

CASE NO.:
Appeal (crl.) 56 of 1996

PETITIONER:
Shailendra Pratap and Anr.

RESPONDENT:
State of Uttar Pradesh

DATE OF JUDGMENT: 08/01/2003

BENCH:
S.N.VARIAVA & B.N.AGRAWAL.

JUDGMENT:

J U D G M E N T

B.N.AGRAWAL, J.

The appellants along with accused Surendra Pratap Chand and Kaushalendra Shahi were charged and tried for offences punishable under Section 148/302/307/324/394 of the Penal Code but were acquitted of all the charges by trial court. On appeal being preferred by the State of Uttar Pradesh, the High Court reversed the order of acquittal in relation to both the appellants and convicted them under Section 302 read with Section 34 of the Penal Code and sentenced to undergo imprisonment for life. They have been further convicted under Section 307 read with Section 34 and Section 324 read with Section 34 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for a period of five years and one year respectively. Appellant No. 1 has been also convicted under Section 394 of the Penal Code and sentenced to undergo rigorous imprisonment for five years. The sentences, however, have been ordered to run concurrently. So far the other two accused persons are concerned, the order of acquittal passed by the trial court has been upheld.

Prosecution case, in short, is that both the appellants are the sons of accused Surendra Pratap Chand and accused Kaushalendra Shahi is their co-sharer. There was a long standing enmity between the accused persons on the one hand and members of prosecution party on the other inasmuch as appellant No. 1 got a case instituted through his servant Ramdhari under Section 392/411 of the Penal Code at Gorakhpur against Nagendra Pratap Shahi and Dhirendra Pratap Shahi, father and uncle respectively of Vinay Kumar Shahi (PW 1)-the informant besides their servants Rattan Yadav and Ganesh in which case 28th July, 1978 was the date fixed in Gorakhpur court for appearance of the accused persons of that case. On 28th July, 1978, Dhirendra Pratap, Rattan (PW 2) and Ganesh along with one Lallu Prasad Gupta had gone to appear in the said case and after attending the court, they stayed at Gorakhpur during night. The informant-Vinay Kumar, who was a student of LL.B., was at Gorakhpur from before. On 29th July, 1978, all the aforesaid persons along with Vinay Kumar (PW 1) and Rajdeo (PW 4) left Gorakhpur at 8.30 a.m. for their village by a Jeep bearing No. UTA 2081 which was being driven by its driver Sita Ram (PW 3). The front seat of the Jeep was occupied by Dhirendra Pratap, Lallu Prasad, Vinay Kumar (PW 1) and Rajdeo (PW 4) besides Sita Ram, driver of the Jeep. The other persons including Rattan (PW 2) were occupying rear seat of the Jeep. At about 9.00 a.m., when the Jeep crossed Jamura Nala bridge, another Jeep of black colour came from the opposite direction and stopped near the speed breaker. The appellants and other two accused persons referred to above armed with guns got down from the said Jeep and out of them, the appellants started firing on the members of the prosecution party who were sitting on the front seat of the Jeep as a result of which Dhirendra Pratap, Lallu Prasad, Sita Ram (PW 3) and Rajdeo (PW 4) received injuries. Accused persons thereafter are said to have fled away whereupon all the four injured persons were taken to Khajani police station by Vinay Kumar (PW 1), who is said to have made over a

written report there at 9.30 a.m. on the basis of which first information report was drawn up against the accused persons under Section 307 of the Penal Code. Injured Rajdeo Singh (PW 4) was sent to Primary Health Centre, Khajani, for treatment whereas other three to District Hospital, Gorakhpur. But on the way, Dhirendra Pratap and Lallu Prasad succumbed to their injuries and when they reached District Hospital, Gorakhpur, doctor declared them dead. Therefore, the case registered by the police under Section 307 of the Penal Code was converted into one under Section 302 of the Penal Code.

The police after registering the case took up investigation and on completion thereof submitted charge sheet against all the four accused persons including the appellants on receipt whereof learned magistrate took cognizance and committed the accused persons to the court of Sessions to face trial.

Defence of the accused persons is that they are innocent, no occurrence as alleged had taken place and deceased Dhirendra Pratap, who was a history sheeter, might have been done to death at the instance of some one in the dead of night in some other manner of occurrence and they have been falsely implicated in the present case out of animosity.

