SUPREME COURT OF INDIA

K. Ramachandran

Vs.

V.N. Rajan

Crl.A.No.485 of 2004

(V.S. Sirpurkar and R.M. Lodha JJ.)

07.07.2009

JUDGMENT

V.S. SIRPURKAR, J.

1. By this appeal the appellant-appellant challenges the revisional judgment of the High Court whereby the High court has upset the Trial Court's judgment acquitting the appellant-appellant and has directed reconsideration of the matter by the Trial Court. The High Court has further directed that such reconsideration would be only on the basis of evidence already recorded.

2. The appellant-appellant K. Ramachandran was tried for the offence under Section 302 as also under Section 201 of the Indian Penal Code on the allegation that he, on 18.02.1995, committed murder of his wife Nalini @ Latha by hitting her with a wooden log on her head. The prosecution's case was that the marriage of the appellant-accused and the said Nalini took place in 1992 and right from the beginning their marital life was not smooth as the appellant-accused suspected her fidelity. After their marriage, appellant-accused used to live with his wife in a rented house at Avadi. It was the prosecution's story that neighbours used to hear wailing sounds of Nalini and she had also told PW-5, Belamurthy that her fidelity was suspected by the appellant-accused and on that account, the appellant-accused was not treating her properly. During the pregnancy, the appellant-accused refused to send Nalini to her parent's house though he was pressurised by PW-5 to send her to the house of her father, PW-1. The appellant-accused went on to suggest that he was not the father of the child which Nalini was bearing and hence she was brought back by PW-1 to his house. Later the appellant-accused and his brother, Pandurangan took Nalini back to the appellant-accused's house.

When Nalini was at the advanced stage of pregnancy, PW-1 wanted to take her to his house but the appellant-accused did not permit that and said that he will take care of the confinement and wanted the child to be born in his house. However, ultimately, the appellant-accused relented on account of intervention of Belamurthy, PW-5.

3. Ultimately, a child was born in the house of her father. But the appellant-accused did not go to see the child. It was only when the child was seven months old that the appellant-accused and brother Pandurangam took Nalini and the child to their house. In the month of May in the year 1994 it is reported that the appellant-accused cut the Thali chain (ornament worn by a married lady) and threw her out of the house. One Krishnaveni, PW-4 had also seen the ill-treatment by the appellant-accused, of his wife. One Girija who was the household servant of the appellant-accused had also seen that. On 02.05.1994, Nalini was brought back by PWs 1 and 2 to their house and after about two months, the appellant-accused and his brother again came and took back her and they continued to live with each other for about 4-5 months. On 17.02.1995, when PWs 1 and 2 had gone to the house of appellant-accused on being called by Nalini on phone. Nalini told them that she was going to Vikravandi. On the next day, which was a Saturday, PWs 1 and 2 received the news of Nalini's death at 12:30 p.m. and went to Vikravandi. They saw the dead body of Nalini and the injury on her head, on back and all over the body. The matter was reported to the police. It was revealed during the investigation that on the night of 17.02.1995, when PW-7 was sleeping in the tea shop, the appellant-accused came to him and asked for the cot. He was then accompanied by Nalini and her daughter. However, on the next day in the morning at 7 a.m., PW-7 heard the news of death of Nalini while lighting stove. Strangely enough, the matter was reported by the appellant-accused himself who claimed in the FIR that Nalini went missing and ultimately died. On that, the policy registered Crime No. 75/1995 under Section 174, Criminal Procedure Code. The police found out the body in the well which was brought out and post-mortem was conducted in Government hospital by Assistant Surgeon, Dr. Bhoomadhu, PW-19. As many as eight injuries were found on the dead body and it was found that Nalini had suffered a scull fracture.

