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GOPAL SINGH AND ORS.

v.

STATE OF M.P.

(Criminal Appeal No.1297 of 2008)

MAY 12, 2010

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[HARJIT SINGH BEDI AND A.K. PATNAIK, JJ.]

Appeal – Appeal against acquittal – Allowed by High Court – Justification – Held: On facts, not justified – If trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused is possible, High Court would not be justified in interfering on the premise that a different view could also be taken – Though High Court is entitled to reappraise the evidence, there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction – In the case at hand, the trial court gave positive findings with regard to various aspects of the prosecution story – The High Court was not able to meet the reasons which weighed with the trial court in drawing its conclusion – Case did not call for interference by High Court.

According to the prosecution, due to serious enmity on account of land dispute, the appellants severely beat two persons with "lathis", "lohangis" and "farsas" thereby causing their death. The prosecution relied primarily on the eye-witness account of PW5 and on the oral dying declarations made by the two deceased to PW4, PW9, PW10 and PW11. In addition, the prosecution relied on the recoveries made pursuant to the disclosure statements of the accused.

The trial Court held it to be a case of delayed FIR. It found the dying declarations unbelievable, the evidence of the solitary eye-witness PW5 totally unnatural, and the

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investigation completely irresponsible and shoddy, and accordingly acquitted the accused-appellants. A

Aggrieved by the judgment of acquittal, the State Government filed appeal in the High Court which was allowed. B

In this Court, it was contended by the appellants, that the High Court was remiss in upsetting the order of acquittal as the trial court had by a very cogent and detailed judgment considered every aspect of the matter and acquitted the accused, and the High Court had ignored the basic principle that if the view taken by the trial court was possible on the evidence, no interference should be made. C

Allowing the appeal, the Court D

HELD: 1. The High Court's power while converting an acquittal into a conviction is no longer a matter of speculation and debate. It is now well settled that if the trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused was possible thereof, the High Court would not be justified in interfering on the premise that a different view could also be taken and though the High Court was entitled to reappraise the evidence there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction. [Para 7] [1071-C-D] E F

2. A bare perusal of the record and the findings recorded by the trial court reveal that the present case is not one of the category which would call for interference by the High Court. The trial court has given positive findings with regard to the various aspects of the prosecution story. The High Court has, in the course of its judgment, not been able to meet the reasons which weighed with the trial court in drawing its conclusion. The G H

- A fact that the first report had been recorded at about 1 p.m. and suppressed by the prosecution has been largely ignored by referring to the first information recorded at about 4.45 p.m. after the Ruqa had been sent by Sub-Inspector from the place of incident to the Police Station.
- B The High Court has also ignored the fact that there was no evidence to show as to when special report had been dispatched to or received by the Magistrate. The inference drawn by the Trial Court, therefore, that the first information of 1 p.m. had been suppressed by the
- C prosecution as the names of the assailants were not known and that there was no evidence to confirm the time of the recording of the FIR shortly after 4.45 p.m. as there was no evidence of the dispatch or delivery of the special report, which cast clearly suspicion even on this part of the prosecution story, has not been dealt with by
- D the High Court. [Para 8] [1071-A-H; 1072-A-B]

- 3. The High Court has examined the reliability of the oral dying declarations made by the two deceased to the four witnesses but while observing that there were
- E substantial discrepancies inter-se each of them, has still chosen to rely on their statements. The Court has ignored the statement of the Dr. who opined that the injured would have been rendered unconscious within 10 to 15 minutes after receiving their injuries by opining that this fact would
- F vary from person to person. This would undoubtedly be true, but the doctor's statement is only one of the factors which had weighed with the Trial Court in rendering its opinion. Even otherwise, an oral dying declaration made to a person who had very serious enmity with the
- G accused should be accepted with a little hesitation and reservation. [Para 9] [1072-C-D]

- 4. The High Court has accepted the statement of PW5 as the eye witness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have
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rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety. Therefore, the judgment of the High Court is erroneous for the above reasons. [Paras 10, 11] [1072-E-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1297 of 2008.

From the Judgment and Order dated 24.03.2008 of the High Court of Judicature of Madhya Pradesh at Jabalpur in Criminal Appeal No. 60 of 1993.

