**SUPREME COURT OF INDIA**

C. Ronald & Anr.

Vs.

State, U.T. of Andaman & Nicobar

Crl.A.No.749 of 2005

(Markandey Katju and Chandramauli Kr.Prasad,JJ.,)

10.08.2011

**ORDER**

1. Heard learned counsel for the parties.

2. This Appeal has been filed against the impugned judgment dated 01.10.2004 passed by the Calcutta High Court, Circuit Bench at Port Blair, in Criminal Appeal No. 31 of 2002.

3. The facts have been set out in great detail in the impugned judgment and hence we are not repeating the same here except wherever necessary.

4. It appears that on 26.11.1997 Sub Inspector Abdul Salam received a secret information that in the evening of 25.11.1997 C. Ronald, appellant No. 1 herein, participated in a gambling. Some hundred rupees notes which were sought to be used by him in the gambling were not accepted by the co- gamblers on the ground that they were fake, whereafter Ronald left the place. He was searched by S.I. Abdul Salam and fake currency notes of Rs.100 denomination were recovered from his chest pocket. Panchnama was prepared and he was arrested. During interrogation Ronald disclosed the name of other co-accused. One Arun disclosed the name of R. Anil Kumar, appellant No. 2 herein.

5. Disclosures made by Arun and Anil Kumar were also referred to in the impugned judgment. During the investigation 42 fake notes were recovered from the house of Ronald wrapped in a red handkerchief from inside a shoe. Each of these notes bore the same serial number. Some fake currency notes were given by Anil to Arun, who tore them up and threw them into a toilet, where these torn pieces were recovered from the septic tank.

6. The trial court acquitted the accused persons, but the High Court has reversed that judgment and convicted the accused persons.

7. Mr. Shanti Bhushan, learned senior counsel appearing for the appellants, contends that the trial court having taken a view and acquitted the appellants, the High Court ought not to have

reversed the same. He has relied upon a decision of this Court in Shingara Singh vs. State of Haryana, (2003) 12 SCC 758 [para 26], wherein it was observed :-

> "... It is well settled that in an appeal against acquittal the High Court is entitled to re-appreciate the entire evidence on record but having done so, if it finds that the view taken by the trial court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial court. Only in cases where the High Court finds that the findings recorded by the trial court are unreasonable or perverse or that the court has committed a serious error of law, or where the trial court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be justified in reversing the order of acquittal..."

8. Mr. Shanti Bhushan has also shown us some other decisions which have taken the same view.

9. In this connection we would like to say that a judgment of a court of law should not be read as a Euclid's theorem nor as a provision in a statute, vide Bharat Petroleum Corporation vs. N.R. Vairamani, AIR 2004 S.C. 4778 (vide paragraphs 9 to 12), Dr. Rajbir Singh Dalal vs. Chaudhary Devi Lal University J.T. 2008 (8) S.C. 621, etc.

10. Section 386 (a) Cr.P.C. states that the appellate court may :

> "in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law".

11. A perusal of Section 386(a) Cr.P.C. shows that no restrictions have been placed by the Statute on the power of the appellate court to reverse an order of acquittal and convict the accused.

12. As observed by this court in Vemareddy Kumaraswamyreddy & Anr. vs. State of A.P. JT 2006(2) 361 (vide para 17) where the words were clear, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions.

13. In Union of India & Anr. vs. Deoki Nandan Aggarwal 1992 Supp (1) SCC 323 (vide para 14), it was observed :

> "It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there".

14. Since the language of Section 386(a) Cr.P.C. is clear and it places no restrictions on the power of the appellate court to convert an order of acquittal into a conviction, we cannot place restrictions on this power for that would really be amending the statute.

15. No doubt, it has been held in certain decisions of this court that there should be good and compelling reasons for the appellate court to convert an order of acquittal into a conviction, but these decisions have been carefully considered in the three-Judge Bench of this court in Sanwat Singh & Ors. vs. State of Rajasthan AIR 1961 SC 715 (vide para 9) wherein it was observed:

> "The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's cse 61 Ind App 398: [(AIR 1934 PC 227 (2)] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified".

