

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

D.B. Criminal Appeal No. 388/1995

State Of Rajasthan

----Appellant

Versus

Devilal @ Devida & Ors

----Respondent

For Appellant(s) : Mr. B.R. Bishnoi PP
 For Respondent(s) : None present.
 For Complainant(s) : Mr. I.R. Choudhary.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Judgment**Reportable****24/04/2024****Per Dr. Pushpendra Singh Bhati, J:**

1. This criminal appeal under Section 378 Cr.P.C. has been preferred by the State claiming the following reliefs:

"It is further prayed that appeal of the State-Appellant may kindly be allowed, acquittal order passed by the learned Sessions Judge, Merta may kindly be set aside and the accused-respondents may kindly be convicted and sentenced according to law.

2. The matter pertains to an incident which occurred in the year 1990 and the present appeal has been pending since the year 1995.



3. By way of the instant appeal, the appellant-State laid a challenge to the judgment dated 31.03.1995 passed by the learned Sessions Judge, Merta in Sessions Case 22/90 (State of Rajasthan Vs. Devilal @ Devida & Ors.), whereby the accused-respondents-Devilal @ Devida, Virdaram and Kewalchand have been acquitted and accused-respondent-Motiram and Annaram has been convicted under Sections 323 & 325 IPC respectively, but were granted the benefit of Section 4 of the Probation of Offenders Act, 1958.

4. Brief facts of the case, as placed before this Court by learned Public Prosecutor appearing on behalf of the appellant-State, are that complainant-Nimbaram submitted an oral complaint (Ex.P/1) dated 18.03.1990 before the Police Station, Padukalan, District Nagaur, stating therein that at about 7:00 p.m., while he was sitting in his house, accused-Kewalchand came to his house and started abusing the complainant from outside the house, whereupon, the complainant came out of his house and asked the said accused person to stop hurling abuses against the complainant; upon which, co-accused Anna Ram and Motiram came alongwith lathis and started beating the complainant and his father; thereafter, from the neighbourhood of the complainant, one Babulal and his mother-in-law Narbada came to the rescue of the complainant party. But even then, co-accused Devilal @ Devida and Birdaram also joined the accused persons and attacked Babulal and Narbada; accused Devilal @ Devida and Birdaram picked the stones and attacked them, as a result whereof, Narbada sustained injuries on the right eye and fell



down. Thereafter, the neighbours, namely, Laduram, Chunaram and their families came to rescue of the victims.

4.1. On the basis of the aforementioned written information (Ex.P/1) given by the complainant, an FIR (EX-P./2) dated 18.03.1990 was registered at Police Station, Padukala, Nagaur for the offence under Sections 323 & 451 IPC, and the investigation accordingly commenced thereafter, and in an unfortunate event, Narbada died the next day, whereupon Section 302 IPC was added.

4.2. Accused-Devilal @ Devida was prosecuted under Sections 147, 323, 302 IPC, accused-Annaram was prosecuted under Section 325 IPC and other accused-Motiram, Virdaram and Kewalchand were prosecuted under Sections 147, 323, and 302/149 IPC.

5. The learned Trial Court framed the charges against the accused persons, which were read over to the accused persons; the same were denied by the accused persons, sought due trial, and the trial accordingly commenced who thereafter before the learned Trial Court.

6. During the course of trial, the evidence of 20 prosecution witnesses were recorded and 40 documents were exhibited on behalf of the prosecution, whereas, the accused in support of defence produced total 3 witnesses as well as 8 documents in defence; whereafter, the accused were examined under Section 313 Cr.P.C., in which they pleaded innocence and their false implication in the criminal case in question.



7. Thereafter, upon hearing the contentions of both the parties as well as considering the material and evidence placed on record, the learned Trial Court passed the impugned judgment dated 31.03.1995 as above, against which the present appeal, has been preferred on behalf of the State.

8. Learned Public Prosecutor for the appellant-State submits that as per the evidence rendered by PW.1, PW.2 & PW.3, are in corroboration with each other and they fully support the prosecution story. Learned Public Prosecutor further submits that as per the post-mortem report, deceased-Narbada died due to the injury caused by the accused-respondents during the incident in question.

8.1. Learned Public Prosecutor also submits that all the accused-respondents came with lathis & stones at the place of incident with common intention to cause death of deceased-Narbada, and they were five in number, and therefore, it was an unlawful assembly.

8.2. Learned Public Prosecutor as well as learned counsel representing the complainant submit that the prosecution has been able to prove its case beyond reasonable doubt, but the learned Trial Court passed the impugned judgment, which is not justified in law, because all the accused-respondents were responsible for the death of deceased-Narbada, and being driven by such common intention, also caused injury to the other persons.

