IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1588 OF 2015

THE STATE OF UTTAR PRADESH **APPELLANT(S)**

VERSUS

RAGHUVIR SINGH **RESPONDENT(S)**

O R D E R

1. This appeal filed by the State arises from the judgment and order passed by the High Court of Judicature at Allahabad dated 13.2.2015 in Criminal Appeal No. 3291 of 2014 by which the High Court allowed the appeal filed by the respondent herein (original accused) and thereby set aside the judgment and order passed by the Additional District and Sessions Judge, Court No. 12, Ghaziabad in Sessions Trial no. 992A of 2005 holding the respondent guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short the "IPC").

2. The case of the prosecution may be summarized as under:-

(a) **On 29.08.2004 at around 13:00 hours, the father of**

the deceased lodged a First Information report at the Dhaulana Police Station Sub-district Hapur, District Ghaziabad, registered as Case Crime No.127/2004 for the offence punishable under Section 302 of the IPC against the respondent herein and two other unknown individuals.

3. The FIR reads thus:-

"COPY OF TEHRIR OF COMPLAINANT IN HINDI

To, The SHO, Police Station Dhaulana, District Ghaziabad, Sir, it is submitted that the applicant Ompal Singh son of Shri Bani Singh is resident of village Sukhdevpur Police Station Dhaulana, District Ghaziabad. In the year 1991 Raghuvir Son of Savajeet Singh resident of his village had murdered my brother Sitaram whose case is under trial before the Court. Therefore we are having animosity with Raghuvir. Today in the last night my son Rajkumar who is driving vehicle of Transport in Ghaziabad, after getting down from bus stand Samana was coming towards house by walk, then at about 10.30 hrs. in the night the aforesaid Raghuvir accompanying with his two other companions Satpal Singh son of Amar Singh resident of Samana had encircled Rajkumar at the Tube Well and with the intention of murder had attacked with knife on my son, on which he cried and after hearing the voice of shriek, my brother Mahesh and Devender Singh and my Kuldeep @ Kalva and Shripaal Singh son of Jaipal Singh of village Galand and other persons of my village went at the said place by running, who in the light of torch and in the light of moon night saw that the aforesaid Raghuvir and his companions by felling down my son Rajkumar at the Haus of tubewell had chopped and separated his neck from his body with sharp edge weapon. We peoples had tried to move forward thereupon Raghuvir told that if you will move forward then the same thing shall also be applied on you. We people had been terrorized, and thereafter the aforesaid accused persons had fled away via Chak Road towards south direction. There is terror of Raghuvir in our village. Because of terror I had not came to the Police Station in the night, and when my relatives came to me after receiving of information, then I alongwith them came to the Police

Station. My report may be lodged and take legal action. Applicant Sd/- Ompal Singh, Ompal Singh son of Bani Singh, resident of Village Sukhdev Pur, Police Station Dhaulana, Ghaziabad, UP. Scriber - Ombir Singh S/ o Ram Prasad Singh, r/o Sukhdev Pur, Police Station Dhaulana, District Ghaziabad, dated 29:08.2004.

Note: I, HCP 99 Yeshpal Singh Nane certified that the copy of tahrir has been copied on Chik
word to word. The carbon copy is clearly readable.
Sd/- Illegible
Yashpal Singh Naine
H.C.P.
29.08.2004"

4. To put it briefly, the family of the deceased was at the inimical terms with the respondent herein. Way back in the year 1991, the respondent herein is alleged to have committed murder of one Sitaram who happened to be the brother of the first informant (complainant herein).

5. The respondent herein was tried for the said offence and was ultimately held guilty and sentenced to life imprisonment.

6. It is the case of the prosecution that the deceased was working as a driver in a Private Transport company. Ordinarily he used to reach home by late evening. However, on the date of the incident, he did not reach home till late in the night and, therefore, the family members got worried.

7. The father of the deceased i.e., the first informant, his brother & one of his sons went out in search of the deceased. While they were searching for the deceased at around 10.30 in the night, they heard cries and witnessed that the deceased was being assaulted by the respondent herein along with two other co-accused (both juvenile accused).

8. It is the case of the prosecution that all the three accused had knives in their hands and the assault was so forceful that the entire head of the deceased was severed off.

9. Although the alleged incident is said to have occurred at around 10.30 in the night hours on 28.08.2004, yet the FIR came to be lodged after almost 14 hours i.e. on the next day in the afternoon at around 1:00 p.m.

10. Upon FIR being registered, the police got into action. The dead body is said to have been recovered from the field of one Satpal (DW-1). The inquest Panchnama of the dead body was drawn in the presence of two Panch witnesses. The dead body thereafter was sent for post mortem. It is the case of the prosecution that in the course of the investigation, the weapons of offence i.e. the knives, were discovered at the instance of the respondent herein

and other co-accused by drawing a Panchnama under Section 27 of the Evidence Act. The clothes of the deceased and those of the co-accused persons, were collected & being sent to the Forensic Science Laboratory for the purpose of the chemical analysis.

