[2017] 3 S.C.R. 808

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ARUN KUMAR

v.

THE STATE OF BIHAR & ORS.

(Criminal Appeal No. 825 of 2017)

B

MAY 01, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Criminal Procedure, 1973 – s.378 – Appeal by son of deceased against acquittal of respondent nos.2-5 of charges
C *u/ss.302/34, 201 and 307 IPC – Prosecution case was that accused persons equipped with guns and lathis attacked the complainant party resulting in death of one and gun shot and lathi injuries to two including the informant – Villagers witnessed the incident – Trial court acquitted the accused persons – Son of deceased filed appeal before High Court which was dismissed – On appeal, held:*
D *In* Lalit Kumar *case, it was held that appellate court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so – High Court decided the appeal without keeping in view the law laid down in* Lalit Kumar *case – Further, High Court ought to have called for the record of the case from the trial court*
E *as provided u/s.385(2) of the Code which it seemed to have not done – Matter remanded to High Court to decide appeal afresh – Penal Code, 1860 – ss.302/34, 201 and 307.*

Allowing the appeal and remitting the matter to High Court, the Court

F **HELD: 1.1 The High Court though in the impugned order referred to the evidence of some witnesses but neither referred and nor appreciated much less discussed the entire evidence adduced by the prosecution of as many as 13 witnesses in proper perspective. In other words, the High Court did not exercise its**
G **appellate powers while hearing the appeal in the manner it ought to have and dismissed the appeal finding no fault by observing in its conclusion that since the view taken by the Sessions Court is a plausible view, the same does not call for any interference by the High Court. [Para 19][812-C-D]**

1.2 It is true that the appeal before the High Court was
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against the acquittal order of the Sessions Judge whereby all the accused charged for the offences punishable under Sections 302/ 34, 201 and 307 of IPC stood acquitted yet, the law laid down by this Court on the question of the powers of the Appellate Court while hearing the appeal arising out of acquittal order of the Sessions Judge in *_Lalit Kumar Sharma_ case should have been kept in consideration by the High Court while hearing the appeal and further the High Court should have called for the record of the case from the Trial Court as provided under Section 385 (2) of the Code which it seems was not called for. The cursory manner in which the High Court disposed of the appeal does not command to uphold the impugned order. In any event, the respondents (accused) would have full opportunity to place their case before the High Court on remand and urge all their submissions in support of the order of the Sessions Judge on the merits. [Paras 20, 24, 25][812-E-F; 813-H; 814-A-B]

Lalit Kumar Sharma & Ors. v. Superintendent & Remembrancer of Legal Affairs, Govt. of West Bengal* **1989 Supp (2) SCC 140 – relied on.

Case Law Reference

1989 Supp (2) SCC 140	**relied on**	**Para 20**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 825 of 2017.

From the Judgment and Order dated 21.04.2014 of the High Court of Judicature at Patna, in Criminal Appeal (DB) No. 1030 of 2013.

Rohit Sharma, Rounak Nayak, Arvind Kumar, Tiwary Sandeep Puggal, (for Harish Pandey), Advs. for the Appellant.

E. C. Vidya Sagar, Shantanu Sagar, Gopal Singh, Manish Kumar, Shivam Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed by the son of the deceased-Sheo Kumar Pati Tiwari against the final Order dated 21.04.2014 passed by the High Court of Judicature at Patna in Criminal Appeal(D.B.) No.1030 of 2013

A whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") against the acquittal of respondent Nos.2-5 of the charges under Sections 302/34, 201 and 307 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") vide judgment dated 17.09.2013 passed by the Ad-hoc Additional B District & Sessions Judge-III, Siwan in Sessions Trial No.32 of 1993.