During trial, the prosecution examined twelve witnesses in all, out of whom, Vinay Kumar (PW 1) is the informant and Rattan (PW 2) is his servant, both of them claimed to be eyewitnesses of the occurrence. Sita Ram (PW 3) and Rajdeo (PW 4) have been declared hostile and have not supported the prosecution case showing complicity of the appellants and other accused persons with the crime. Dr. Purushottam Tiwari (PW 5) is said to have examined the injuries of PW 4. Dr. D.P.Gupta (PW 6) and Dr. S.K.Srivastava (PW 8) are said to have held postmortem examination on the dead bodies of Dhirendra Pratap and Lallu Prasad respectively. Shijor Prasad (PW 7) and Ram Pratap Singh (PW 10) are the formal police witnesses who took the dead bodies for postmortem examination. Jung Bahadur Yadav (PW 9) is the head constable who had drawn the first information report. Dr. K.K.Mal (PW 11) is the doctor who examined another injured Sita Ram (PW 3). S.I.Nanhu Ram (PW 12) is the investigating officer. The defence, however, examined one Thakur Prasad Yadav as DW 1 on whose statement, certain documents were exhibited showing complicity of deceased Dhirendra Pratap in six cases which were instituted prior to the date of the present occurrence. Upon conclusion of trial, all the accused persons were acquitted by the trial court but the High Court, on appeal being preferred by the State, convicted the appellants as stated above. Hence this appeal.

Shri Sushil Kumar, learned Senior Counsel appearing in support of the appeal submitted that the trial court passed the order of acquittal after fully considering the evidence and doubting the veracity of the prosecution case and disbelieving the witnesses by giving cogent reasonings and the High Court was not justified in reversing the order of acquittal more so when view taken by the trial court was reasonable one and cannot be said to be perverse. On the other hand, learned counsel appearing on behalf of the respondent-State submitted that the High Court was quite justified in interfering with the order of acquittal.

In order to appreciate the submissions, it would be expedient to refer to reasonings of the trial court while recording acquittal and the same are enumerated hereunder:

(a) According to the prosecution case and evidence only those members of prosecution party had received injuries who were sitting on the front seat of the Jeep, nobody who was sitting on the rear seat of the Jeep had received any injury and the accused persons are said to have fired from the front side of the Jeep. In the opinion of Dr. D.P.Gupta (PW 6), one of the firearm injuries received by the deceased Dhirendra Pratap was on the back side of his body. Further, Dr. K.K.Mal (PW 11), who examined PW 3, found that this witness had also received one of the injuries by firearm on his back side. The investigating officer (PW 12) has not stated anywhere in his evidence that he found any hole on the front seat of the Jeep and in view of the fact that none of the persons, who was sitting on the rear seat of Jeep, had received any injury, the medical evidence that the aforesaid two persons had received injuries on the back side as well makes the prosecution case highly doubtful, more so when guns were fired from

front side of the jeep.

(b) Dr. Purshottam Tiwari (PW 5), who examined injured PW 4, opined that injury Nos. 1 and 3 received by him were caused by hard and blunt object and according to the prosecution case and evidence, the accused persons were armed with guns only and no other weapon. This circumstance creates doubt regarding the veracity of prosecution case.

(c) The investigating officer (PW 12) who inspected the ill-fated Jeep has nowhere stated in his evidence that he found any mark of firing thereon.

(d) The reason for stay during night at Gorakhpur for settling accounts of Sopai Ghat settlement was not mentioned by the informant in the first information report nor the said fact was stated by any other witness in his statement made before the police but has been disclosed by the witnesses for the first time in court.

(e) According to the evidence of witnesses, hospital was on way to the police station but no reason whatsoever has been assigned why the four injured persons were taken to the police station first and not the hospital. Further, it does not appear why the police referred three injured persons to Gorakhpur hospital instead of first referring them to Khajani hospital which was nearby the police station for giving them first aid. These facts make the prosecution case that the four injured persons were taken by PW 1 to the police station suspicious.

(f) Out of the four persons who claimed to be eyewitnesses to the alleged occurrence, PWs 3 and 4 have been declared hostile and did not support the prosecution case showing complicity of the appellants with the crime in any manner.