16. In Salim Zia vs. State of Uttar Pradesh AIR 1979 SC 391 (vide para

> 12) it was observed by this Court:
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> "1. The High Court in an appeal against an order of acquittal under S.417 of the Code of Criminal Procedure, 1898 has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence, the order of acquittal should be reversed.
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> 2. The different phraseology used in the judgments of this Court such as –
>
> (a) `substantial and compelling reasons';
>
> (b) `good and sufficiently cogent reasons';
>
> (cc) `strong reasons', are not intended to curtail or place any limitation on the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion as stated above but in doing so it should give proper consideration to such matters as

(i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (ii) the right of the accused to the benefit of any real and reasonable doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."

17. Moreover, in the present case, it has been observed by the High Court in the impugned judgment that :-

"We have already demonstrated that the view taken by the learned Sessions Judge is not a possible view on the state of evidence. On the contrary, we have amply demonstrated above that the learned Sessions Judge excluded from consideration the evidence which was there. He fell into grievous error in appreciation of the evidence and misdirected himself; entertained a doubt for which there was no foundation and expressed his helplessness because the witnesses particularly the seizure witnesses turned hostile and refused to tell the court the truth. Attempt on his part was lacking to marshal the evidence; to remove the grain from chaff; to take the help of that part of the evidence of the hostile witnesses which support the case of the prosecution. He commented upon insincerity of the investigating agency but did not put to use the material which was before him. We feel no hesitation in holding that the learned Sessions Judge was wrong and therefore we have reappraised the evidence and come to the conclusion indicated above."

18. Hence, we do not agree with submission advanced by Mr. Shanti Bhushan.

19. Mr. Shanti Bhushan then submitted that the statement under Section 164 Code of Criminal Procedure was wrongly taken into consideration.

20. In the present case, the person who made the statement under Section 164 Cr.P.C. also gave evidence before the trial court and was declared hostile. He was confronted with his statement under Section 164 Cr.P.C. only to show that his turning hostile was not bona fide. However, even if we ignore the statement under Section 164 Cr.P.C., we see no reason to disbelieve the police witnesses.

21. There is no principle of law that a statement made in court by a police personnel has to be disbelieved. It may or may not be believed. It is not that all policemen will tell lies. There are good and bad people in all walks of life. There are good and bad police men as well. We cannot assume that every statement of a policeman is necessarily false.

22. In the present case, there is nothing to show that the policemen were making false statements in the court. They had no enmity with the accused.

23. Mr. Shanti Bhushan submitted that it is possible that these policemen demanded some money from the accused which they did not give and hence they were falsely implicated.

24. This case was not set up by the accused at any point of time and no such suggestion was even made in the cross-examination.

25. It is next submitted by Mr. Shanti Bhushan that evidence adverse to the appellants was not put to them in their examination under Section 313 Cr.P.C.

26. This aspect has been considered by the High Court which has held that no prejudice has been caused to the accused on this account.

27. It is on record that fake currency notes are in wide circulation in Andaman and Nicobar Islands. The banks have stated that common people have often complained in this connection vide Exts. 21, 22 and 11. Witnesses have also been examined on that account.

28. There is sufficient evidence on record (discussed in detail by the High Court) to prove the guilt of the accused beyond reasonable doubt.

29. Making or circulating fake currency is a serious offence. We see no reason to take a lenient view in the matter.

30. However, in the facts and circumstances of the case, while upholding the conviction of the appellants we reduce the period of sentence to five years rigorous imprisonment.

31. By order dated 18.03.2005 this Court has granted bail to the appellants.

32. If the appellants have not served out sentence of five years rigorous imprisonment as awarded by us, then their bail bonds shall stand cancelled and they shall be taken into custody forthwith to complete the sentence of five years rigorous imprisonment as awarded by us. Any period of incarceration in jail which the appellants have already undergone shall be deducted from the aforesaid period of five years rigorous imprisonment.

33. If the appellants have already served out sentence of five years rigorous imprisonment, then their bail bonds shall stand discharged accordingly.

34. For the reasons stated above, the appeal is disposed of accordingly.