4. After the necessary investigation, the charge-sheet came to be filed against appellant-accused. During investigation, the appellant-accused had agreed to discover the log with which he had hit Nalini. The charges were framed for offence under Section 302 and 201, IPC. During the trial, number of witnesses came to be examined. The Sessions Judge, however, did not accept the evidence of doctor and acquitted the appellant-accused of all the offences. The Sessions Judge held specifically that it was not proved that the appellant-accused had hit Nalini with a log.

5. This judgment of the Sessions Judge was not appealed against by the State. Instead, father of Nalini filed a criminal revision. This revision seems to have been filed and was admitted by the High Court. It was pending when the State Government filed an appeal against the acquittal of the appellant-accused which was delayed by 801 days. Strangely enough, that condonation of delay application came to be considered by the Division Bench of the High Court and the High Court, by its order dated 05.03.2003, dismissed the condonation application. Thereby the appeal against acquittal could not proceed. Very strangely, at the time when the condontion of delay application in filing the appeal was considered by the High Court, it was not pointed out by the Government advocate on criminal, side who appeared for the State, that a revision had already been and was pending against the acquittal, at the instance of father of Nalini. Now, in fact the State Government was very much a party in that revision and was also served. After all, the said revision was admitted by the High Court. However, since the Division Bench was totally unmindful of the pendency of the said revision it merely dismissed the condonation of delay application. We have seen that order.

That is an order merely refusing to condone the delay and there is nothing in the order to suggest that the High Court ever considered the merits of the order of the Trial Court.

6. Ultimately, the revision came up before the Single Judge of the High Court, who allowed the revision and directed reconsideration of the matter on the basis of evidence already on record. In the impugned order, the learned Judge does not seem to have given any further opportunity to the parties for leading any further evidence and that is how this judgment of the learned Single Judge is in challenge before us.

7. The learned counsel appearing on behalf of the appellant-accused, firstly contended that the effect of dismissal of the condonation of delay application was the dismissal of appeal. It was pointed out that the Division Bench which considered the matter had made an observation in the order to the effect that the appellant-accused was already acquitted in the year 1999 and, therefore, to condone the delay and to admit the appeal would cause prejudice him. The counsel, therefore, urged that this revision should have been dismissed.

8. Learned counsel for the complainant, however, argues that the revision was filed prior in time as compared to the appeal filed against acquittal and the said revision was also admitted by the High Court. Further, the High court had no occasion to consider the merits of the matter as it proceeded to dismiss the application for condonation of delay. If that was so, there was nothing wrong in learned Judge considering the revision on its merits. Learned counsel further pointed out that the question of un-tenability of the revision was never pointed out to the learned Single Judge by showing that the appeal against the decision could not proceed on account of delay not being condoned by the High Court. Learned counsel urged that the complainant had not done any wrong in filing the revision which was also admitted by the High Court and, therefore, the revision could not be wiped out merely because the High court, without considering the merits of the matter, chose to refuse the delay in filing the appeal by the State.

9. We cannot find fault with the learned Single Judge in proceeding ahead with the revision as it was never brought to the notice of the learned Single Judge that the appeal against the same judgment which was impugned in the revision had already been filed. It was for the appellant- accused to point out that on the date when the revision was heard the fate of the criminal appeal filed impugning the same judgment was sealed because of the refusal on the part of the Division Bench to condone the delay. In fact, it was up to the Government pleader who was a common party in both the revision and the appeal to point out to the learned Single Judge about the dismissal of the condonation of delay application. Very strangely, the Government pleader did not do that. Again we are at a loss to understand as to how the criminal revision was left out and was not mentioned before the Division Bench deciding the question of condonation of delay in appeal, which was filed against the same judgment. In this appeal, however, the first question which has been raised is about the dismissal of the statutory appeal preferred by the State and its effect on the pending revision. The appellant-appellant-accused, however, has conveniently avoided to state in the special leave petition as to when he came to know about the dismissal of the condonation of delay application in filing the appeal and how. We cannot, therefore, find fault with the learned Single Judge's judgment who was never appraised of the dismissal of the condonation of delay application. Similarly, since the order refusing to condone the delay is not challenged before us, it will not be possible for us to go into that aspect also. But we must observe that it was the duty of the State counsel to point out that a revision was already pending against the same judgment which was challenged in appeal but which appeal was delayed by more than 800 days at the time when the application for condonation for

