SUPREME COURT OF INDIA

Ramappa Halappa Pujar

Vs.

State of Karnataka

(S.B. Sinha and Markandey Katju JJ.)

27.04.2007

JUDGMENT

S.B. SINHA, J.

Appellants herein have filed this statutory appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 being aggrieved by and dissatisfied with the judgment dated 9.6.2005 passed by a Division Bench of the High Court of Karnataka at Bangalore in Criminal Appeal No.252 of 1999(A) whereby and whereunder, a judgment of acquittal passed by a III Additional Sessions Judge, Dharwad acquitting the appellants herein for offence punishable under sections 143, 147, 148, 341, 324, 342, 504 and 302 read with Section 149 of I.P.C., was reversed.

The alleged occurrence took place at about 10.30 A.M. on 13.12.1994 near the Bus stand at Village Ichangi situated in the District of Dharwad. A First Information Report was lodged by one Devendrappa (PW-25). He is the brother of appellants 1 and 2 herein being original accused nos.1 and 2.

Appellant no. 4 is married to the sister of the appellants 1 and 2. Appellants 1 and 2 and the first informant allegedly sold 5 acres 20 gunthas of land situated in the said Village Ichangi to deceased Ratnavva. The contention of the accused no.1, however, was that his signature on the alleged deed of sale was a forged one. The property, however was in possession of the deceased Ratnavva. On 13.12.1994 at about 7.30 A.M. Ratnavva and her sons Shivananda Basavaraj and Veeresh went to the land in question for plucking groundnuts. The accused persons in furtherance of their common object of assaulting them came to the land in question with deadly weapons. They chased Devendrappa and assaulted him. They assaulted the deceased with sticks causing bleeding injuries. They were also abused. Allegedly in the scuffle that followed, accused no.1 instigated accused no.4 to stab Devendrappa and when an attempt was made in this behalf, bleeding injuries accidentally were caused to accused no.1. Devendrappa ran away from the said place. He was, however, caught near a place known Udachammana Gudi at Ichangi. His hands were tied. He was wrongfully confined to the house. It is stated that the accused persons also threw stones at the deceased and her companions PWs.26 to 28. One of them had hit the deceased.

PWs.25 to 28 being frightened, moved a little away from the scene leaving the deceased on the spot. She was forcibly taken near the Bus stand of their village, tied to an electric pole and her garments were taken off. She was tied around her neck with her own saree. She was assaulted with sticks. She begged for water but the same was denied to her. The accused continued to assault her with sticks. She breathed her last at that spot. The first informant Devendrappa (PW-25) who was kept confined in his house allegedly had become unconscious. After regaining consciousness he came to know of

the said murder and lodged the First Information Report.

The post-mortem examination of the deceased was conducted by Dr.

Mohantappa (PW-13). The dead body was received at the hospital for post mortem examination on or about 11.30 P.M. in the night. The post-mortem examination was conducted in the morning of 14.12.1994. PW 13 found the following external injuries on the dead body :- "1. Oblique ligature mark on the upper part of the neck, mark is interrupted, stating from right angle of the jaw and along the border of the mandible and to the left angle of the jaw, traversing to the nape of the neck, measuring about 14"2 x in length. Interrupted ligature mark along the lower border of jaw from right to left side of the jaw 4 in No. measuring 1" x =" x = x =' x =' x =" x ="

respectively. Ligature mark on the middle of the nape of measuring =" x =". Ligature marks were reddish, dry, parchment like, ecchymosed margins.

Both the hands were clinched.

2. There are 3 ligature marks on the right forearm about 3" away from the wrist, measuring 6" x <", 8" x <, 8 =" x1/4" respectively.

3. Ligature marks on the left fore arm two in No.

measuring 5 =" x <", 5" x <" respectively.

