REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1794 of 2013

MACHINDRA ...APPELLANT(S)

VERSUS

SAJJAN GALPHA RANKHAMB & ORS. ....RESPONDENT(S)

J U D G M E N T

Pinaki Chandra Ghose, J.

The instant appeal is directed against the judgment and order dated 24th February, 2011 passed by the High Court of Judicature of Bombay, Bench at Aurangabad, in Criminal Appeal No.333 of 2010, whereby the High Court while allowing the appeal of respondent Nos.1 & 2 herein, set-aside the judgment and order of conviction and sentence dated 24.08.2010 passed by learned

Sessions Judge, Osmanabad, and acquitted them of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short "IPC").

2. Brief facts necessary for disposal of the present appeal are as follows:

Parties herein are close relatives as respondent No.1 is the brother-in-law of the appellant herein (his sister having married to the appellant) and respondent No.2 is the son of respondent No.1. It appears that appellant had purchased 3 acres of land from his father-in-law (father of respondent No.1) about 20 years before the date of occurrence. On account of the said transaction, respondent No.1 was not happy, which is stated to be the alleged enmity between the parties. Appellant had two sons, namely, Gorakh and Dattatreya. On 21.04.2007, a complaint was lodged by the appellant at Osmanabad Rural Police Station stating that the complainant, his wife and other relatives had gone to attend the marriage of his granddaughter Rupabai, while his younger son Dattatreya remained at home. After attending the marriage, when they came back, one Balu Shekha Solawar told the complainant that accused Sajjan and his son Kakasaheb had killed Dattatreya

in the field of Sanjay Sambhaji Jethithor. The complainant immediately rushed towards the spot and found the dead body of Dattatreya lying on the field. The villagers who were present on the spot told the complainant that accused killed Dattatreya. On the basis of the complaint, Osmanabad Rural Police Station registered the case as Crime No.36 of 2007 under Section 302 read with Section 34 of IPC against respondent Nos.1 & 2 herein, who are none other than maternal uncle of deceased and his son for causing death of the deceased with stick and Khil (yoke pin). After completion of the investigation by the Police Inspector of Osmanabad Police Station (PW-19), final report was submitted before the Court of Chief Judicial Magistrate, Osmanabad. Since the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of learned Sessions Judge, Osmanabad. Twenty witnesses were examined on prosecution side and five witnesses were examined on defence side. The learned Sessions Judge vide his judgment and order dated 24.08.2010, convicted respondent Nos.1 and 2 herein for offence punishable under Section 302 read with Section 34 of IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/- each,

in default to make payment of fine, to suffer further imprisonment for two months.

3. Being aggrieved by the judgment and order of conviction and sentence passed by the learned Sessions Judge, Osmanabad, the accused respondents preferred Criminal Appeal No.333 of 2010 before the High Court of Judicature of Bombay, Bench at Aurangabad. The High Court allowed the said appeal, set-aside the judgment and order of conviction and sentence dated 24.08.2010 passed by learned Sessions Judge, Osmanabad, and acquitted respondent Nos.1 & 2 of the offence punishable under Section 302 read with Section 34 of IPC. Hence, the present appeal by the father of the deceased who is the complainant in this case.

4. We have heard Mr. Rajat Kapoor, learned counsel appearing for the complainant-appellant herein and Mr. M.Y. Deshmukh, learned counsel appearing for respondent Nos.1 & 2 herein, at length. We have also perused the judgments of both the High Court and the Trial Court as also the evidence on record.

5. Learned counsel appearing for the appellant submitted that the High Court failed to consider the autopsy conducted on the body of deceased wherein compound fracture of skull over left temporal

bone was found which shows the gravity of the offence. He further submitted that the recovery of weapon of offence made at the instance of the accused-respondents was also ignored by the High Court. Moreover, the High Court erred grossly in holding that testimonies of PW-4 and PW-10 falsify each other.

Per contra, learned counsel appearing for the respondents submitted that PW-4 and PW-10 ought to have been disbelieved being interested witness since both of them were tenants of the land owned by deceased. Moreover, considering the gravity of head injuries, if minutely perused, it is not possible for any person to have survived for five minutes. He further submitted that the evidence of the alleged eye-witnesses, i.e. PW-3, PW-4 and PW-10, is totally concocted and not supported by medical evidence because PW-6 - Doctor has not mentioned the probable age and cause of the injuries. Furthermore, the Investigating Officer (PW-19) has nowhere in his examination before the Trial Court mentioned about any eye-witness to the incident. As per the admission of said Investigating Officer, he was informed about the incident by some unknown person. If this is the case, then the testimony of eye-witnesses appears to be false and unbelievable.

7. Learned counsel for the respondents concluded his arguments stating that the prosecution story is again doubtful for two more reasons: (i) PW-3 had informed about the alleged incident to one Chandrakant Gophane, however, the prosecution had not examined him; (ii) There was no propriety in sending the accused for medical examination on 21.04.2007, when admittedly the accused were arrested on 22.04.2007 which is proved by testimony of PW-19 and corroborated by the testimony of PW-20.

8. We have noticed that the Trial Court after relying mainly upon the testimony of PW-3, PW-4 and PW-10, found that the prosecution has proved its case beyond reasonable doubt, corroborated by the medical evidence of doctor (PW-6) who conducted the autopsy of the deceased and by the report of chemical analyzer. It was held that the respondents with common intention to kill the deceased had caused injuries with stick and Khil, to which the deceased succumbed later on.