delay was considered by the Division Bench. Since the appellant-accused had not raised the question about the continueability of the revision before the High Court, we would not ordinarily allow the counsel for appellant-accused to raise that question before us. Though, we must say that an awkward situation has arisen wherein an appeal against the judgment had failed, though only on the question of limitation, yet, a revision against the same judgment, however, continued and was allowed also and all this happened because of the casual attitude on the part of the State Government as also the appellant- accused in not pointing out the proper facts to the Courts, both to the Division Bench as well as the learned Single Judge.

10. The question is undoubtedly important, and hence, though raised for the first time before us, we propose to decide the same. An incongruous situation has arisen where, though the appeal against the acquittal has been dismissed by not allowing the condonation of delay in filing the same, yet, the revision filed against the said judgment by the private complainant has not only survived but such revision has also been allowed. We must observe that the Division Bench in not allowing the condonation of delay has effectively dismissed the appeal in the sense that it has not allowed the State Government to proceed with the appeal for which there was a provision. This was a prosecution not based on private complaint but on the police report. Therefore, the State Government had a right under Section 378 (2) Cr. P.C. to file appeal and very conspicuously the private party did not have that right. The private complainant, therefore, could only excite the general powers of revision by the High Court. Firstly, we must clarify that when the Division Bench considered the question of condonation of delay in filing the appeal against acquittal, though technically, it was deciding the application under Section 378 (3), Cr.P.C. It was actually the whole appeal itself which was before it. In this behalf it will have to be seen that the limitation for filing such appeal at the instance of the State Government against acquittal is provided by Article 114 of the Limitation Act. It is undoubtedly true that sub-Section (3) specifically provides that the appeal under sub-Sections (1) and (2) cannot be entertained except with the leave of the High Court and, therefore, an application for leave in such appeal filed by the State Government is a must. The limitation for filing the appeal is 90 days from the date of the order while the same Article provides for 30 days of limitation from the date of grant of special leave. Therefore, what was before the High Court was the appeal itself and the petitioner prayed the condonation of delay of 801 days in filing appeal against acquittal. When the High Court declined to grant that permission, it, in effect refused to entertain the appeal against the order of the Trial Court, thus, making it final. Now, obviously, if the judgment was rendered final by the Division Bench of the High Court then there could not be any subsequent order to the contrary by the Single Judge even if the effect of the pendency of the revision was not brought to the notice of the Division Bench. There is no review power under the Criminal Procedure Code to the Criminal Court including the High Court. Such a review power exists only in this Court. As such, once the High Court had passed the order refusing the condonation of delay of appeal and thereby awarding the finality to the Trial Court's judgment, that order could be considered and upset only by this Court on a proper appeal having been filed in this Court by the State Government. As against the State Government, the order of the Trial Court acquitting the appellant- accused had become final. Therefore, the only course left open then in law was to challenge that order refusing to condone the delay in filing appeal against acquittal. It is an admitted fact that such appeal challenging the order passed by the Division Bench was never filed and the order of the Division Bench became final and has remained final till today. Under such circumstances, in our considered opinion, the revision against the same order could not have been entertained, much less allowed upsetting the finality of the Trial Court's judgment, which finality was confirmed by the order of the High court by refusing to condone the delay in filing the appeal against the same Trial Court judgment. That would be the true import of the appellate powers of the

High Court. An attractive argument is pressed in service by the learned counsel for the complainant that this is a case where the complainant's side was not considered at all.