11. At the end of the investigation, Police filed charge-sheet for the offence of murder. The trial court framed charge against the respondent herein and two other co-accused for the offence of murder punishable under Sections 302 read with 34 of the IPC to which all the three pleaded not guilty and claimed to be tried.

12. In the course of the trial, the prosecution examined the following witnesses:-

1. **"PW1 Ompal,**
2. **PW2 Devender Singh,**
3. **PW3 Kuldeep,**
4. **PW4 Dr. Ramesh Kumar,**
5. **PW5 S.I. P.K. Divedi,**
6. **PW6 S.I. Yashpal Singh,**
7. **PW7 constable 405 Ravinder Kumar,**
8. **PW8 Constable 334 C.P. Sharma,**
9. **PW9 Anand Vijay Singh."**

13. We take notice of the fact that respondent herein (original accused) examined the following defence witnesses:-

1. **"DW1 Satpal,**
2. **DW2 Vijay Singh,**
3. **DW3 Omvir Singh and**
4. **DW4 R.C. Jain"**

14. At this stage, it is relevant to note that in the course of the trial, the trial court realized that the other two co-accused were Juvenile and therefore the trial was separated.

15. Upon conclusion of the recording of the oral evidence the further statement of the respondent accused was recorded under Section 313 of the Cr.P.C., wherein he said that he was innocent and had been falsely implicated in the alleged crime.

16. The trial court upon appreciation of the oral as well as documentary evidence on record, recorded a finding that the prosecution had been able to successfully prove its case against the accused beyond reasonable doubt and, accordingly, held the accused guilty of the offence of murder. The respondent-accused was sentenced to undergo life imprisonment with fine.

17. The accused being dissatisfied with the judgment and order of conviction and sentence passed by the trial court went before the High Court by filing Criminal Appeal No. 3291 of 2014. The said appeal came to be allowed. The High Court reversed the judgment and order of conviction and acquitted the accused of the charge as enumerated above.

18. In such circumstances, referred to above, the State is here before us with the present appeal.

19. Mr. Shreeniwas Patil, the learned counsel appearing for the State vehemently submitted that the High Court committed a serious error in passing the impugned judgment. According to him, there was no good reason for the High Court to disturb a very well-reasoned and considered judgment passed by the trial court.

20. He would submit that the High Court committed an error in disbelieving all the three eye-witnesses to the incident.

21. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the impugned judgment passed by the High court be set aside.

22. On the other hand, Mr. Rajul Bhargava, the learned counsel appearing for the respondent-accused submitted that no error not to speak of any error of law could be said to have been committed by the High Court in acquitting the accused. He would submit that the High Court rightly disbelieved the three eye- witnesses to the incident.

23. He would submit that once the oral evidence of the three eye-witnesses is eschewed from consideration there is no other circumstantial evidence on record to connect the accused herein with the alleged crime.

24. In such circumstances referred to above, the learned counsel prayed that there being no merit in the appeal filed by the State, the same may be dismissed.

ANALYSIS

25. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is that whether the High Court committed any error in passing the impugned judgment.

26. We have before us the evidence of three eye-witnesses, the evidence of discovery of weapon of offence, motive as put forward by the prosecution and the oral evidence of the defence witnesses.

27. It is the case of the original first-informant (father of the deceased) that he along with his brother & son went out in search

of the deceased as the deceased had not returned back home till around 10.30 in the night. According to the first informant, his brother & his son while they were searching for the deceased, they heard some cries that attracted their attention and at that moment they saw the deceased being assaulted by the respondent accused herein along with two other co-accused. This according to the version of the three eye-witnesses was at around 10.30 around in the night of 28th August, 2004.

28. According to them, since they were frightened and were in a state of shock, they went back home and surely, must have gone off to sleep. On the next day at around 1.30 in the afternoon, the father went to the Police Station & lodged the FIR for the incident that occurred at 10.30 p.m. on 28th August, 2004.

29. It is pertinent to note that according to the three eye-witnesses there were three accused. However, in the FIR only the name of the respondent-accused herein figures.

30. The first informant claiming to be an eye-witness has not explained why he omitted to name the other two co-accused in the FIR.

31. If he claims to be an eye-witness to the incident and is said to have witnessed three persons known to him assaulting his son i.e. the deceased then what was the good reason not to name the other two accused (juvenile Accused) in the FIR. This omission assumes significance and is a relevant fact under Section 11 of the Evidence Act.

32. In this regard, we may refer to a decision of this Court in the case of "Ram Kumar Pandey vs. State of Madhya Pradesh" reported in AIR 1975 SC 1026, wherein this Court observed in para 9 as under:-

> **"9. No doubt, an FIR is a previous statement which can strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case."**

33. Having regard to the unnatural conduct of all the three eye-witnesses and also having regard to the fact that the FIR came to be lodged almost after a period of 14 hours renders the entire oral version of all the three eye-witnesses doubtful.

34. In our opinion, the High Court upon reappreciation of evidence rightly disbelieved all the three eye-witnesses.

35. In the aforesaid context, we may observe that mere delay in registering the FIR by itself may not render the entire case of the prosecution more particularly, the oral version of the eye-witnesses, doubtful. However, delay in the registration of the FIR should be looked into considering the other infirmities emerging from the case of the prosecution.