Fakhruddin, Munawar S. Aalam, Karim Ansari, Bharat Bhushan, Raj Kishor Choudhary, Yusuf Khan, Rauf Rahim, Yadunandan Bansal, Minu Sharma, Gulshan Jahan and Aftab Ali Khan for the Appellants.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. The prosecution story is as under:

1. On the 19th June 1990, the two deceased Rajmohan and Niranjan Singh had gone to Jammusarkala to buy sugar and while they were returning to their village and were passing through the nearby forest, they were severely beaten by the six accused with "lathis", "lohangis" and "farsas". Information of the incident was given by Maina Banjara PW3 to Daulat Singh PW4 and Sumer Singh PW10. Sumer Singh and Maina Banjara and several others then returned to the spot whereafter Niranjan Singh and Rajmohan (injured) made oral dying declarations that they had been beaten by the six accused with the aforementioned weapons. The two died a short while later. Intimation of the incident was also received in Police Station

- A Berasia at 3.40 p.m. by telephone and was recorded in Ex.P-3 on which Sub-Inspector O.P.Katiyar PW13 reached the place of incident along with a police force and found the dead bodies. A Ruqa was recorded at 4.40 p.m. at the site and on its basis a formal FIR was registered in the Police Station. The
- B dead bodies were thereafter dispatched to the hospital for post-mortem which was performed by Dr. R.K.Sharma PW1 who found 28 injuries on each of the two deceased. During the course of the investigation, the accused were arrested and on the basis of their disclosure statements, the weapons of offence
- C were also recovered. The police also ascertained that the two parties were very closely related inter-se and that there was gross enmity between them with respect to certain agricultural land. On the completion of the investigation, the accused were charged for an offence punishable under Section 302 read with
- D Section 34 of the IPC as they pleaded not guilty, they were brought to trial.

2. The prosecution in support of his case relied primarily on the eye – witness account of Feran Singh PW5 and on the oral dying declarations made by the two deceased to Daulat
- E Singh PW4, Harnath Singh PW9, Sumer Singh PW10 and Shivraj Singh PW11. In addition, the prosecution relied on the recoveries made pursuant to the disclosure statements of the accused. The prosecution case was then put to the accused and the plea taken was of serious enmity on account of a land
- F dispute between them and Daulat Singh PW4 as the latter was keen to take over their agricultural land. The trial court recorded a comprehensive judgment and discussed the evidence under two broad heads (1) the eye witness evidence of Feran Singh PW5 and (2) the circumstantial evidence which included the
- G motive behind the incident and the dying declaration of the deceased and the recoveries of the weapons of offence. The Court then examined the evidence of the prosecution in the background of the motive and observed that Maharaj Singh accused was the son of Balwant Singh from his first wife and
- H the other accused were sons of Maharaj Singh whereas PW4

Daulat Singh and PW9 Harnath Singh were also sons of Balwant Singh though from a second wife and Feran Singh PW5 was son of Daulat Singh PW and Shivraj Singh PW11 was son of Sumer Singh PW10, meaning thereby all the witnesses belonged to one large group. The Court also observed that from the evidence on record, it was amply clear that the relations between the two sets of brothers were very strained and several criminal litigations inter-se them and pertaining to a land dispute had started in the year 1984 and were subsisting even on the date of murder and that the periodic quarrels between them had caused great friction in the family. The Court then went on to examine the prosecution story and recalled that two different stories had been projected by the prosecution, first, that a report had been filed by Daulat Singh PW at the Police Station immediately after the crime had been committed at about 1 p.m. and the second that information had been received on telephone as per Ex.P3 at 3.45 p.m. on which Sub-Inspector Katiyar PW13 had reached the place of incident at 4p.m and after spot inspection at 4.45 p.m. had initiated the recording of the FIR. The Court, however, disbelieved the statement of Sub Inspector that he had reached the place of incident at 4 p.m. observing that if the information had been received at 3.45 p.m. it would not have been possible for him to have covered the 18 km distance through a very rustic rural road within 20 minutes. The Court, accordingly, held that on account of the discrepancy with regard to the lodging of the FIR at 1 p.m. or after 4.45 p.m., the only inference that could be drawn was that till 1p.m. the names of the accused were not known and that the report of 1 p.m. had been withheld by the prosecution. The Court then went into the alternative that assuming that the FIR had indeed been recorded shortly after 4.45 p.m. and the incident had taken place at 10 or 10.30 a.m. about one km away from the village and the time taken in conveying the information to the village by Maina Banjara to Daulat Singh and Sumer Singh, it appeared to be a case of a delayed FIR. The Court further observed that there was no evidence to show as to when the copy of the FIR had been

