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BHOLA @ PARAS RAM

v.

STATE OF H.P.

Criminal Appeal No. 331 of 2009

FEBRUARY 18, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

Penal Code, 1860:

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s.304 (Part I)/34 – Prosecution u/s. 302/34– Acquittal by trial Court– Conviction u/s. 304 (Part-I)/34 by High Court– holding that acquittal was in disregard of evidence of eye-witnesses and motive–On appeal, held: Conviction order was right as it was passed after proper analysis of the evidence.

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Evidence–Appreciation of– Evidence having omissions, contradictions and discrepancies–Held : Such evidence cannot be discarded in its entirety–Truth should be sifted from untruth–Minor discrepancies not to be given under importance if it does not go to the root of the matter and shakes basic

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version of prosecution witnesses.

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Appellant– accused along–with two co–accused was tried for offence punishable u/s. 302/34 IPC. Trial Court acquitted them. High Court reversing the acquittal, convicted them u/s. 304 (Part I) IPC in terms of Exception 4 to s. 300 IPC, holding that acquittal order was passed over–looking the evidence of eye– witnesses (PWs 2 to 5) and that of father of the appellant–accused to whom the deceased and his wife (eye–witness) had told that one of the co–accused had beaten the deceased; and that there also existed motive for the assault.

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In appeal to his Court, appellant–accused contended that conviction could not have been based on the

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evidence of eye-witnesses as the same had omission, contradictions and inconsistencies. A

Dismissing the appeal, the Court

HELD : 1.1 The High Court has analysed the evidence and has rightly come to the conclusion that the guilt of the accused persons has been established. [Para-7] [755-G] B

1.2 Undue importance should not be attached to omissions, contradictions and discrepancies in evidence which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be accepted to possess a photographic memory and to recall the details of an incident verbatim. Minor discrepancies were bound to occur in the statement of witnesses. Even if there are some omission, contradictions and discrepancies, the entire evidence cannot be discarded. After exercising care and caution and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvements, the court can come to a conclusion as to whether the residual evidence is sufficient to convict the accused. [Para 6-5] [755-C-D; 755-E-F] C D E

Sohrab and Anr. v. The State of M.P. AIR 1972 SC 2020; *State of U.P. v. M.K. Anthony*; AIR 1985 SC 48; *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, AIR (1983) SC 753—relied on F

Case Law Reference

AIR 1972 SC 2020	Relied on	Para 5
AIR 1985 SC 48	Relied on	Para 5
AIR (1983) SC 753	Relied on	Para 6

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 331 of 2009 G

From the Judgement and Order dated 27.05.2008 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 150 of 1994. H

A Anil Nag, Narender Tyagi, for the Appellant.

Naresh K. Sharma for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

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1. Leave granted.

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2. Challenge in this appeal is to the judgment of a Division Bench of the Himachal Pradesh High Court setting aside the acquittal recorded by learned Additional Sessions Judge, Kangra, Dharamshala. Three accused persons Bhola, Prithu and Dharmu faced trial for alleged commission of offence punishable under Sections 302 read with 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court by the impugned judgment set aside the order of acquittal and directed each of the accused persons guilty of offence punishable under Section 304 Part I, IPC read with Section 34 IPC and sentenced each to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-.

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2. Background facts in a nutshell are as follows:

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Fandi Ram (hereinafter referred to as the 'deceased') owed certain amount to Prehlad Chand (PW-10), merchant of village Boh on account of purchases made on credit. Appellant is son of PW-10. On 14.2.1992 at 8.00 a.m. the accused appellant visited house of Fandi Ram and demanded payment due to his father. Fandi Ram told Bhola that he had to take loan from the society and would make payment. Bhola who was carrying a bottle of liquor asked Fandi Ram to go to society shop after visiting the house of accused Prithu. Both of them went to the house of Prithu located in the village of Fandi Ram. All the three sat in the house of Prithu and started consuming liquor in which his brother Dharmu also joined. At about 2 p.m. Singhu (PW-4) son of deceased was sent by his widow Kailasho Devi (PW-3) to see if Fandi Ram had gone to society shop. Singhu reminded his father, but all the three accused told that

they would accompany him to society shop. Singho then came and left for village Kathla and Sardair Lal (PW-5) another son of deceased went to water mill (Gharat). A

