SUPREME COURT OF INDIA

Venkatesan

Vs.

Rani

Crl.A.No.462 of 2008

(P.Sathasivam CJI., Ranjan Gogoi JJ.)

19.08.2013

JUDGMENT

RANJAN GOGOI, J.

1. What are the true contours of the jurisdiction vested in the High Courts under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter for short 'the Code') while examining an order of acquittal passed by the Trial Court? Whether the principles governing the exercise of the aforesaid jurisdiction have been rightly determined by the High Court in the present case and, therefore, had been correctly applied to reverse the order of acquittal of the accused- appellant passed by the learned Trial Court and to remit the matter to the said Court for a de novo disposal, is the further question that arises in the present appeal filed against an order dated 27.04.2006 passed by the High Court of Judicature at Madras.

2. The appellant is the husband of one Anusuya who, according to the prosecution, was put to death by the appellant on 19.4.2000 by pouring kerosene on her and thereafter setting her on fire. The marriage between the appellant and the deceased took place sometime in the year 1998 on the own accord of the parties. According to the prosecution, after the marriage, the appellant raised demands for various dowry items including cash. As such demands were only partially met by the parents of the deceased the appellant, according to the prosecution, harassed and ill treated the deceased and eventually caused her death on 19.4.2000. On the basis of the aforesaid facts alleged by the prosecution, the accused- appellant was put to trial for commission of offences under Sections 498A, 304-B and 302 of the Indian Penal Code. The Trial Court, on the grounds and reasons assigned, which will be

duly noticed, acquitted the accused- appellant. Aggrieved, the mother of the deceased invoked the revisional jurisdiction of the High Court to challenge the acquittal. By the impugned judgment and order dated 27.04.2006 the High Court held that the order of acquittal passed by the learned Trial Court suffered from certain inherent flaws which justified a reversal of the same and for remission of the matter for a fresh decision in accordance with law and the directions set out in the said order of the High Court.

3. We have heard Mr. K.K. Mani, learned counsel for the appellant and Mr. M. Yogesh Kanna, learned counsel appearing for the State.

4. Learned counsel for the appellant has submitted that the acquittal of the accused-appellant made by the learned Trial Court is based on a full and complete consideration of the evidence and materials on record. It is submitted that cogent reasons have been assigned by the learned Trial Court in support of the acquittal ordered by it. It is also contended that the High Court has erroneously taken the view that the order of the learned Trial Court lacks clarity on the vital aspects of the case as outlined in the order of the High Court dated 27.04.2006. All the issues highlighted by the High Court in its order dated 27.04.2006 have, in fact, been dealt with by the learned Trial Court. The reversal of the acquittal by the High Court is, therefore, contended to be wholly unjustified.

5. Opposing the contentions advanced on behalf of the accused-appellant, learned counsel for the State has urged that no acceptable basis for the impugned acquittal is evident in the order of the learned Trial Court. Learned counsel has supported the findings recorded by the High Court by contending that there is lack of clarity and absence of categorical findings on vital issues of the case which makes it imperative that the impugned order of remand made by the High Court by its order dated 27.04.2006 be maintained. No interference with the same would be justified.

6. To answer the questions that have arisen in the present case, as noticed at the very outset, the extent and ambit of the revisional jurisdiction of the High Court, particularly in the context of exercise thereof in respect of a judgment of acquittal, may be briefly noticed. The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in Pakalapati Narayana Gajapathi Raju vs. Bonapalli Peda Appadu[1], Akalu Ahir v. Ramdeo Ram[2], Mahendra Pratap Singh v. Sarju Singh[3], K. Chinnaswamy Reddy v. State of A.P.[4] and Logendranath Jha v. Polai Lal Biswas[5] may be referred to. Specifically and for the purpose of a

detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of Akalu Ahir v. Ramdeo Ram (supra) may be usefully extracted below.

> "8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:
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> (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
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> (ii) Where the trial court has wrongly shut out evidence which the prosecution wished to produce;
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> (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
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> (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
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> (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.
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> These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal."
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> "10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."
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> The observations in para 9 in the case of Vimal Singh v. Khuman Singh[6] would also be apt for recapitulation and, therefore, are being extracted below.

> "9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.