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A received by the Magistrate, as provided by Section 157 of the Code of Criminal Procedure and finally concluded on this aspect by observing:

B "it could be safely deduced that the FIR was finalized deliberately as an after-thought, after having dispatched the dead bodies for post-mortem examination. Under these circumstances, namely the way in which the FIR was filed, as to whether in point of fact, the FIR was registered at 4.45 p.m. or at 1 p.m., and the details regarding the crime, non-despatch of a copy thereof to the Magistrate, non-compliance of immediate recording of the incidence of crime, omission of the names of the accused persons in the text of the respective panchnamas on the bodies and also in the merge statements thereof, on perusal of all these circumstances, I come to the conclusion that the report was lodged with unwarranted delay and the prosecution has since failed to provide any logical explanation thereof. Under the above circumstances, prima facie the story put forth by the prosecution is highly doubtful."

E 3. The Court then examined the dying declarations that have been allegedly made by the two deceased shortly before their deaths to Daulat Singh PW4, Harnath Singh PW9 and Sumer Singh PW10. The Court referred to the broad principle underlying the recording of a dying declaration and emphasized that its veracity had to be adjudged carefully as the maker was not available for cross-examination and the Court was thus called upon to exercise great caution and for that purpose two broad factors had to be kept in mind, firstly, that the person making the dying declaration was physically capable of making it, and secondly that the statement, if made, represented the true state of affairs. The Court then examined the statement of the witnesses to the dying declaration and observed that as the evidence inter-se them was completely discrepant as to the manner in which the dying declaration had been made, a serious doubt was cast on the truthfulness of their testimony.

The Court also referred to the evidence of Dr. R.K.Sharma PW, A
the doctor who had performed the post-mortem examinations,
and had found 28 wounds on each body, and observed that as
per the statement of the doctor both the injured would have been
rendered unconscious within 10 to 15 minutes looking to the
critical nature of the wounds. The Court then tested the B
prosecution story on this basis and opined the incident had
occurred around 9 or 10 a.m., as suggested, and Daulat Singh
and Sumer Singh had taken an hour to reach the place of
incident (as Daulat Singh had virtually admitted that they had
reached the site of at 11 a.m.), it appeared to be extremely C
doubtful that Rajmohan and Niranjn Singh were in a position
to make any statement. The Court also examined the
statement of Harnath Singh PW9 and observed that it was a
blatant lie and that it would have been impossible for him to
reach the place of incident to become a witness to the oral D
dying declarations. The Court, accordingly, concluded that the
statements of the aforesaid witnesses were totally contradictory
and illogical and in point of fact the deceased were not in a
position to make any statement and that under these
circumstances, "the story of the dying declaration was totally E
made up, unnatural and non-dependable." The Court also
examined the evidence of the solitary eye witness Feran Singh
PW son of Daulat Singh and recorded a positive finding that
the story projected by him was totally unnatural inasmuch that
he had rushed to the village from the site after seeing the
incident about 1 km away where his father, uncle, brothers, F
cousins and the entire family had been present, but he did not
tell them as to what had happened but had, in fact, hidden
himself on the plea that he feared for his own safety. The Court
ultimately concluded that the evidence was against normal G
human behaviour and could not be deemed to be trust-worthy.
The Court also held that the investigation in the matter was
completely irresponsible and shoddy and the police had made
no attempt to ascertain the identity of the person who had made
the telephone call leading to the recording of Ex.P3 at 3.40 p.m.
and the prosecution story appeared to have been built on the H

A assumption that as the relations between the parties were strained, it were the accused and accused alone, who were responsible for the double murders. The trial court, accordingly, acquitted the accused.