At about 3.30 p.m Kailasho and her son Jagdish from their house noticed all the three accused giving fist blows to Fandi Ram near the school, located in front of their house, separated by a drain from the school. Kailasho shouted why her husband was being beaten and she accompanied by Jagdish rushed to the place of occurrence where her husband was being given a beating. Bhola accused in her presence gave a stone blow on the head of Fandi Ram and ran away. Remaining accused also hit him with the stone on the head. Jagdish (PW-2) intervened but the accused Dharamu and Prithu also gave beatings to him. The sleeve of the shirt of Jagdish got torn and one sleeve was left on the spot. Jagdish tied a cloth around the head of his father, which was bleeding due to injuries. They took Fandi Ram to the shop of Prehlad Chand (PW-10). On the way Sardari Lal (PW-5) who was coming from the water mill met them. He inquired about the cause of injuries from his father. Fandi Ram told him of the accused beating him with stones with all the other accused due to the enmity of Panchayat elections. Then on the way to the shop of Prehlad Chand, Janam Singh, Nambardar (PW-6) met them who was also told by the deceased that he was beaten by the accused with stones due to Panchayat elections. Prehlad Chand was also told by the deceased that he was beaten by the accused, who then tried to get the matter compounded and settled for Rs.600/-. But accused did not agree to make payment. Thereafter in the shop of Prehlad Chand, Fandi Ram fell unconscious. On way a Compounder Desh Raj (PW -12) provided him first aid. B C D E F

Fandi Ram at about 11.00 p.m. succumbed to the injuries. Further case revealed is that during night due to distance, injured could not be taken to hospital at Shahpur located at a distance of 25 Kilometers, nor police could be informed. In the morning of 15th February, 1992, Sardari Lal came to Shahpur to lodge report but when he reached village Darini, the bus had already G H

A left. Therefore, Darini informed police station Shahpur on
telephone about the occurrence upon which information A.S.1.
Feru Ram (PW-15) recorded Rapat Ex.P.19 and proceeded to
the spot. In village of the deceased he recorded statement Ex.P-
5 of Jagdish Singh (PW-2), sent the same for registration of a
B case. Prepared inquest report Ex. P. 2 and took Parna Ex. P.
10 vide memo Ex. P. 8 in possession. Investigation was
undertaken. After completion of investigation charge sheet was
filed.

C Trial Court did not accept the evidence to be credible and
directed acquittal. State questioned the acquittal.

D The High Court found that the trial Court has over looked
the evidence of the eye witnesses, more particularly, PWs 2 to
5. It was also noted that PW-10 the father of accused Bhola
accepted that Kailasho Devi accompanied by her son and the
deceased in injured condition came to his shop and on enquiry
Fandi Ram and his wife informed him that he was beaten by
accused Dharmu and Fundi Ram also nodded his head
supporting the version of his wife. The High Court noted that the
E evidence clearly established that the accused persons took liquor
with the deceased in the house of accused Bhola. There was
election dispute. PW-10 who was Pradhan proclaimed that he
did not vote for a winning party and this was the bone of
contention between the accused persons and the deceased.
F The accused persons were also drunk. They started quarreling
with the deceased and gave him a fist blow and assaulted him
with some stones which was witnessed by Kailasho Devi and
her son Jagdish Singh from their house. Therefore, the order of
acquittal was set aside.

G 3. In support of the appeal, learned counsel for the appellant
submitted that the evidence of the eye witnesses was not reliable
and, therefore, the order of acquittal should not have been set
aside.

H 4. Learned counsel for the State on the other hand
submitted that the High Court had rightly held that in course of

sudden quarrel the occurrence took place and, therefore, had A
convicted the accused persons in terms of Exception 4 to
Section 300 IPC by altering the conviction to Section 304 Part
I IPC.

5. It is to be noted that the accused persons pleaded that B
the evidence of the eye witnesses cannot be accepted as there
were omissions, contradictions and discrepancies in the
evidence of most of the prosecution witnesses. In the effort of
false implication, prosecution made introduction of PW-9, an
eye witness. It is fairly settled position in law that even if there
are some omissions, contradictions and discrepancies the C
entire evidence cannot be discarded. After exercising care and
caution and sifting the evidence to separate the truth from untruth,
exaggeration, embellishments and improvements the court can
come to a conclusion as to whether the residual evidence is
sufficient to convict the accused. (See *Sohrab and Anr. V. The* D
State of M.P. (AIR 1972 SC 2020) and *State of U.P. v. M.K.*
Anthony (AIR 1985 SC 48).

6. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* E
(AIR 1983 SC 753), it was observed that undue importance
should not be attached to omissions, contradictions and
discrepancies which do not go to the root of the matter and
shake the basic version of the prosecution witnesses. A witness
cannot be accepted to possess a photographic memory and to
recall the deals of an incident verbatim. Ordinarily, it so happens
that a witness is overtaken by events. A witness could not have
been anticipated the occurrence which very often has an element
of surprise. The mental faculties cannot, therefore, be expected
to be attuned to absorb all the details. Thus, minor discrepancies
were bound to occur in the statement of witnesses. F

7. The High Court has analysed the evidence in the G
aforesaid background and has rightly come to the conclusion
that the guilt of the accused persons has been established.

8. The appeal is, therefore, dismissed.

K.K.T.

Appeal dismissed.