3. The prosecution case, in short, is that on 24.07.1991, after having dinner at 9.00 p.m., the informant-Uma Pati Tiwari along with his elder brother Ram Tapasya Pati Tiwari and nephew Sheo Kumar Pati Tiwari were talking with each other at the Bathan situated at Village Kashidat C Diara District Siwan, Bihar. At that time, Ram Naresh Chaudhary with Gun, Sukhraj Mallah with Gun, Janardan Ahir with Lathi, Chandeshwar Kurmi with Gun, Anil Singh with Gun, Balinder Ahir with Lathi, Naga Bhar with Lathi and Dwarika Chaudhary with Lathi came there in group and attacked them. Janardan Ahir and Balinder Ahir hit on the right D hand of the informant with lathi five times and Sukhraj Mallah fired gun shot on Ram Tapsya Pati Tiwari, the brother of the informant. Ram Naresh Chaudhary, Anil Singh and Sukhraj Mallah fired bullets from gun at Shiv Kumar Pati Tiwari. The informant and the people with him fell down being injured. Shiv Kumar Pati Tiwari died and the accused persons fled away with his dead body towards South. The informant had injuries E on his right hand and back and Ram Tapsya Pati Tiwari had gun shot injury on his left eye, left ear and also at nose. The other villagers saw the incident.

4. The cause of the incident was that some days ago, the accused persons had cut and stolen away the barbed wire of the field of the F informant upon which, they scolded the accused persons.

5. The informant stated that he had recognized the accused persons in moon light and torch light. The injured persons were admitted in Sadar Hospital, Siwan.

G 6. On 25.07.1991, at about 10.00 a.m., Mr. Mahender Pandey, Thana In-charge, after hearing about the incident, came in the Hospital and recorded the statement of the deceased's father in his station diary at entry No. 393. Thereafter, sub-Inspector Mr. J.N. Prasad proceeded to inspect the scene of the crime, collected sample of blood stained earth etc. and recorded the statements of the witnesses. At 1.00 p.m.

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Mr. A.A. Khan-Sub-Inspector recorded the statement of the deceased's uncle in the Hospital.

7. On the basis of the station diary entry No.393, Sub-Inspector Mr. J.N. Prasad registered FIR No.42/1991 dated 25.07.1991 was lodged against eight accused persons in Assaon Police Station. The accused persons were apprehended.

8. After investigation, charge-sheet No.32/91 was filed on 21.10.1991 against Ram Naresh Chaudhary, Balvinder Ahir, Anil Singh, Sukhraj Mallah, Chandreshwar Kurmi, Janardan Ahir, Naga Bhar and Dwarika Chaudhary.

9. Subsequently, a supplementary charge-sheet No.3 of 1992 was filed on 09.06.1992 against Anil Singh, Naga Bhar and Sukhraj Mallah, Chandreshwar Kurmi, Janardan Ahir and Dwarika Chaudhary.

10. After cognizance on 17.09.1992, the trial of three accused Sukhraj Mallah, Chandreshwar Ahir and Dwarika Chaudhary was separated. Thereafter the trial of Naga Bhar was also separated.

11. Thereafter, on the basis of original charge sheet, Sessions Trial No.32/93 and on the basis of the supplementary charge sheet Sessions Trial No.76/93 was lodged. Both the trials were tried together.

12. Charges were framed against the accused persons. Respondent Nos. 3 & 4 were charged with offences punishable under Sections 201/302/34 IPC. Respondent Nos. 2 & 5 were charged with the offences punishable under Sections 323/324/325/307 IPC. All the four accused were charged with the offences of rioting and committing murder with common object. The prosecution examined 13 witnesses.

13. By judgment dated 17.09.2013, the Trial Court acquitted all the accused persons of the offences charged against them.

14. Challenging the said judgment, the son of the deceased filed appeal before the High Court.

15. By impugned order, the High Court dismissed the appeal filed by the appellant.

16. Hence, the appellant has filed this appeal by way of special leave petition before this Court.

A 17. Having heard the learned Counsel for the parties and on perusal of the record of the case including perusing the written submissions filed by the respondents, we are inclined to allow the appeal in part and remand the case to the High Court for hearing the appeal on merits afresh in accordance with law.