4. There was fracture of left thigh bone lower 1/3rd about 2" away from the knee joint.

5. Contusion on left knee joint medial aspect measuring 3" x 2" Multiple contusions were found on the body.

6. Contusion on left infracbuicular region measuring 2" x 3".

7. Contusion abrasion on the right elbow posterior aspect measuring 2" x 1".

8. Contusion on left knee front aspect measuring 5" x =".

9. Two contusion on lateral and front of left thigh measuring 3 =" x 3", 3" x 3" respectively.

10. Contusion on left buttick and posterior aspect of thigh measuring 6 =" x 3", 3 <" x 3" respectively, 2" x 1".

11. Abrasion on left side of the ankle measuring =" x =".

12. Contused abrasion of left lateral aspect of ankle measuring 2 =" x 1".

13. Contusion on lateral aspect of left leg upper part measuring 3 =" x 2".

14. Two contusions on right thigh measuring 2" x 2", 4 =" x 1" respectively.

15. Abrasion on the right thigh lateral aspect measuring 1 =" x =".

16. Contusion on the right buttock measuring 1 =" x =".

17. There was no fracture of Hyoid bone, Thyroid cartilages or tracheal rings.

18. Multiples small abrasion on right side of buttock measuring =" to 1" in length <" to =" in width."

In the opinion of the autopsy surgeon, the injury No.1 ligature mark can also be caused if saree piece is rolled and tied around the neck. It can also be caused by a rope. Injuries Nos. 2 and 3 can be caused if rope is tied to that part of the body. Injury 4 on the body of the deceased it was opined, could be caused by a hit with hard and blunt substance like stick. The other injuries namely contusion and abrasions can be caused by stick, and also with the fists and with kicks. The injuries around the neck were sufficient to cause the death.

Devendrappa was also examined by one Dr. Achut Kumar Vasant.

He found the following injuries on his person :

5m x 3mm abrasion with 2 cm x 2 cm swelling on the back of the head in the occipital region. The said injuries according to him could not be self-inflicted ones.

Before the learned Trial Judge, a large number of witnesses were examined on behalf of the prosecution. PWs.1 to 8, 10, 11, 19, 20, 21 and 29 who were either eye witnesses or Panch witnesses turned hostile. PW.9 Karveerapa Chenbasapa, however, proved the Panchnama which was marked Ext.p-14. The panchnama was drawn in respect of the spot where Ratnavva was found dead. He, however, refused to prove the contents of the other panchnamas. He was also declared hostile.

Before the learned Trial Judge, an auto driver Huchappa Basappa Parasannavar was examined as PW.2 to prove that accused no.1 was carried in his tempo to the Handignur Government Hospital. Almost for the said purpose, one Rafiq Abdulsab Havaldar was examined as PW.18. He, however, did not support the prosecution case.

Learned Trial Judge recorded a judgment of acquittal opining that the prosecution case has been supported only by the first informant Devendrappa, sister of the deceased Chembavva and sons of the deceased Shivananda, Basavaraj, PW.27 and Veeresh, PW.28 on whose evidence no reliance can be placed. The learned Trial Judge took into consideration the defence of the accused that the deceased and her sister were of loose moral character and although married, had left their respective husbands. It was noticed that the deceased had been living with the first informant and in view of their immoral conduct the villagers were against them. It was held that Accused no.1 allegedly had suffered a stab injury at the hands of the prosecution witnesses and was taken to the hospital at about 9.30 A.M. on that day whereafter only the villagers killed the deceased. The learned Trial Judge further held that PWs.25, 26, 27 and 28 being interested witnesses were not reliable.

The Division Bench of the High Court, however, opining that there was no reason to disbelieve the said PWs.25 to 28, particularly when PW.25 was an injured witness, differed with the said findings holding :

"39. It might be that PWs 26 to 28 are the close relatives of the deceased. The central evidence against the accused consists of their evidence who have given a complete narration of the prosecution case. Though they are the close relatives of the deceased, they cannot be termed as the interested witnesses. The witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such

as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. There cannot be any mechanical rejection of their evidence on the sole ground that it is the evidence of partisan or interested witnesses. Therefore the mere fact that PWs.26 to 28 are the close relatives of the deceased is not sufficient to discard their testimony given in Court, more so, when their evidence does not suffer from any such infirmity.