We must express here that considering the history of appeal against acquittal and the revisional powers of the High court, the appeal against acquittal originally was not there. That was a general rule in England. In Canada, such right was recognised by Section 584 of the Canadian Criminal Code only on the point of law to the Court of appeal for an indictable offence. In New Zealand also vide Sections 380-382 of the Crimes Act, 1861, there were similar provisions. In comparison to these strict provisions, in India, however, unlimited and general right was given in respect of appeal against acquittals in favour of the State Government. In its 48th Report, the Law Commission cautioned against the unlimited nature of the right and prescribed that it was desirable to put some limitation as to the nature of cases where the right would be available. It was also further provided that regard must be had to the need of putting reasonable limitations on the period for which anxiety and tension of a criminal prosecution could be allowed to torment the mind of the appellant-accused. It was provided that there is a qualitative distinction between conviction and acquittal and appeals against acquittals should not be allowed in the same un-restricted manner as appeal against conviction. Before that in its 41st Report, the Law Commission had observed that the appeals against acquittals should be heard by the High Court to avoid miscarriage of justice and to secure a uniform standard in dealing with such appeals. It was further provided that the right of appeal should be confined only to the State and the complainant and cannot be given to other interested persons. Thirdly, it was provided that there no need for an express provision to the effect that when an appeal by State has been dismissed no application for special leave by complainant should be competent since this is a necessary consequence of the dismissal of appeal. (Emphasis supplied). Forthly, it was provided that an appeal from a Single Judge to the Bench will not serve any useful purpose, and lastly it was provided there was no justification for extending the time for appeals by the State.

In the Report of Joint Select Committee also it was recommended that such appeals shall be entertained by the High Court only if it grants leave to the State Government in this behalf. This is necessary to check any arbitrary exercise of executive power. Section 378, Cr.P.C., as it stood then was further amended w.e.f 23.06.2006 by Act No.25 of 2005 vide Section 32 while for the first time the appeals against acquittals recorded by a Magistrate in respect of cognizable and bailable offences could be tried by the Court of Sessions also. But we are not concerned with that Amendment.

All this would clearly suggest that once the appeal at the instance of the State has been dismissed, the complainant or the state could not ask for the revision of the judgment. In this particular case, we are of the clear cut opinion, that since the Trial Court's judgment was given the effect of finality by the Division Bench of the High Court then learned Single Judge of that Court could not have reversed that effect and upset that position . In this behalf, even sub-Section (6) would, though not directly, support this view. Sub-Section (6) provides as under:

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

This would mean that if a case is instituted by the complainant and such leave is refused even the State Government would be unable to pursue any appeal under sub-Sections (1) or (2) against the

impugned judgment of acquittal. In effect by sub-Section (6), the finality attained by the dismissal of an application for special leave is confirmed by the Court then that verdict would operate against the said judgment of acquittal being challenged even at the instance of the State Government. If this is the effect of the finality attained by the judgment, even in case of an offence which was tried on the basis of a private complaint, then there would be no reason not to give the same effect to the finality attained by the judgment of acquittal by reason of the order passed in appeal, filed by the State Government.

Again, as we have already pointed out the finality confirmed by the Division Bench should not be upset by the judgment of the Single Bench of the same Court. Such incongruous results would follow if we allow the revision to be entertained and decided. In this case, undoubtedly, the revision was not only entertained but also admitted by the High Court. We have only to express that the attitude on the part of the State Government counsel as also the appellant-accused was extremely casual. We also do not understand as to why, when appeal was filed along with the application for condonation of delay against the judgment of acquittal, the revision pending against the same judgment of acquittal was not joined with the appeal. Ordinarily, that should have been done. It is all the result of colossal casualness even on the part of the Registry of the High Court which has resulted in such incongruous situation. We, however, cannot blame the learned Single Judge for proceeding with the revision as he was never apprised of the dismissal of the appeal.

The limitation aspect cannot be such as to be apart or distinct from the merits of the impugned judgment. Therefore, it cannot be said that the appeal was only disposed of on the question of limitation. The result would, after all, be the same i.e. impugned judgment gaining finality.