36. In the case on hand, the High Court looked into the evidence of DW-1. It appears that the dead body of the deceased was recovered from the field of DW-1. It is DW-1 who spotted the dead body and accordingly informed the family members of the deceased. It is only after DW-1 informed about the recovery of the dead body of the deceased that the family members came to know that the deceased had been killed.

37. In the aforesaid context, we may quote what has been observed by the High Court in its impugned judgment:-

> **"Apart from the aforesaid witnesses court witness, namely, Mann Singh son of Bani Singh Head Master of the college, namely, Swami Preetam Das Inter College, Rampur**

Khas, District Aligarh was produced to prove the date of birth of co-accused Deepak Kumar Ranaand Lokesh through the Scholar Register of the College, however, the most important piece of evidence on record is that of DW1 Satpal in front of whose tubewell the alleged incident is said to have taken place."

38. The High Court rightly observed that it was only after the information was received through Satpal (DW-1) through the husband of the Pradhan that the family of the deceased reached the place of occurrence. It also appears that the body was found lying at one place whereas the severed head was found lying inside the chimney.

39. It is well settled that the evidence tendered by the defence witnesses cannot always be termed as a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. The rejection of the defence case on the basis of the evidence tendered by the defence witnesses has been effected rather casually by the trial Court [See State of Haryana v. Ram Singh, 2002 Criminal Law Journal 987).

40. The trial Judge owes a responsibility to weigh the probability of the prosecution evidence, which he has to do for arriving at the decision whether the prosecution allegations have been proved by the standard laid down in Section 3 of the Evidence Act. In so weighing the probability of the prosecution allegations, of necessity, other probabilities also appearing from the evidence brought before the Court have to be considered for comparative assessment which of the probabilities should be accepted as a fact proved. If, from the evidence, any probability consistent with the innocence of the accused is equally strong as the probability pointing to his guilt, then on the strength of the presumption of innocence in favour of the accused, it could be said that the prosecution has failed to prove its allegations. Even if the probability consistent with innocence is not equally strong with other probability of his guilt, yet the probability of innocence is such as would cast a doubt, then it may be a case of reasonable doubt, the benefit of which must go to the accused. That being so, it is incumbent upon the trial Judge to consider all the probabilities that appear from the evidence before him and he cannot afford to be credulous and omit to consider reasonable probabilities.

41. In the aforesaid context, we may quote with profit the observations of the Supreme Court in the case of *Lal Mandi* v. *State of West Bengal*, reported in (1995) Criminal Law Journal, 2659, as contained in paragraph 5 of the decision.

> **"5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial Court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate Court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of an accused which gets strengthened on his acquittal is not available on his conviction. An appellate Court may give every reasonable weight to the conclusions arrived at by the trial Court but it must be remembered that an appellate Court is duty bound, in the same way as the trial Court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial Court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."**

42. In view of the aforesaid, the High Court committed no error in disbelieving the three eye-witnesses.

43. If the evidence of the three eye-witnesses is to be discarded then we are left with the evidence of discovery.

44. The High Court disbelieved the discovery also as the independent witness to the discovery, i.e., the Panchas failed to prove the contents of the panchamana.

45. At this stage, the learned counsel appearing for the State inviting our attention to the order passed by this Court on 23.11.2015, the order read thus:-

> **"Application for exemption from filing O.T. is allowed.**
> **Leave granted.**
> **Hearing expedited.**
> **We are informed that the respondent is already in jail in connection with the murder of uncle of the deceased.**
> **We make it clear that he shall not be released from jail without obtaining permission from this Court in this case."**

46. However, the learned counsel appearing for the respondent-accused makes a statement that the respondent-accused has already undergone the entire sentence so far as the incident of 1991 is concerned.

47. In overall view of the matter, we are convinced that the High Court committed no error in passing the impugned judgment acquitting the respondent-accused.

48. In the result this appeal fails and is hereby dismissed.

49. Pending application(s), if any, stands disposed of.

……J.
[J.B. PARDIWALA]

…….J.
[R. MAHADEVAN]

New Delhi.
23rd January, 2025.
cd

ITEM NO.101 COURT NO.14 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 1588/2015

THE STATE OF UTTAR PRADESH Appellant(s)

VERSUS

RAGHUVIR SINGH Respondent(s)

[AS ITEM NO. 1]

Date : 23-01-2025 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) : Mr. K Parmeshwar, Sr. A.A.G.(NP)
Mr. Shreeniwas Patil, Adv.
Dr. Vijendra Singh, AOR
Mr. Deepak Goel, Adv.
Ms. Apurva Aggarwal, Adv.
Mr. Shailesh Sharma, Adv.

For Respondent(s) : Mr. Rajul Bhargava, Sr. Adv.
Mr. Kartikeya Bhargava, AOR
Mr. Jasir Aftab, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is dismissed in terms of the Signed order.

2. Pending application(s), if any, stand disposed of.

(CHANDRESH) (POOJA SHARMA)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)
(Signed order is placed on the file)