40. For these reasons, we are of the view that we are unable to reject the evidence of PWs.26 to 28 on the ground that they are the relatives of the deceased. We have ourselves carefully gone through the entire evidence of PWs.26 to 28 and we find that shorn of a few embellishments here and there, their evidence read as a whole in its entirety is acceptable. Moreover the testimony given by them in Court stands corroborated from the medical evidence on record. They have given a true and correct description of what they had seen, observed and comprehended at the spot."

The High Court, however, gave benefit of doubt to A6 to A8. The case against A9 abated as he died during trial. Appellants before us were convicted by the High Court under sections 143, 147, 148, 341, 342, and 302 read with Section 149 of I.P.C. They were sentenced to undergo imprisonment for life and a fine of Rs.1,000/- for commission of the offence under section 302 read with Section 149 of the IPC, but no separate sentence was passed in respect of the other offences found to have been committed by the appellants.

Mr. Girish Ananthamurthy, learned counsel appearing on behalf of the appellants, took us through the judgment of the learned Trial Judge to contend that sufficient and cogent reasons having been assigned in support of the judgment of acquittal recorded by the learned Trial Judge which was based on probability and the view taken by it being a possible one, the High Court committed a manifest error in reversing the said judgment of acquittal.

Mr. Rana Mukherjee, learned counsel for the respondent, however, supported the judgment.

Before we embark upon the rival contentions of the parties, we may notice that although the learned Trial Judge noticed the motive of the appellants in committing the offence, did not deal therewith in his judgment. The High Court, however, considered the question of motive on the part of the accused to commit the said offence at some length. Execution of the deed of sale in favour of the deceased by the three brothers is not in dispute. What was, however, in dispute was that as to whether appellant no.1 had executed the said deed of sale or not. Possession of the parties in or over the said land was also in dispute.

Appellants herein and other persons supporting them were bearing ill will against the deceased and her family. Existence of the land in dispute between the deceased and the accused stands admitted. Homicidal nature of the death of the deceased is also not in dispute. The fact that she suffered a number of ante-mortem injuries is also not in dispute. From the post- mortem report it is evident that she had suffered injuries almost on all parts of her body. She suffered even a fracture on left thigh bone.

Learned Trial Judge appears to have totally relied upon the evidence of PW.22 Veerbhadrappa Sadeppa Gundagavi who was the Medical Officer at General Hospital, Haveri. According to him

accused no.1 was brought to the Hospital by one Mallangouda Hanman Thagounda Patil with a history of assault. He examined him and found stab-wound 1 cm. above umbilicus transversally measuring 2-1/2 cm. x = cm. x 1 cm. which was red in colour and since there was no sufficient facility in that hospital and since the injury was grievous, he was referred to Chigateri Hospital wherein he was admitted and discharged on 13.2.1995 only. He proved a purported entry made in the Medical Legal Register maintained at the General Hospital, Haveri which was marked as Ext.P-25 wherein it was allegedly mentioned that one Ramappa Halappa Pujar (accused no.1) was brought by one Mallangouda and another Nellappa Hullur to that doctor with the history of assault on that day at about 9.30 A.M. with knife by one Shivanand Chennashetty.

Allegedly he intimated the concerned Police Station. No document, however, has been produced to prove the said fact. We have perused the original register. We have found certain interpolations therein. A certificate was purported to have been granted only in February 1995. The said certificate has not been legally proved. The Doctor at Chigateri General Hospital at Davangere had not been examined by the accused is shrouded by mystery. According to PW.12, Appellant no.1 was being transported in a tractor. He was, however, transferred to the auto belonging to PW.12.

PW.18 was the driver of the tractor. Although he was examined on 13.11.1997, according to him the incident took place a year prior thereto.

He stated the time to be around 10 A.M.. He did not say that he found accused no.1 to be in an injured condition. He was merely told that he had not been feeling well. He took him to a distance of one kilometer from the Bus stand, whereafter he was transferred to a matador van. He could not identify the accused no.1. PW.12 Huchappa Basappa, however, describes himself to be a driver of a tempo. He was examined on 24.10.1997.

