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**CASE COMMENTARY - CENTRAL BUREAU OF
INVESTIGATION (CBI) v. SHYAM BIHARI (2023) 8 SCC 197**

AUTHORED BY - DEEPANSHI SRIVASTAVA

FACTS:

Three persons namely Raj Kumar Baliyan (deceased), Pramod Kumar Tyagi and Sudeep were travelling from Muzaffarnagar to Meerapur to attend a marriage function. Sudeep and Pramod were riding together on one scooter while Raj Kumar was on another scooter. On their way, they noticed three policemen standing by the roadside — one holding a danda (stick) and the others carrying rifles. The policeman with the danda flashed a torchlight towards them, which startled and distracted the riders, causing both scooters to lose balance, skid, and fall. Amidst the sudden confusion, one of the policemen allegedly shouted an exhortation to “shoot to kill.” As a result, Raj Kumar Baliyan sustained fatal injuries and succumbed to them while being taken to the hospital, although Sudeep and Pramod somehow managed to escape towards a nearby village. Importantly, the deceased was rushed to the hospital in the presence of the policemen themselves, but he could not survive the journey. Subsequently, an FIR was lodged by Pramod Kumar Tyagi, narrating the incident from their perspective.

Another version of the incident came to light on 25.06.1987 when Mahindra Singh informed the police about an alleged robbery in the village resulting in a casualty. According to this version, while the police constables were patrolling the village against the threat of gangsters, a villager raised an alarm that 5-6 criminals were planning to commit a robbery. Two scooters were seen approaching at high speed, and when the policemen flashed a torchlight at them, the riders allegedly fired shots intending to kill the policemen and villagers. In retaliation, the policemen fired back, which led to the death of the deceased. Initially, the investigation was conducted by CB-CID, and later it was handed over to the CBI for further inquiry. After a detailed investigation, the CBI submitted a charge sheet against the policemen under Section 302 read with Section 34 of the IPC. The Additional Sessions Judge, upon trial, found the policemen guilty of committing the offence. However, the accused pleaded not guilty to the charges.

ISSUE RAISED:

Before the Hon'ble Supreme Court of India, the following legal issues were raised for determination:

1. Whether the circumstantial evidence formed a complete and unbroken chain linking the facts so as to conclusively prove the offence against the accused?
2. Whether the judgment delivered by the High Court was based on a plausible view and did not amount to a miscarriage of justice?

ARGUMENTS:

The prosecution argued that, as per the General Diary (GD) entries recorded on the relevant date and time, the accused policemen were indeed present at the place of occurrence. Furthermore, the ballistic expert's report confirmed that certain empty cartridges recovered from the crime scene had been fired from the same rifles officially issued to the policemen. In addition, eyewitnesses Sudeep and Pramod testified in court, directly implicating the accused as the persons who fired the fatal shots that led to the death of the deceased.

On the other hand, the defence contended that the witnesses Sudeep and Pramod could not conclusively identify whether the policemen standing trial were the same ones involved in the firing incident. The defence also challenged the evidentiary value of the empty cartridges found at the spot, arguing that these were merely circumstantial, especially since the deceased was killed by a bullet from a 0.12 bore firearm rather than from the service rifles, which were of 0.303 calibre.

JUDGEMENT:

The Trial Court, after thoroughly examining the oral and documentary evidence, came to the conclusion that the prosecution failed to establish beyond reasonable doubt that the accused policemen had actually committed the offence. Aggrieved by this decision, the State preferred an appeal before the High Court. The High Court observed that the prosecution's entire case heavily rested upon the testimony of three main witnesses, whose credibility was found lacking. Furthermore, the medical evidence revealed that the deceased was killed by a bullet of 0.12 bore, which did not match the service rifles issued to the policemen, thereby creating reasonable doubt. Consequently, the High Court acquitted the accused.

When the matter came before the Supreme Court of India, it was observed that although the judgment of the High Court appeared to be somewhat concise and brief, mere brevity in the judgment could not itself be treated as a ground to reverse the acquittal. The Supreme Court further noted that since the case pertained to an incident that took place in 1987 and the appeal had already remained pending for over a decade, remanding the matter to the High Court simply to rewrite a more elaborate judgment would not serve the ends of justice and could instead amount to a miscarriage of justice.

It is a settled principle of law that in an appeal against acquittal, the appellate court certainly has the power to re-appreciate evidence and arrive at its own conclusions; however, such power must be exercised cautiously, and interference with an order of acquittal should only occur when there is a manifest miscarriage of justice.

In the present case, the two eyewitnesses were riding separately on another scooter alongside the deceased when, according to them, the policemen flashed a torchlight causing them to skid, followed by a gunshot which led to the death of Raj Kumar Baliyan. Even assuming that there was indeed an exchange of fire between the policemen and unknown persons that night, there was no reliable evidence to establish that the firing was carried out with the clear intention to kill. Importantly, the post-mortem and ballistic evidence revealed that the fatal injury was caused by a bullet of 0.12 bore, which was not the calibre of the service rifles allotted to the accused policemen. While some empty cartridge shells of 0.303 calibre were found at the scene, this fact alone did not conclusively prove the guilt of the accused since the murder weapon was of a different calibre. The Supreme Court further questioned why, if the policemen indeed intended to kill the deceased, they would have used a country-made firearm instead of their standard-issue service rifles.

Additionally, the fact that the policemen were officially deputed to patrol that area on the relevant night, and as testified by local villagers, they remained present even when the ambulance arrived to take the injured to the hospital, indicating that they did not possess the necessary Mens Rea to commit murder. Had they harboured criminal intent, it would have been reasonable to expect them to flee the scene instead of helping transport the deceased to the hospital.

Therefore, when viewed as a whole, the circumstances and evidence did not prove beyond

reasonable doubt that the accused policemen were responsible for committing the offence. The sequence of facts presented by the prosecution remained incomplete and fell short of conclusively and exclusively pointing to the guilt of the accused.

Accordingly, the Supreme Court held that the High Court's judgment acquitting the accused was indeed a plausible and reasonable view, supported by the evidence on record. Finding no miscarriage of justice, the Supreme Court refused to interfere with the acquittal. Consequently, the appeal stood dismissed.