8. In the present case, the prosecution had examined as many as 12 witnesses. PW-1 Thiru Srinivasan is the father of the deceased whereas PW- 2 Thirumathi Rani (petitioner before the High Court) is the mother. Both the aforesaid witnesses had stated in their depositions that there was no demand for dowry by the accused and that the accused and deceased had married on their own volition. The two witnesses had further stated that whatever was given by them as dowry items was

voluntary. Insofar as demand for cash (allegedly made on three different occasions) is concerned, PW-1 and PW-2 could not account for the source from which the aforesaid payments were allegedly made. PW-1 Thiru Srinivasan and PW-2 Thirumathi Rani are admittedly not eye witnesses to the occurrence because they had come to the house where the accused and the deceased had lived only after noticing smoke from the said house. PW-3 Thiru Vincent (brother-in-law of the deceased) and PW-4 Thirumathi Mary (sister of the deceased) are also not eye witnesses to the occurrence. It must also be taken note of that all the aforesaid witnesses, i.e., PW-1 to PW-4 had deposed that when they had reached the house of the deceased they saw her in flames and the deceased was unable to speak as there was a piece of cloth in her mouth. The aforesaid part of the prosecution story, however, does not find support from the testimony of PW-11 Dr. Santhakumar who had conducted the postmortem of the deceased inasmuch as in cross-examination PW-11 had clearly stated that he did not find any blisters in the mouth of the deceased. PW-5 Thiru Balaraman did not sign the mahazar (Exh. P-10) showing the seizure of a burnt kerosene can, a partially burnt saree and a matchbox allegedly recovered from the place of occurrence. PW-6 Dr. Prakash had deposed that the deceased was brought to his clinic at about 7.30 a.m. on 19.4.2000 but considering the burn injuries suffered he had referred the case to the government hospital. PW-7 Dr. Vijayalakshmi had deposed that though a magistrate had come to the hospital to record the dying declaration, the deceased was unconscious and not in a position to make any statement. PW-10 Dr. N. Usha who was working in the casualty section of the Chennai Kilpauk Government Hospital had deposed that when questioned, the deceased Anusuya had reported to her that she got injured due to bursting of the stove while she was cooking. PW-11 Dr. Santhakumar had conducted the postmortem and the most significant part of his evidence has already been noticed hereinabove, namely, that he did not find any blisters in the mouth of the deceased. PW-12 Thiru Subramaniyam is the Investigating Officer of the case who had, inter alia, deposed that the investigation did not disclose that the accused had harassed or ill- treated the deceased Anusuya prior to her death.

9. In view of the specific case of the prosecution that the accused had poured kerosene on the deceased and thereafter set her on fire and had gagged her mouth with a piece of cloth to prevent her from screaming, which version has been unfolded by PWs 1, 2, 3 and 4, it is difficult to see as to how the charge against the accused-appellant under Section 304-B of the IPC could be sustained. The evidence of PW-12 Thiru Subramaniyam, Investigating Officer of the case, that the investigation did not reveal any harassment and ill-treatment of the deceased by the accused prior to her death makes the prosecution case against the accused under the aforesaid Section as well as under Section 498A of the IPC wholly

unsustainable. Insofar as the offence under Section 302 of the IPC is concerned, there is no eye witness to the occurrence. PWs-1 to PW-4 though examined as eye witnesses cannot be understood to have actually witnessed any of the events that would be crucial for the determination of the liability of the accused-appellant. By the time they had reached the place of occurrence the deceased was already engulfed in flames. The fact that PW-6 had stated that the deceased had come to his clinic unaccompanied by PWs 1, 2, 3 and 4 who in their depositions have claimed otherwise is too significant a contradiction to be ignored. There is a further contradiction in the evidence of PWs 1 and 2 on the one hand and PW-12 on the other. According to PW-1 and PW-2 they had made a complaint to the police station immediately after the occurrence and thereafter went to the hospital whereas PW-12 had deposed that the complaint was lodged after PW-1 and PW-2 had returned from the hospital. The evidence of PW-10 Dr. N. Usha that the deceased herself had stated that she was injured due to bursting of the stove while she was cooking casts a further doubt on the prosecution story. The absence of the proof of seizure of the material objects, made by the Mahazar (Exh.P-10) and the contradiction between the oral testimony and the contents of Exh. P-9 with regard to the actual place of occurrence, in our considered view, further demolishes the credibility of the prosecution version. In the above facts the view taken by the Trial Court in acquitting the accused cannot be held to be a view impossible of being reached. Keeping in mind the extremely limited keyhole available for a scrutiny of the foundation of the order of acquittal passed by the learned Trial Court the reversal ordered by the High Court does not commend to us. We have also noticed that the High Court had found the order of the learned Trial Court to be vitiated by lack of clarity on several counts as specified in its order dated 27.04.2006. The said deficiencies, when juxtaposed against the reasoning of the learned Trial Court, appear to have been adequately answered by the learned Trial Court in the light of the evidence and the material brought before it.

10. For the aforesaid reasons we find it difficult to accept the conclusion reached by the High Court in the present matter. We, therefore, allow this appeal, set aside the order of the High Court dated 27.04.2006 and restore the order of acquittal dated 16.07.2003 passed by the learned Trial Court.

[1] (1975) 4 SCC 477
[2] (1973) 2 SCC 583
[3] AIR 1968 SC 707
[4] AIR1962 SC 1788
[5] AIR 1951 SC 316
[6] (1998) 7 SCC 223