

SUPREME COURT OF INDIA

Syed Peda Aowlia

Vs.

Public Prosecutor, High Court of A.P.

CrI.A.No.1149 of 2001

(Dr. Arijit Pasayat and P.P. Naolekar JJ.)

13.06.2008

JUDGEMENT

Dr. Arijit Pasayat, J

1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court allowing the appeal filed by the State so far as present appellant is concerned while upholding the acquittal of other accused persons. The learned IV Additional Sessions Judge, Guntur had directed acquittal of all the five accused persons who faced trial for commission of offence punishable under Section 302 and Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC'). The trial Court on analyzing the evidence had found that the prosecution has not been able to establish its accusations and accordingly directed acquittal. The State filed an appeal in terms of Section 378 (1) and (3) of the *Code of Criminal Procedure, 1973* (in short the 'Code'). The High Court by the impugned order allowed the appeal so far as the present appellant is concerned while dismissing the appeal of the State so far as the other accused persons are concerned.

2. Learned counsel for the appellant submitted that the High Court has not discussed the evidence of the witnesses and has come to abrupt conclusions about the acceptability of the evidence.

3. Learned counsel for the respondent-State on the other hand submitted that though the High Court has not analysed the evidence in detail, its conclusions are not erroneous.

4. It is not necessary to go into the factual position in detail as we find that the appeal filed by the State has been disposed of in perfunctory manner.

5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt

of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors. v. State of Madhya Pradesh*¹]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra*², *Ramesh Babulal Doshi v. State of Gujarat*³, *Jaswant Singh v. State of Haryana*⁴, *Raj Kishore Jha v. State of Bihar and Ors.*⁵, *State of Punjab v. Karnail Singh*⁶, *State of Punjab v. Pohla Singh and Anr.*⁷ and *V.N. Ratheesh v. State of Kerala*⁸.

6. The conclusions of the High Court read as follows:

"It is true that there is some delay in reaching a copy of FIR to the residence of the Magistrate, but it cannot be said that it is inordinate delay. According to the version of PW-1 and also the version of PWs 14 and 15 the first information was given by PW-1 at about 10.30 a.m. and on the strength of which PW-14 registered the case against the accused. The evidence of PW-15 shows that he got a copy of FIR at about 1.30 p.m. but he did not note down the timing on the copy of FIR on receipt of the same. But, it has been a positive case of PW- 15 that he received copy of FIR at 1.30 p.m. Once this version is accepted, then the defence version that the FIR was given at 8.30 p.m. has to be rejected.

Mr. Movva Chandra Sekhar Rao, learned counsel appearing for the appellants relied upon a ruling reported in *Meharaj Singh v. State of U.P.*⁹, in which the Apex court had laid down that inordinate delay in filing the first information has to be explained. We have no hesitation in accepting the above said proposition. We have come to the conclusion that PW-1 had given the first information report at the Police Station at about 10.30 a.m., immediately after removing the injured to the Hospital at Guntur. If there is some delay in sending the copy of FIR to the Magistrate, then straight away a conclusion cannot be drawn that the FIR was not laid at the time as spoken to by PW-1.

It is not the case of the defence that there is political rivalry between the accused party and the deceased party. Therefore, this Court finds no reason for PWs 1 to 3 and 5 to concoct a story against A.1. Under these circumstances, we have no hesitation in holding that the prosecution was able to prove that A-1 was responsible for causing the death of the deceased and he is guilty of the offence punishable under Section 302 of the Indian Penal Code.

The role attributed to A-2 to A-5 in this case by the prosecution witnesses is very minor. Only their presence was secured through their evidence. They had not participated in killing the deceased and, therefore, this Court is of a considered view that A-2 to A-5 cannot be held responsible for causing the death of the deceased. Under these circumstances, we pass the following order:

The appeal filed by the State is allowed as far as A-1 is concerned. A-1 is convicted and sentenced to suffer imprisonment for life and he is directed to surrender the learned IV Additional Sessions Judge, Guntur, forthwith. The appeal filed by the State against A-2 to A- 5 stands dismissed."

7. We find that the High Court has not applied its mind to the various aspects and the position in law as highlighted above relating to the scope for interference in appeal against an order of acquittal. In the circumstances, we set aside the impugned order and remit the matter to the High Court for fresh consideration in accordance with law only in respect of appellant. State has not questioned, it is to be noted, the High Court's order upholding acquittal of A2 to A5 as was done by the trial Court.

8. The appeal is allowed to the aforesaid extent.

¹(2002 (2) Supreme 567) ²(AIR 1973 SC 2622) ³(1996 (4)Supreme 167) ⁴(2000 (3) Supreme 320)
⁵(2003 (7) Supreme 152) ⁶(2003 (5) Supreme 508 ⁷(2003 (7) Supreme 17) ⁸(2006 (10) SCC 617)
⁹(1994 (5) SCC 188)