According to him his tempo was booked two years ago by accused nos.7 and 8 for a trip to Haveri from Hosaritti Bus stand. When accused no.1 was being brought in a tractor he saw a bandage on his stomach. He was taken to Handignur Government Hospital and from there to Haveri Government Hospital. The inconsistencies between evidence of PW.18 and PW.12 is evident. If PW.12 is to be believed, apart from the mistake in the year in which the accident took place, the appellant no.1 reached Handignur Government Hospital at 10.45 A.M. They were there only for 5 to 10 minutes. They reached Haveri Hospital at about 12 O'Clock which was situated at a distance of 25 k.m. Why it took more than ninety minutes to cover a distance of 25 k.m., is not known. How accused no.1 was being taken to the Handignur Government Hospital when he had a bandage on his stomach has not been explained. We also notice that although according to PW.18 the vehicle in which accused no.1 was transported was a matador van, according to PW.1 he was merely driving a tempo. Appellant no.1 was unconscious who made a statement in regard to the time of manner of occurrence and the name of the assailants is not known. Why such a statement had to be recorded has also not been disclosed. PW.22 must have examined the accused no.1 only for a few minutes. He might have given only the first aid.

How he could prove the entries made in the general register has not been disclosed.

The time factor taking into consideration the findings of the learned Trial Judge would be a relevant piece of evidence. According to the prosecution the occurrence took place at about 10.30 A.M. It must have started round about 9.30 A.M. The manner in which the occurrence took place at three different places goes to show that it must have taken some time. Possibility of the appellant no.1 sustaining a stab injury at the instance of the prosecution witnesses or others is not clear.

Prosecution, at least, has come out with some explanation as to how he suffered a stab injury. On the other hand, the appellants had not offered any explanation whatsoever. It is unbelievable that in a situation of this nature, particularly when an accused had suffered a grievous injury for which he was allegedly required to remain in hospital for more than 2 months, would not be reported to the police.

PW.22 although stated that he had reported the matter to the police; no attempt was made to obtain production of the said document. The copy of the said report had also not been produced by PW.22.

Accused no.1 had not been arrested. If he was undergoing treatment at the hospital for such a long time, he himself could have lodged a first information report. The other villagers also could have done the same.

Sustenance of the injury at the hands of the prosecution witnesses in ordinary course should have been disclosed by the Panch witnesses.

Investigating Officer in his deposition stated that he came to learn about the said injury in the course of his investigation only on 16.12.1994. He had not carried out any investigation in relation thereto. Presumably he did not feel any necessity therefor. The learned Sessions Judge made a caustic remark thereabout. Performance of statutory duties of the Investigating Officer making investigation properly or not may be a subject matter of comment but, in our opinion, the High Court cannot be said to have committed any mistake in not getting swayed by the said fact alone.

If the defence story in regard to sufferance of injury by accused no.1 at 9.30 A.M. is not believed, much of the reasonings adopted by the learned Sessions Judge to record a judgment of acquittal in favour of all the accused persons become unsustainable. The manner in which the deceased met her death would show that she had been brutally assaulted by a large number of persons. She was tied with a wooden pole and not only she had been assaulted all over her body, an attempt was made even to hang her by using her saree.

The investigation started without any delay. Statements of a large number of witnesses were recorded on 13.12.1994 itself. Witnesses turned hostile. The same by itself would not negate the prosecution case. The very fact that the villagers in a case of this nature had turned hostile would, on the other hand, show that there was a ring of truth in the prosecution case.

It is in the aforementioned backdrop, the High Court opined :- "38. It is no doubt true that except PWs.25 to 28, all other eyewitnesses have turned hostile. But that by itself is no reason to discard the evidence of PWs.25 to 28. On the other hand, it would show that no independent witness from the village is prepared to come forward to depose against the accused persons. If the other witnesses were not eyewitnesses to the incident, why should the Investigating Officer record their statement falsely if they have not stated so. Be that as it may be.

