of both the accused at the time of their arrest. Undisputedly, those injuries have not been correctly explained by the prosecution and the manner of their sustaining injuries as stated by prosecution has been falsified by Jail Doctor as discussed above.

17. We find substance in the contention of accused respondents that soon after the incident, they went to the police station concerned to lodge the F.I.R. where they were directed to sit there and meanwhile when the prosecution side reached there and it came to the notice of the police that one of the injured of the prosecution side has succumbed to his injuries, without lodging their F.I.R., they were booked and challaned to jail.

18. Under the facts and circumstances of the case, the finding of acquittal recorded by learned trial court does not appear to be erroneous or wrong judgment or the view taken by him cannot be said to be impossible, illegal or perverse rather the view taken by the trial court is quite possible.

19. A possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations has to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

20. The considerations on the basis on which the trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may however be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefore, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power u/s 378, Cr. P.C. is not called for.

The Government appeal lacks merit and it is dismissed, accordingly.