9. The High Court has, however, reversed the order of conviction while holding that no reliance could be placed on the evidence of PW-3. The High Court further held that both PW-4 and PW-10 had

falsified evidences of each other. Non-examination of weapon recovered from the place of incident by the Chemical Analyzer also made the case doubtful as per the opinion of the High Court.

Before answering the question that whether the High Court was correct in allowing the appeal of the respondents herein, we wish to supply emphasis on one of the cardinal principles of criminal jurisprudence pertaining to the 'burden of proof on the prosecution' in criminal cases. This Court has in a recent judgment in the case of ***Yogesh Singh Vs. Mahabeer Singh & Ors.***, AIR 2016 SC 5160 = 2016 (10) JT 332, reiterated the said principle in the following words:

> *"It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr., (1988) 4 SCC 302:*
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> *'25. … 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 overemotional 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 concept 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 legitimization of trivialities would make a mockery of administration of criminal justice."

11. Keeping in mind the aforesaid position of law, we shall now examine the arguments advanced and materials on record to see whether the findings of the High Court call for interference in the facts and circumstances of the present case.

We have noticed that there are contradictions in the depositions of PW-4 and PW-10 and none of them is eye-witness to the alleged incident. Furthermore, PW-20 has proved in his deposition that he medically examined respondent Nos.1 & 2 herein on 21.04.2007 and not on 22.04.2007 when they were arrested. It is a matter of surprise to us that prosecution had not examined one Sanjay Jetithor in whose field the alleged incident occurred.

Non-examination of this material witness, who could have unfolded the relevant facts of the case necessary for adjudication, makes the prosecution version doubtful. It is also pertinent to mention here that PW-3, who is an alleged eye-witness to the incident, had in his deposition admitted that he passed the information on phone to one Chandrakant Pandurang Gophane who was never examined by the Trial Court. After perusing the deposition of PW-3, we have noticed that this witness and the respondent accused were not in cordial terms as their cattle used to enter the fields of one another and chapter case was filed against the wife of accused on that count.

On perusal of the record, it has further been noticed by us that there was six days' delay in lodging the FIR which remained unexplained throughout the trial and in the appeal before the High Court. One last fact which is imperative and crucial to be mentioned here is that opinion on the cause of injuries was neither mentioned by doctor PW-6 in his deposition, nor in post-mortem report. In criminal cases pertaining to offences against human body, medical evidence has decisive role to play. A medical witness who performs a post-mortem examination is a witness of fact

though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by this Court in ***Smt. Nagindra Bala Mitraand Vs. Sunil Chandra Roy & Anr.***, 1960 SCR (3) 1, as follows:

> *"The value of a medical witness is not merely a check upon the testimony of eye witnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. If a person is shot at a close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person."*

Further it was observed in the case of ***State of U.P. Vs. Krishna Gopal & Anr.***, (1988) 4 SCC 302, in the following words :

> *"24. It is trite that where the eye-witnesses' account is found credible and trustworthy, medical-opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial-process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical-evidence, as the sole touch-stone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a*

cumulative evaluation."

15. But looking at the post-mortem report, cause of injuries was not stated nor was any opinion formed to create independent testimony. We would like to emphasize on the vital role played by opinion of the expert which is simply a conclusion drawn from a set of facts coming to his knowledge and observation. Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution. Therefore, we are of the considered opinion that the prosecution has failed to prove that death was caused due to the injuries inflicted by the recovered weapons.

Furthermore, looking at the facts and circumstances of this case, we have noticed that PW-3 the eye-witness to the incident has

neither stated as to when the accused came with alleged weapons nor he extended any help to the deceased. Rather he fled away from the spot as per his deposition, and came to know about the death of the deceased in the evening. This peculiar fact of the case completely over-rides the direct evidence rule, because ultimately probabilities creating doubts with respect to the cause and modus-operandi of offence increases when alleged eye-witness flee away from the place of occurrence. Where the medical evidence is such that it does not give any clear opinion with respect to the injuries inflicted on the body of victim or deceased, as the case may be, the possibilities that the injuries might have been caused by the accused are also ruled out. Such medical evidence is also very important in assessing the testimony of eye-witnesses and in determining whether the testimony of eye-witnesses can be safely accepted. Moreover, it is settled law of criminal jurisprudence as has been recognized by this Court in ***State of U.P. Vs. Krishna Gopal***, (*supra*) that "*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.*" After meticulously scrutinizing the facts and circumstances of the present case, and

keeping in mind the proposition of law as observed in ***Yogesh Singh Vs. Mahabeer Singh & Ors.*** (*supra*), we are of the considered opinion that there are not only actual but substantial doubts as to the guilt of the respondents herein. We are, therefore, unable to find any evidence as to how the deceased was killed and by whom. The unfortunate man succumbed to injuries but the substantial doubts, mentioned above, confer a right upon the accused-respondents to be held not guilty.

17. Thus, we see no reason to interfere with the findings of the High Court as, in our opinion, the High Court after correct appreciation of evidence has rightly acquitted the accused-respondents, giving them benefit of doubt. This appeal is devoid of any merit which is, accordingly, dismissed.

. . . . . .J
(Pinaki Chandra Ghose)

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(Rohinton Fali Nariman)

New Delhi;
April 19, 2017.