9. Heard learned counsel for the parties as well as perused the record of the case.



10. This Court observes that the appellant-State challenged the impugned judgment dated 31.03.1995, whereby the accused-respondents-Devilal @ Devida, Virdaram and Kewalchand have been acquitted and accused-respondents-Motiram and Annaram, though were convicted under Sections 323 & 325 IPC respectively, but were granted the benefit of Section 4 of the Probation of Offenders Act, 1958.

11. This Court further observes that in the FIR, the reason for the incident in question was not mentioned and as per the statement of PW-17-Galku, it is clear that all the accused-respondents did not reach the place of incident exactly at the same time; the accused-Kewalchand came first and after 10-15 minutes accused-Motiram and Annaram reached and thereafter, the accused- Devilal @ Devida and Virda Ram reached the place of the incident in question. This Court also observes that the dispute arose because of the damage caused by the cattle of the victim in the accused's farm and accused-Kewalhand came to Nimbaram's house to complain regarding the same, which is a vital aspect of the case and is clearly hidden in the prosecution case, and the said fact has been recorded by the learned Trial Court in the impugned judgment.

12. This Court further observes that as per the statement of PW. 6-Sugani, only accused-Kewalchand, Motiram, and Annaram were present at the place of incident, while PW.7-Suraj stated that only Motiram, Annaram and Virda were present at the place of incident; both the witnesses did not verify the presence of the accused-Devilal @ Devida at the time of commission of the offence



in question. Therefore, in absence of one of the accused at the place of incident at the relevant time, if requirement of Section 147 IPC could not be fulfilled qua even one of the accused, then the other accused did not come under Section 147 IPC, therefore, they cannot be punished alongwith the accused-Devilal @ Devida, who was charged under Section 302/149 IPC.

13. This Court also observes that there is no specific allegation against the accused- Devilal @ Devida regarding the factum of injuring the right eye of Narbada (deceased) and causing her death. This Court further observes that as per the Statements of PW.1, PW.2, PW.3, PW.4 and PW.17, accused-Devila @ Devida hit the right eye of Narbada, but the PW.12-Dr. Sahni stated that as per the inspection of the body of deceased it was found that left eye was injured and the same was reported in injury report (Ex.P/ 20).

13.1. This Court also observes PW.20- Dr. Jitendra Choudhary who conducted the postmortem of the deceased body, and as per postmortem report (Ex. 39) reflected that the injury was found on the left eye of the deceased. Therefore, contradiction was found in the statements of PW.1, PW.2, PW.3, PW.4 & PW.17 and their statements did not match with PW.12 and PW.20 as well as injury report and postmortem report.

14. This Court further observes that a perusal of the statement of PW.15-Lun Singh indicates that he prepared the Fard report (EX.D/5) wherein Narbada' (deceased) thumb print was also taken, and as per the said report as well as the statement of PW.15, accused Motiram caused injury in the eye of the deceased,





which is completely contrary to the statements of the eye-witness as well as other witnesses.

14.1. This Court also observes that PW.15 also stated that the statements of Narbada (deceased) before death was recorded and in the Dying Declaration (EX.P/40), she stated that the injury had been caused by accused-Devilal @ Devida. PW.15 in cross-examination admitted that the deceased took the names of different persons, and did not give any specific name who caused injury in eye, which is a clear contradiction and there was no clarity in the deceased's statements, which also deserves extension of benefit of doubt in favour of the accused.

14.2. This Court also observes that at the time of recording the Dying Declaration, Narbada (deceased) was unconscious and the same was admitted by PW.-2 Nimbaram in his cross-examination, and PW.12-Dr. Sahni also stated that the deceased was unconscious at the time of inspection of the injury, and therefore, she was not in a condition to give any statement and Ex.P/40 was thus doubtful and it was not reliable for convicting the accused-respondents for the charges in question.

15. This Court further observes that a perusal of the statements of PW.1-Babulal, PW.2-Nibaram and PW.17-Galku, indicates that accused-Virda caused injury on the back of Babulal, but the same was not even mentioned in the statements recorded before the Police and also not mentioned in the report (Ex.P/1), and as per the injury report (Ex.P/18), the injury so mentioned was sustained on the chest of Babulal; but in the statements, it was stated that the injury was caused on the back of Babulal.



16. This Court also observes that the other accused-Kewalchand hitting Nimbaram, was stated by PW.17, but Nimbaram himself as well as PW.3 and PW.4 did not verify that the accused Kewalchand had caused any injury to him.