B 4. Aggrieved by the judgment of acquittal, the State of Madhya Pradesh filed an appeal in the High Court and the appeal has been allowed. The judgment of the High Court is under challenge before us after the grant of special leave.

C 5. It has been urged by Mr. Fakhruddin, the learned senior counsel for the appellants, that the High Court was remiss in upsetting the order of acquittal as the trial court had by a very cogent and detailed judgment considered every aspect of the matter and acquitted the accused, and that the High Court had ignored the basic principle that if the view taken by the trial court was possible on the evidence, no interference should be made. It has been highlighted that the trial court had considered the evidence under two broad heads and recorded a positive finding that the first report of the incident at about 1 p.m. had been suppressed by the prosecution and the report recorded after 4.45 p.m. was, thus, not the first information report but even assuming that it was the first report, the fact that there was no evidence to show that the special report had been delivered to the Magistrate belied the prosecution story that it had been recorded at about 4.45 p.m. It has also been pointed out that the serious animosity between the parties was proved on record and several litigations that were continuing since 1984 was the evident cause for the false implication of the accused, who were the father, Maharaj Singh and his five sons. It has further been submitted that the prosecution had placed primary reliance on the dying declarations made by the two deceased to four different persons and in the light of the statement of Dr. Sharma PW that the injured could not have remained conscious for more 10 or 15 minutes after sustaining the injuries, the story of the oral dying declarations allegedly made about two hours thereafter could not be believed. It has further been pointed out that the conduct of Fera Singh PW5 the solitary eye witness

was completely unnatural and belied his presence.

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6. Mrs. Vibha Dutta Makhija, the learned counsel appearing for the State has, however, supported the judgment of the High Court and has argued that the High Court was justified in believing the prosecution story as the incident had happened all of a sudden and a quick and clock work like investigation could not be expected in India's rural set up.

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7. We have considered the arguments advanced by the learned counsel for the parties. The High Court's power while converting an acquittal into a conviction is no longer a matter of speculation and debate. It is now well settled that if the trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused was possible thereof, the High Court would not be justified in interfering on the premise that a different view could also be taken and though the High Court was entitled to reappraise the evidence there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction.

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8. A bare perusal of the record and the findings recorded by the trial court reveal that the present case is not one of the category which would call for interference by the High Court. The trial court has given positive findings with regard to the various aspects of the prosecution story already referred to above. The High Court has, in the course of its judgment, not been able to meet the reasons which weighed with the trial court in drawing its conclusion. The fact that the first report had been recorded at about 1 p.m. and suppressed by the prosecution has been largely ignored by referring to the first information recorded at about 4.45 p.m. after the Ruqa had been sent by Sub- Inspector Katiyar from the place of incident to the Police Station. The High Court has also ignored the fact that there was no evidence to show as to when special report had been dispatched to or received by the Magistrate. The inference drawn by the Trial Court, therefore, that the first information of 1 p.m. had been suppressed by the prosecution as the names

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- A of the assailants were not known and that there was no evidence to confirm the time of the recording of the FIR shortly after 4.45 p.m. as there was no evidence of the dispatch or delivery of the special report, which cast clearly suspicion even on this part of the prosecution story, has not been dealt with by
B the High Court.

9. The High Court has examined the reliability of the oral dying declarations made by the two deceased to the four witnesses but while observing that there were substantial discrepancies inter-se each of them, has still chosen to rely on
C their statements. The Court has ignored the statement of Dr. Sharma PW who opined that the injured would have been rendered unconscious within 10 to 15 minutes after receiving their injuries by opining that this fact would vary from person to person. This would undoubtedly be true, but the doctor's
D statement is only one of the factors which had weighed with the Trial Court in rendering its opinion. Even otherwise, an oral dying declaration made to a person who had very serious enmity with the accused should be accepted with a little hesitation and reservation.

- E 10. We also find that the High Court has accepted the statement of Feran Singh PW5 as the eye witness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and
F others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety.

11. We are, therefore, of the opinion that the judgment of
G the High Court is erroneous for the above reasons. We, accordingly, allow the appeal and direct the acquittal of the accused. If they are in custody, they shall be released forthwith. If they are on bail, their bail bonds shall stand discharged.

H B.B.B.

Appeal allowed.