Merely because the other eyewitnesses examined by the prosecution have turned hostile and did not support the prosecution version for the reason best known to them, that by itself does not corrode vitality of the prosecution version particularly when the witnesses who have supported the prosecution version viz. PWs. 25 to 28 have withstood the incisive cross-examination and pointed out the accused as the perpetrators of the crime. There is nothing unusual in a criminal trial that many a times independent witnesses who do not want to incur the wrath of the accused will turn hostile at the trial. It is the tendency on the part of the persons to play safe by remaining neutral."

The High Court has noticed and in our opinion rightly that although the prosecution witnesses turned hostile, they made no whisper about the incident having occurred in the manner as alleged by the appellants. It is of some significance that the injuries sustained by PW.25 is not in dispute.

Why the evidence of the injured witnesses was not believed by the learned Trial Judge is beyond any comprehension. He was the brother of accused 1 and 2. He was also a party to the deed of sale. The High Court had assigned cogent and sufficient reasons in relying upon the evidence of PW.25, particularly, when there are evidences on record to show that he had been assaulted with material objects.

Even if, the version of the respondent that accused no.1 suffered injury at the hands of PW.27 while he was firmly held by the deceased and PW.26 is believed, the presence of PWs. 26 and 27 stands accepted.

We, therefore, are of the opinion that keeping in view the fact that PW.26 is the sister of the deceased and PWs.27 and 28 were her sons, their testimonies before the Court cannot be said to be wholly unreliable. [See Mano v. State of Tamil Nadu, JT 2007 (5) SC 143] We may also notice that as per evidence of the Investigating Officer, the accused no.1 when questioned, declined to tell him anything. If he was not at the place of occurrence at the time when the incident had taken place, it was expected that he would tell his side of the story including the manner in which he had suffered injuries to the Investigating Officer. There was absolutely no reason why he would suppress the fact from the Investigating Officer. This clearly goes to show that accused no.1 made all attempts to conceal the circumstances under which he had sustained injuries on his person. If in the aforementioned situation the High Court has believed the prosecution story, we do not see any infirmity therein, particularly, when no complaint was made in that behalf by the accused no.1 or by anybody else in their behalf to the police.

Accused no.1 has also not raised any plea of self-defence.

Suggestions given to the prosecution witnesses are self-inconsistent and wholly contradictory to each other. They cannot go together.

We have been taken through the depositions of PWs. 25 to 28. We agree with the inference arrived at by the High Court as regards credibility of their evidences before the court. There may be some contradictions in the depositions of the said witnesses but they are minor in nature. We cannot loose sight of the fact that they deposed in court about 3 = years after the date of occurrence and, thus, minor variations from their earlier statements are but natural.

The High Court, thus, in our opinion, in a case of this nature cannot be said to have committed any error in reversing the judgment of acquittal by the learned Trial Judge. The jurisdiction of the High Court albeit is limited in this behalf, as would appear from some of the decisions of this Court but the High Court in our considered view did not exceed its jurisdiction.

In the facts and circumstances of the case, it was not necessary for the witnesses to prove the actual role played by each of the appellants.

The High Court had given benefit of doubt to four of them. That by itself is not decisive. Allegation of overt acts on the part of the appellant is evident.

opined :

"36. Section 149 of the Indian Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed.

The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regard likelihood of commission of another offence or not would depend upon the facts and circumstances of each case.

Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf. [See Rajendra Shantaram Todankar v. State of Maharashtra].

this Court opined :- "21. The members of the unlawful assembly can be held liable under Section 149 IPC, if it is shown that they knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. It is true that the common object does not require prior concert and a common meeting of mind before the attack.

It can develop even on spot but the sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence."

this Court held :- "8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

Reliance has been placed by Mr. Girish Ananthamurthy on a recent (3) SCALE 90]. Therein also it was held :

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail

extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

For the aforesaid reasons, we do not find any infirmity in the judgment of the High Court. The appeal is accordingly dismissed.