17. This Court further observes that the statements of prosecution witnesses are having contradictions and they did not support the prosecution story for the purpose of conviction of the accused-respondents under Section 302 IPC. This Court also observes that even the deceased herself took the name of different person, who caused injury to her; the entire evidence creates a doubt and cannot be said to be reliable for convicting the accused-respondents under Section 302 IPC, and therefore, the learned Trial Court had rightly passed the impugned judgment.

18. This Court further observes that accused-Motiram was convicted under Section 323 IPC and accused-Annaram was convicted under Section 325 IPC but the learned Trial Court deemed it just and proper, after considering the overall facts and circumstances of the case as well as material available on record, to extend to the said accused-respondents the benefit of Section 4 of the Probation of Offenders Act, 1958, which, in the given circumstances, is justified in law.

19. At, this juncture, this Court deems it appropriate to reproduce the relevant portions of the judgments rendered by the Hon'ble Apex Court in the cases of ***Mallappa & Ors. Vs. State of Karnataka (Criminal Appeal No. 1162/2011, decided on 12.02.2024)*** and ***Babu Sahebagoada Rudragoudar and Ors.***



Vs. State of Karnataka (Criminal Appeal No. 985/2010,
decided on 19.04.2024), as hereunder-:

Mallappa & Ors. (Supra):

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

Babu Sahebagouda Rudragoudar and Ors. (Supra):

38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023) 9 SCC 581** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

- "8.1. The acquittal of the accused further strengthens the presumption of innocence;



8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

19.1. This Court also considers it appropriate to reproduce the relevant portion of the judgment rendered by a Division Bench of this Hon'ble Court in the case of **State of Rajasthan Vs. Shiv Narayan & Ors. (D.B. Criminal Appeal No. 250/1992, decided on 13.12.2022)**, as hereunder:-

*"In **Yogesh Singh Vs. Mahabeer Singh and Ors.** reported in AIR 2016 SC 5160, Hon'ble the Supreme Court held that one of the golden threads which runs through the web of*





*administration of justice in criminal cases is that if there are two perspectives arising from the evidence adduced in a matter, one inclining towards the guilt of the accused and another inclining towards the innocence of the accused, the view which is favourable to the accused should be adopted. In a recent judgment dated 28th July, 2022 passed in Criminal Appeal No. 2119 of 2010 titled **State of Rajasthan Vs. Kistoora Ram**, the Apex Court has held that the scope of interference in an appeal against acquittal is limited unless the view taken by Court is impossible or perverse. It was opined that if two views are possible, then the order of acquittal cannot be discarded only because the Appellate Court is of the view that conviction is more probable. The order of acquittal would warrant interference only when the view taken by the lower court is not possible at all.*

In light of the above observations and considering the arguments advanced at the bar, this Court does not find any room for interference in the order passed by the learned trial Court. The story of the prosecution is not found proved beyond reasonable doubt and the plea of the accused regarding right to private defense is found to be reasonable and worth accepting”.

20. This Court also observes that the learned Trial Court passed the impugned judgment regarding acquittal of the accused-Devilal @ Devida, Virdaram, Kewalchand and after conviction of accused-Motiram and Annaram under Sections 323 & 325 respectively giving the benefit of Section 4 of the Probation of Offenders Act, 1958, which in the given circumstances, is justified in eye of law, because as per the settled principle of law as laid down by the Hon’ble Apex Court in the aforementioned judgments, particularly in category of VI, to the effect that the judgment of the Trial Court can be reversed by the Appellate Court only when it demonstrates





an illegality, perversity or error of law or fact in arriving at such decision; but in the present case, the learned Trial Court, before passing the impugned judgment, examined each and every witnesses at a considerable length and duly analyzed the documents produced before it, coupled with examination of the oral as well as documentary evidence, and thus, the impugned judgment suffers from no perversity or error of law or fact, so as to warrant any interference by this Court in the instant appeal.

21. This Court further observes that the scope of interference in the acquittal order passed by the learned Trial Court is very limited, and if the impugned judgment of the learned Trial Court demonstrates a *legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal* as held by the Hon'ble Apex Court in aforementioned judgment, and thus, on that count also, the impugned judgment deserves no interference by this Court in the instant appeal.

22. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as in light of the aforementioned precedent laws, this Court does not find it a fit case warranting any interference by this Court.

23. Consequently, the present appeal is ***dismissed***.

(MADAN GOPAL VYAS),J **(DR.PUSHPENDRA SINGH BHATI),J**

21-SKant/-