11. However, we find that the revision could not have proceeded and the appellant-accused must succeed on this plea alone. We have also considered the judgment of the learned Single Judge on merits of the matter. In a revision against acquittal preferred by a private party, there is a very little scope to interfere. Here was a case where the learned Single Judge dis-approved of the appreciation of the evidence by the Trial Court. It is not as if the Trial Court had ignored any important piece of evidence or it had chosen not to appreciate the same. It is again not as if there was any piece of evidence which was illegally not permitted to come on record. Again, it is also not a case where there was some serious defect in the trial affecting the merits of the matter. Further, the Court trying the appellant- accused did not lack the jurisdiction also to try and convict or acquit the appellant-accused. All that the High Court has observed is that the appreciation of evidence by the Trial Court was not correct and the Trial Court should not have taken the view that it has taken of the evidence. This question has been considered in the celebrated judgment of Akalu Ahir Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant-accused;
(ii) Where the Trail Court has wrongly shut out evidence which the prosecution wished to produce;
(iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law. Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to re- appreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. The situation, as we will show further, is identical in the present case.

12. In the impugned judgment, learned Single Judge has pointed out the prosecution case that the Court noticed that though the appellant-accused was supposed to reach Vikravandi in the day time on 18.02.1995, he preferred to reach on 17.02.1995 at about 2 a.m. and then the appellant- accused took shelter in the tea shop of PW-7. Learned Judge further noted that at about 5 a.m. in the morning the deceased wanted to answer the call of nature and, hence, leaving the child in the tea shop itself, the appellant-accused took the deceased to his lands where there is a well and after the deceased answered the nature's call when she went to wash herself in the nearby well she slipped and fell into the well and was drowned. The learned Judge also noted that the appellant-accused himself reported that at about 11:20 a.m. in the Vikravandi police station. Thereafter, some villagers and the police came to the spot of occurrence and the further investigation started. The learned Single Judge further noted that the prosecution examined 20 witnesses including the relations of the deceased as also PWs 1 and 2, who were the parents of the deceased, PW-3, son-in-law and PW-4 who was the servant maid in the house of the appellant-accused. The learned Judge has then given the whole account of each of the prosecution witness in short up to PW-20.

13. While considering the evidence of PW-19, the doctor who conducted the post-mortem, following observation was made by the learned Judge: In cross examination a specific question was put that if a person falls down from a high place into a well where there was water, would such injury be caused. The doctor has negatived the suggestion and he was of the opinion that the said injury could have been caused only when she had been hit with some weapon and MO No.1 would be such a weapon that could have caused the injury.

14. When we see the evidence of Dr. Bhoomadhu, who was examined as PW-19, we clearly see the following assertions in paragraph 9 of his deposition:

I opined that the death should have occurred 28 to 30 hours earlier. I opeined the death could have been caused because of loss of blood due to injuries and shock. Ex.35 is the requisition. Ex.36 is the report I had sent. The Inspector showed the MO No. 1 the log and enquired me with No.1 the injuries over the body 1 to 5 cold have been possible.

15. In the cross-examination this witness asserted that 8th injury is inside and there was no outward injury to that(sic).

16. He admitted in the cross-examination that the injury was very minor one and there was no need to cut that. The depth of injuries 1, 2 and 4 was 1/4th cms. and they were ordinary external injuries and there was no need to open them and, therefore, he did not open them. He further admitted that the Inspector enquired him on 12.06.1997 and he did not remember whether the Inspector examined him showing the log, MO No. 1. He also could not say whether the blood was beneath would 2, 4 and 5. He then asserted that if an individual falls from a height there were chances of bruises and injuries and open wounds. When falling from a height if head dashes against a hard substance, injury No. 8 can be caused. He also admitted that if a blow was given by MO NO.1 on the head, external injury can be there. He further tried to explain that if the hitting was light there would be no external injury.