(g) Another eyewitness is PW 1-the informant himself. This witness is nobody else than nephew of the deceased Dharendra Pratap and appellant No.1 got a case filed under Section 392 of the Penal Code against the deceased Dharendra Pratap who is uncle of this witness besides his father Nagendra Pratap and servant Rattan (PW 2) and Ganesh and the said case was pending on the date of the alleged occurrence. This witness might have implicated the accused persons to put pressure upon them so that they may not pursue the aforesaid criminal case instituted against his family members. PW.1 admitted that he was examinee of LL.B. examination which were scheduled to be held only after few days with effect from 7th August, 1978 and the reason for his accompanying the members of the prosecution party in the Jeep to his village home was to bring foodgrains for his consumption, though he had employed a servant who could have been sent to the village for bringing the same. It was quite unnatural for this witness to accompany the deceased for the purpose enumerated above. The aforesaid fact shows that this witness might not have accompanied the deceased Dharendra Pratap in the Jeep and had alleged the reason for going to the village only to become a witness to the alleged occurrence. Apart from that, PW.1 has stated in the first information report that he was sitting on the front seat of the Jeep but according to his statement in court, he was on the back seat of the Jeep. This witness has stated that members of prosecution party had gone to appear in the case filed against them under Section 392 of the Penal Code in which 28th July, 1978 was the date fixed but his statement has been contradicted by PW 2 who stated that on that day they had gone to Gorakhpur for making inquiry about the date fixed in the case. From these facts, presence of PW 1 at the alleged place of occurrence becomes highly doubtful.

(h) Another person, who claimed to be eyewitness, is PW 2. He is undisputedly servant of PW 1 and accused in case filed under Section 392 of the Penal Code at the instance of appellant No.1 which was pending on the date of the alleged occurrence. This witness had a motive to falsely implicate the accused persons to put pressure upon them so that they may not pursue the said case. Apart from that, the case in consolidation was pending on the date of occurrence between Ram Singh, cousin of accused Kaushalendra Shahi, who is co-sharer of other accused persons, and this witness in which accused Kaushalendra Shahi was taking steps on behalf of Ram Singh. PW.2 stated before the police that he had gone to Gorakhpur on 28th July, 1978 for doing some personal work but in court he has stated that he had gone to Gorakhpur to make inquiry about the date fixed in the case under Section 392 of the Penal Code. That apart, according to PW 1, the members of prosecution party had gone to Gorakhpur for appearing in the case which was fixed for 28th July, 1978 but even according to the statement of this witness, which was made for the first time in court, he had gone to Gorakhpur for making inquiry regarding the date

fixed. This witness has for the first time in court disclosed the reason for his stay during night at Gorakhpur. He has nowhere stated before the police that he stayed during night at Gorakhpur for the purposes of settling accounts of Sopai Ghat settlement.

(i) The motive for occurrence alleged is two fold. Firstly, it has been alleged that case under Section 392 of the Penal Code was instituted at the instance of appellant No.1 against PW 1, PW2, deceased Dharendra Pratap, uncle of PW 1 and his father Nagendra Pratap which was pending on the date of occurrence. Secondly, it was alleged that the deceased had taken settlement of Sopai Ghat and in the bid, appellant No. 1 had also participated but the said fact is not supported by bid sheet (Ex.kha 5) wherein name of this appellant was never mentioned and further according to PW 1, the said settlement in favour of the deceased had been cancelled before the date of the alleged occurrence. The aforesaid grounds could not be taken to be motive for the alleged occurrence but the same could be grounds for false implication of the accused persons.

(j) Undisputedly, the deceased Dharendra Pratap was a history sheeter and he was accused in six cases which were pending from before the date of the alleged occurrence. In view of the aforesaid infirmities in the prosecution case and the evidence, possibility of the deceased Dharendra Pratap being done to death in the dead of night by members of the rival group cannot be ruled out.

Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity.

In the result, the appeal is allowed, impugned judgment passed by the High Court convicting the appellants is set aside, the order of their acquittal rendered by the trial court is restored and they are acquitted of all the charges. The appellants, who are on bail, are discharged from the liability of bail bonds.