B 18. We are of the considered opinion that the appeal needs to be remanded to the High Court for its hearing on merits afresh in accordance with law. The need to remand the case has occasioned due to the reason that we find that the High Court dismissed the appeal cursorily and by a cryptic order.

C 19. The High Court though in the impugned order referred to the evidence of some witnesses but neither referred and nor appreciated much less discussed the entire evidence adduced by the prosecution of as many as 13 witnesses in proper perspective. In other words, we find that the High Court did not exercise its appellate powers while hearing the appeal in the manner it ought to have and dismissed the appeal finding D no fault in the order impugned before it by observing in its conclusion that since the view taken by the Sessions Court is a plausible view, the same does not call for any interference by the High Court.

20. It is true that the appeal before the High Court was against the acquittal order of the Sessions Judge whereby all the accused charged E for the offences punishable under Sections 302/34, 201 and 307 of IPC stood acquitted yet, in our considered view, the law laid down by this Court on the question of the powers of the Appellate Court while hearing the appeal arising out of acquittal order of the Sessions Judge in **Lalit Kumar Sharma & Ors. Vs. Superintendent & Remembrancer of** F **Legal Affairs, Govt. of West Bengal,** 1989 Supp(2) SCC 140 should have been kept in consideration by the High Court while hearing the appeal and further the High Court should have called for the record of the case from the Trial Court as provided under Section 385 (2) of the Code which it seems was not called for.

G 21. It is apposite to quote the law laid down by this Court in the case of **Lalit Kumar** (supra).

> **"8. Before dealing with the contentions raised by the respective learned counsel, we shall examine whether the judgment of the trial court was manifestly perverse and** H **wholly unreasonable, compelling the appellate court to step**

in with the order of acquittal. It is now well settled that the power of an appellate court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. This Court in *Mathai Methews* v. *State of Maharashtra*[1] has pointed out that (SCC pp. 773-74, para 5):

> **"if a finding reached by the trial Judge cannot be said to be an unreasonable finding, then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record."**

Regarding the power of the appellate court in dislodging a finding of acquittal of a trial court, there are plethora of decisions, but we feel that it is not necessary for us to refer to all those decisions because we are of the firm view that the impugned judgment is liable to be set aside even on the ground that the appellate court has gone wrong in setting aside the order of acquittal on the re-appraisal of the available evidence."

22. As mentioned above, since the High Court decided the appeal without keeping in view the law laid down by this Court quoted supra, it has committed an error and hence it is not possible for this Court to sustain the impugned order which deserves to be set aside.

23. This Court cannot undertake the exercise of discussing and appreciating the evidence as a first Appellate Court and secondly, having regard to the nature of charges leveled against the accused persons and the evidence adduced by the prosecution, we consider it just and proper to request the High Court to decide the appeal afresh on merits keeping in view the law laid down by this Court in the case of **Lalit Kumar Sharma** (supra).

24. We have also perused the written submissions filed by the respondents as permitted by the Court. However, we are not persuaded to accept the submissions of the respondents urged in their written submissions for the reasons mentioned above. In our opinion, the cursory

A manner in which the High Court disposed of the appeal does not command us to uphold the impugned order.

25. In any event, the respondents (accused) would have full opportunity to place their case before the High Court on remand and urge all their submissions in support of the order of the Sessions Judge
B on the merits.

26. Before parting with the case, we consider it proper to make it clear that we have not recorded any finding on the merits of the case having formed an opinion to remand the case to the High Court for hearing the appeal afresh on merits on the grounds mentioned above.

C 27. The High Court will, therefore, decide the appeal strictly in accordance with law uninfluenced by any of our observations made in this order.

28. In view of foregoing discussion, the appeal succeeds and is accordingly allowed in part. Impugned order is set aside. The criminal
D appeal out of which this appeal arises is accordingly restored to its original file to enable the High Court to decide the appeal, as directed, expeditiously.

Devika Gujral Appeal allowed.