

SUPREME COURT OF INDIA

Basayya Prabhayya Hallur

Vs.

State of Karnataka

CrI.A.Nos.1236-1237 of 2002

(Dalveer Bhandari and Dr. Mukundakam Sharma JJ.)

07.10.2009

ORDER

1. We have heard the learned counsel for the parties at length.
2. These appeals are directed against the judgment and order dated 16.7.2002 passed by the High Court of Karnataka in Criminal Appeal Nos. 319/1997 and 67/1997.
3. Brief facts which are necessary to dispose of these appeals are recapitulated as under:
4. It is alleged that on 1.5.1991 at about 8.30 p.m., seven accused persons, namely, Virabasayya Prabayya Hallur (A-1), Babu @ Chanamallayya (A-2), Basayya Prabhayya Hallur (A-3), Basavaraj Hanamappa Talwar (A-4), Laxman Hanamappa Talwar(A-5), Prakash Hanamappa Talwar (A-6) and Suresh Hanamappa Talwar (A- 7) formed an unlawful assembly with a common object of committing murder of the deceased Shivappa, assaulted him and also caused injuries to PWs 1 to 4, 7 and 17 and thereby committed offences punishable under Sections 147, 148, 302, 324 and 504 read with Section 149 of the I.P.C. On 2.5.1991 at 4.30 a.m., PW-1 Mahadevappa lodged a complaint as per Ext.P-1 on the basis of which the entire investigation in Crime No.60/91 started.
5. The Additional Sessions Judge, Bijapur framed charges against all the accused for the offences punishable under Sections 147, 148, 302, 324 and 504 read with Section 149 of the *I.P.C.*
6. The prosecution in support of its case examined 23 witnesses and got marked 26 Exhibits and 14 material objects. The learned Sessions Judge accepted the case of the prosecution in part and convicted accused Nos.1 & 4 for offences punishable under Section 304 Part-I I.P.C. and sentenced them to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 500 each with default clause. Accused Nos.2, 3, 6 & 7 were acquitted of all the charges. Accused No.5 died during the pendency of the trial.

7. Accused Nos.1 and 4 aggrieved by the said judgment of the learned Sessions Judge preferred Criminal Appeal No.67/1997 before the High Court of Karnataka. The State of Karnataka also preferred appeal, being Criminal Appeal No.319/1997, against the judgment of the learned Sessions Judge. Both the appeals were disposed of by a common judgment dated 16.7.2002 delivered by the High Court.

8. The High Court convicted accused No.1 under Section 304 Part-II I.P.C. and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500 with default clause.

9. So far as accused No.4 is concerned, the High Court acquitted him under Section 304 Part-I I.P.C. but convicted him under Section 324 of the I.P.C. and was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- with default clause.

10. As regards accused Nos.2, 3, 6 and 7, the High Court by the impugned judgment, reversed the Trial Court's judgment of acquittal and convicted them under Section 324 read with Section 149 of the I.P.C. and sentenced them to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- each with default clause. However, the High Court acquitted all the accused persons under Sections 302/149 and 504/149 of the I.P.C.

11. Our attention has been drawn to a chart which indicates that the appellants have already undergone actual sentence of imprisonment for more than two months. While admitting the appeal, this Court released the appellants on bail on 17th June, 2003. Now the crucial question which arises for consideration of this Court is whether the appellants should be sent back to jail to serve out the remaining sentence after a lapse of several years.

12. We have heard the learned counsel for the parties. On consideration of the totality of the facts and circumstances of the case, in our considered view, ends of justice would be met if, while maintaining the conviction of accused Nos.2, 4, 6 & 7, their sentence is reduced to the period already undergone by them, provided they pay a fine of Rs.25,000/- each within a period of one month from the date of communication of this order, which shall be deposited in the Trial Court. In case the fine is not paid or deposited they would undergo the remaining period of sentence. The concerned trial Court is directed to ensure that the amount of fine so deposited by the appellants is paid to the wife of the deceased Shivappa within eight weeks.

13. Now, we are left with the appeals pertaining to accused Nos.1 and 3. As far as accused No.1 - Virabasayya Prabayya Hallur is concerned, there is a concurrent finding of fact by the Sessions Court which has been affirmed by the High Court. He has been named in the complaint. All the injured eye witnesses have also named him in their statements. Specific role has been attributed to him in commission of the murder of deceased Shivappa. In our considered view, no interference with the impugned judgment is called for and consequently, the appeal filed by accused No.1, being devoid of merit, is dismissed.

14. So far as accused No.3 - Basayya Prabhayya Hallur is concerned, he was acquitted by the Trial Court. His acquittal has been set aside by the High Court. Since there were conflicting judgments so we have carefully gone through the evidence and documents on record.

15. Mr. Krishnamani, learned senior counsel appearing on behalf of the appellant (accused No.3) and learned counsel appearing on behalf of the State of Karnataka have taken us through the relevant portions of the impugned judgment and the evidence on record. Mr. Krishnamani, learned senior counsel has also drawn our attention to the evidence of Shankarappa (PW- 3). In his testimony, it is categorically stated that except A-3, all other accused were holding sticks. The High Court has failed to give any cogent or convincing reasons to set aside the findings of the Trial Court qua A-3. The High Court was predominantly moved with the consideration that accused Nos. 2 to 6 cannot go scot free. But that can never be the proper reason for setting aside the judgment of acquittal.

16. The principles for setting aside an order of acquittal have been crystallised in a large number of judgments of this Court. *Sheo Swarup v. King Emperor*¹, is one of the earliest cases where circumstances which are relevant in setting aside a judgment of acquittal have been enumerated in detail.

17. Mr. Krishnamani has also drawn our attention to the judgment of this Court in *Ghurey Lal v. State of Uttar Pradesh*². He particularly laid emphasis to paragraph 43 of the said judgment where the case of Sheo Swarup (supra) has been dealt with.

18. Lord Russel writing the judgment in that case has observed as under:

“...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness.”

19. Mr. Krishnamani also referred to paragraph 44 of the judgment in Ghurey Lal (supra) where reference has been made to another leading case of this Court in *Surajpal Singh v. State*³, in which it is stated that the presumption of innocence of the accused is further reinforced by his acquittal by the Trial Court as the Trial Court had the advantage of seeing the witnesses and hearing their evidence.

20. Therefore, unless there are very substantial and compelling reasons, the Appellate Court would not be justified in reversing the judgment of acquittal. Mr. Krishnamani has also drawn our attention to paragraph 68 of the judgment in which a leading judgment of this Court in *Chandrappa v. State of Karnataka*⁴, has been dealt with. This Court reiterated therein fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. The presumption of

innocence of the accused is further reinforced, reaffirmed and strengthened by the judgment of acquittal by the trial Court.

21. Mr. Krishnamani also referred to paragraph 69 of the said judgment in which this Court has summarized the gists of the cases and held as under:

“1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the *Criminal Procedure Code, 1973*. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.”

22. We find considerable force in the submission of Mr. Krishnamani, learned senior counsel who appeared for the appellant. The High Court in our considered view was not justified in reversing the judgment of acquittal in such a perfunctory manner. The impugned judgment of the High Court is clearly contrary to the well settled position of law. Consequently, the impugned judgment of the High Court qua A-3 is set aside and the appeal filed by him is allowed. A-3 is acquitted of all the charges.

23. The appeals are disposed of accordingly.

¹(AIR 1934 PC 227)

²2008 (10) SCC 450

³AIR 1952 SC 52

⁴(2007) 4 SCC 415