NON-REPORTABLE

2023 INSC 1083

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1163/2018

CHANDRASEKHAR PATEL **APPELLANT(S)**

VERSUS

SURESH & ORS. **RESPONDENT(S)**

WITH
CRIMINAL APPEAL NO. 1164/2018

J U D G M E N T

ABHAY S. OKA, J.

1. Heard the learned senior counsel and the learned counsel for the respective parties.

2. The incident, which is the subject matter of these Appeals, is of 6th March, 1996. There were five accused, who were prosecuted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, the "IPC"). One of them was also prosecuted for the offence punishable under Section 109 read with Section 302 of the IPC. The offence alleged was of committing the murder of one Siddhnath Patel.

3. In an appeal preferred by the convicted accused, the High Court passed an order of acquittal, which is challenged by way of these two Appeals before us. Criminal Appeal No.1163/2018 is preferred by the son (Chandrasekhar Patel) of the deceased, who is PW-2, and the other Appeal (Criminal Appeal No.1164/2018) is preferred by the State.

4. Shri Sanjay R. Hegde, learned senior counsel appearing in support of the appeal preferred by PW-2 has taken us through the evidence of the material prosecution witnesses, namely PW-1 to PW-5. He has submitted that only possible view was that the prosecution has established that the respondents have committed the offence. We have also heard the submissions of Shri Shreeyash U. Lalit, learned counsel representing the State in support of the order passed in the appeal.

5. When an Appellate Court deals with an appeal against an order of acquittal, it is no doubt true that the Appellate Court has to re-appreciate the evidence of the prosecution witnesses. After re-appreciating the evidence on record, the Appellate Court has to examine whether the Court which passed the order of acquittal, on the basis of the same evidence, could have recorded a finding of acquittal. In other words, the Appellate Court has to examine whether the finding recorded by the Court acquitting the accused is a possible finding, which could have been arrived at on the basis of the evidence on record. If the answer to this question is that the view taken by the Court which acquitted the accused is a possible view taken on the basis of the evidence on record, only because the Appellate Court is of the opinion that a contrary view is also possible, it cannot interfere with the order of acquittal. The reason is that the presumption of innocence is further strengthened by the acquittal of the accused.

6. We have independently analyzed and appreciated the evidence of

PW-1 to PW-5.

7. After having perused the evidence of PW-1, we find that during the cross-examination of the witness, the Trial Court has disallowed several questions. The presence of PW-1 at the site was attributed to the case made out by him in the examination-in-chief that he had acquired a land on rent in the village. In the cross-examination, he could not tell the khasra number of the land and the precise area of the land as well as the names of the other account-holders. In that context, some questions were attempted to be asked, which were disallowed by the Trial Court. The disallowed questions were whether the field was irrigated or not irrigated; from which place he purchased fertilizers; and whether the money received by selling soyabean and wheat was deposited in his bank account. These questions were asked as the witness in paragraph 24 of the cross-examination, after he expressed his inability to mention khasra number of the land and other particulars, claimed that he was taking the crop of soyabean and wheat. In the cross-examination, he accepted that he was a body builder and he had received championship award at the University on two occasions. In this context, a question was asked during the cross-examination when the second stab injury was caused, whether he attempted to help the deceased. Even this question was disallowed.

8. The claim of the witness was that he saw the incident while he was slowly proceeding on a moped. When the incident happened, he got up from the moped and saw the incident. Therefore, a question was put to him whether houses were situated where he stood. Even

this question was not permitted to be asked.

9. After having carefully perused the cross-examination of PW-1, we are of the view that several material questions, which were very relevant, were not allowed to be put to the witness. This will certainly cause prejudice to the accused. These questions were put with the object of showing that the version of the witness was not truthful. The questions were put with the object of proving that the prosecution case was doubtful.

10. Interestingly, PW-2, PW-3 and PW-5, who were alleged to be the eye-witnesses, did not depose before the Court about the presence of PW-1 near the scene of the offence. PW-2 deposed that on the date of the incident, his father had used Hero Honda motorcycle for reaching the spot where the incident took place. The Police have not traced and recovered the said vehicle. It has come on record in the testimony of PW-2 that there one Govind was an eye-witness, who has not been examined as a witness.

11. In paragraph 22 of the cross-examination of PW-2, it is brought on record that there were houses around the place of the incident. It is also brought on record that nearby there was a Hanuman temple, which opens at 6 o'clock in the morning. From the time at which it opens, the prayers and religious songs are sung in the temple.

12. It is not the case of the prosecution that any attempt was made by the Police to record the statements of the persons staying in the locality. PW-2 has also deposed in the cross-examination

that his signatures on a blank paper were taken by the Police.

13. According to the case of PW-3, after seeing the incident, she went back to her house and narrated the incident to her husband (PW-4). Thereafter, her husband went to the house of the deceased and made a phone call from there. It is borne out from the record that though a phone call was made by PW-4 informing that the deceased was murdered, he did not disclose to the Police the names of the assailants. According to the version of PW-3, she had disclosed the names of the assailants to PW-4. The statements made by PW-3 in paragraph 12 create a serious doubt whether she had really seen the incident. According to her, when she heard the shouts, her son, whose age was about 25 years then, was present. Nothing has been brought on record to show that her son came out. The son's statement was not recorded by the Police. There is a serious doubt whether PW-3 had seen the incident.

14. We have perused the evidence of PW-4. He has simply stated in examination-in-chief that he informed the Police through phone about the incident. He has not named the person to whom he gave the information, though it is recorded in the record of the Police Station. PW-4 is not an eye-witness. He is the one who claims that after his wife (PW-3) disclosed the incident to him, he reported the same to the Police on phone. As far as PW-5 is concerned, he has not deposed about the presence of PW-1 at the site.

15. Moreover, it is brought on record that there were houses

around the place where the incident took place and the prayers were going on in the nearby Hanuman temple, a place close to the place of the incident. The Police have not made any attempt to record the statements of the other alleged eye-witnesses.

16. An argument was attempted to be made that firstly, there is no prejudice caused to the accused by not permitting certain questions to be put to PW-1 and, secondly, even if, there is a prejudice, the evidence of PW-1 can be discarded.

17. The second submission is over-simplification of the problem. An accused has a right to cross-examine a prosecution witness. As we have already recorded that certain material questions, which were very relevant, were not allowed to be put to the witness. We cannot imagine what would have been the answers given by the witness had those questions been allowed to be asked. If the questions would have been allowed, there was a possibility that the answers might have been relevant to discredit the other witnesses.

18. According to us, not allowing the relevant questions to be put to the eye-witness, who is stated to be the independent witness, causes serious prejudice to the defence of the accused. It is too late in the day now to remand the case to the Trial Court for further cross-examination of the said witness because a period of 27 years has elapsed from the date of the incident.

19. Even if we ignore the evidence of PW-1 and take into consideration the evidence of PW-2 to PW-5, we find that there are several doubts created which raise a question mark about the

truthfulness of their version. This is coupled with the fact that though the independent witnesses were present, even an attempt was not made to record their statements.

20. Therefore, we have no manner of doubt that the ultimate conclusion recorded by the High Court that the guilt of the accused was not established beyond a reasonable doubt, is certainly a plausible conclusion which could have been arrived at on the basis of the evidence of the prosecution. This is our view after carefully scrutinizing the evidence of the material prosecution witnesses.

21. Therefore, no interference is called for with the impugned judgment of acquittal. The Appeals are, accordingly, dismissed.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
NOVEMBER 30, 2023.