17. We have examined the evidence of the doctor almost line by line but we do not see any assertion on the part of the doctor which has been quoted by the learned Judge in paragraph 10 of his judgment which we have quoted above. Therefore, it is obvious that the High Court has mis- read the evidence of the doctor. It will be worthwhile to see that the doctor has specifically said that there was no corresponding outward injury to the 8th injury suffered by the deceased(sic) . If this is so, it is not possible to hold that the 8th injury which was only an internal injury would be caused by MO No.1, a log. The doctor, on his external examination found an internal fracture. Injury No.8 was only a Haemorrhage or a blood clot.

18. After reading the evidence carefully, we are of the opinion that the evidence of the doctor has been completely mis-read by the high Court. In paragraph 13 of the judgment, the learned Judge has referred to the finding by the Trial Court that the appellant-accused had been ill-treating his wife. In paragraph 17, learned Judge has commented upon the conduct of the appellant-accused and has observed that that appellant- accused had not come forward with any specific case as to why he took his wife on the night of 17.2.1995 to Vikravandi and as to why at 2 a.m. when appellant-accused could have gone to his own house, he preferred to stay in a tea shop. It is then commented that the story, that he accompanied the deceased to the field when she wanted to answer the nature's call, was difficult to digest. It has also come later on in the judgment that it was strange that the lady should have gone to the well instead of a nearby pond to wash herself. In our opinion, these observations are speculative. If the lady had gone to the well in the dark at 5 O'clock then one wonders how she could have seen the nearby pond. Again, it has not been proved that the field belonged to the appellant- accused. There appears to be a lot of confusion on that issue. The field has been described in the R.D.O. report in the Magazar as survey No. 167/5. It is then further mentioned in paragraph that the said well in the Punja survey No. 167/5 in Patta No. 354 to be in the name of Panduramng s/o Kasilingam. We, therefore, fail to understand as to how it was mentioned that the field belonged to the appellant-accused.

19. Lastly, it is expressed by the High Court in paragraph 19: What is more surprising is that there were as many as 8 injuries in the body. The injury on the head makes it abundantly clear that she has been assaulted by a weapon. It is not the case of the accused that there was any stone or any protruding material in the well which could have hit on the head. It is nobody's case. Therefore, it is for the accused to explain as to how all these things happened.

20. We do not think that this was a correct approach as the above observation is not factually correct. In the whole judgment, it is nowhere pointed out as to how and where the Trial Court had gone wrong. When we see the judgment of the Trial Court, it is seen that the Trial Court has awarded the acquittal as according to it in a case based on circumstantial evidence, the chain of

circumstances has to be complete and in this case it was not. The only two circumstances which were held proved according to the Trial Court were that the deceased was last seen accompanying the appellant-accused herein and that her dead body was found near the residential plot of the appellant-accused. To the Trial court these two circumstances were not enough to book him much less for an offence under Section 302, IPC. The learned Sessions Judge also explained the 8 injuries noted by the doctor and has appreciated the evidence of PW-19 and observed that barring injury No.8, which was an internal injury there were no other outward serious injuries as those injuries were minor and might have been caused by some insect or biting by fish. He pointed out that the doctor was not certain whether the injury Nos. 2, 4 and 5 suggested that they were ante-mortem injuries. He also said that the post-mortem report was inconclusive. The Trial Court has, in detail, considered the evidence and came to the finding that the verdict of conviction was not possible in this case. We have already pointed out that the approach of the learned revisional Court was not correct, after all this was a revision against acquittal, at the instance of private party.

21. The learned Single Judge of the High Court has directed not even re-trial but re-appraisal of the evidence which will be clear from the last paragraph of the impugned judgment before us. We do not think that this could be the course adopted in the matter. We, therefore, allow this appeal and set aside the judgment of the revisional Court and restore that of the Trial Court.