SUPREME COURT OF INDIA

Basappa

Vs.

State of Karnataka

Crl.A.No.512 of 2014

(Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

27.02.2014

JUDGMENT

KURIAN, J.:

1. Leave granted.

2. Appellant is the accused in C.C. No. 707 of 2004 on the file of the Judicial Magistrate First Class at Hubli, Karnataka. He was charge- sheeted under Sections 279 and 304A of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') and Sections 187 and 196 of The Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act'). The accident occurred on 11.02.2004 at 02.30 P.M. when the appellant was allegedly driving a tractor with a trailer. The vehicle hit against a scooty and resultantly a two year old child travelling in the scooty fell down. The tractor ran over the child and she succumbed to the injury. PWs 1 to 11 were examined and seven documents were marked on the prosecution side. Two documents were marked on the side of the accused. The learned Magistrate, after elaborately discussing the evidence, came to the following conclusion at paragraph-22 of the Judgment dated 25.05.2005:

> "22. Perused the evidence of PW-1 to 11 and the case file after perusal of the same, it creates doubt whether this accused was the driver at the relevant point of time or not, so also to say that the accident was happened due to the rash and negligent act of this accused, as there is no any cogent, impeachable and clinching evidence with respect to the ingredients of alleged offences.

Further in view of these types of discrepancies of the prosecution witnesses case is not beyond doubt. Had the prosecution able to explain clearly the above said doubtful circumstances, then certainly this court could have believed the evidence of the material witnesses but now the doubtful evidence and circumstances are not cleared. Hence I am not accepting the stand taken by the learned APP. Therefore in view of the so many discrepancies in the versions deposed before the court and one given before the police, it creates doubt whether this accused was involved in the commission of offences or not. Therefore, I feel accused is entitled for acquittal."

(Emphasis supplied)

3. We are informed that the accused was on bail during the trial but remained in custody for five months and five days during investigation.

4. The State filed appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'). The High Court re-appreciated the whole evidence and came to the conclusion that the appellant was liable to be convicted under Sections 279 and 304A of IPC. Further, it was held that "the prosecution has failed to prove the offences under Section 187 and 197 of the MV Act". Accordingly, the appeal was allowed and the appellant was sentenced to undergo simple imprisonment for a period of six months with fine of Rs.2,000/- under Section 304A and for three months with fine of Rs.500/- under Section 279 of IPC. A default sentence was also given. The sentences were to run concurrently. Thus aggrieved, the appellant is before this Court.

5. Section 197 of the MV Act deals with unauthorized driving of a motor vehicle. Section 187 of the MV Act reads as follows: "187. Punishment for offences relating to accident.-Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 132(1)(c) of the MV Act was omitted w.e.f. 14.11.1994. Section 133 deals with duty of the driver, owner or conductor to furnish information on

demand. There is no such case for the prosecution. Therefore, the alleged offence could only be non-compliance of Section 134, which reads as under:

"134. Duty of driver in case of accident and injury to a person.- When any person is injured or any property of a 3rd party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person-in-charge of the vehicle shall-

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure the medical attention as required under clause (a), at the nearest police station as soon as possible and in any case within twenty-four hours of the occurrence.

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-

(i) insurance policy number and period of its validity; (ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.-For the purposes of this section, the expression "driver" includes the owner of the vehicle." (Emphasis supplied)

6. In the instant case, the main defence of the appellant before the trial court was that there was no evidence to hold that he was the driver of the tractor at the

relevant time. According to the prosecution, there is no direct evidence. Even the injured witness PW- 5, who was driving the scooty, has not identified the driver. The High Court, on the only evidence that the appellant was scolded by people in the hospital, has come to the conclusion that the appellant was the driver of the tractor. There is also no direct evidence with regard to the ingredients of Sections 279 and 304A of IPC. The High Court, on re- appreciation of the evidence, has taken another view so as to convict the accused.

7. There is no finding in the impugned Judgment by the High Court that the conclusions drawn by the trial court are perverse so as to mean that the same is against the weight of evidence. The important issue, thus, for our consideration is - whether the High Court was justified in re-appreciating the evidence and reversing the order of acquittal merely because of a possibility of another view.

8. The High Court in an appeal under Section 378 of Cr.PC is entitled to reappraise the evidence and conclusions drawn by the trial court, but the same is permissible only if the judgment of the trial court is perverse, as held by this Court in Gamini Bala Koteswara Rao and Others v. State of Andhra Pradesh through Secretary[1]. To quote: "14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

(Emphasis supplied)

9. It is also not the case of the prosecution that the judgment of the trial court is based on no material or that it suffered from any legal infirmity in the sense that there was non-consideration or misappreciation of the evidence on record. Only in such circumstances, reversal of the acquittal by the High Court would be justified. In K. Prakashan v. P.K. Surenderan[2], it has also been affirmed by this Court that the appellate court should not reverse the acquittal merely because another view is possible on the evidence. In T. Subramanian v. State of Tamil Nadu[3], it has further been held by this Court that if two views are reasonably possible on the

very same evidence, it cannot be said that the prosecution has proved the case beyond reasonable doubt.

10. In Bhim Singh v. State of Haryana[4], it has been clarified that interference by the appellate court against an order of acquittal would be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take.

11. In Kallu alias Masih and others v. State of Madhya Pradesh[5], it has been held by this Court that if the view taken by the trial court is a plausible view, the High Court will not be justified in reversing it merely because a different view is possible. To quote: "8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

(Emphasis supplied)

12. In Ramesh Babulal Doshi v. State of Gujarat[6], this Court has taken the view that while considering the appeal against acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable and if the court answers the above question in negative, the acquittal cannot be disturbed. To quote:

> "7. … the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the

appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions. …"

(Emphasis supplied)

13. In Ganpat v. State of Haryana and others[7], at paragraph-15, some of the above principles have been restated. To quote: "15. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. …"

14. The exercise of power under Section 378 of Cr.PC by the court is to prevent failure of justice or miscarriage of justice. There is miscarriage of justice if an innocent person is convicted; but there is failure of justice if the guilty is let scot-free. As cautioned by this Court in State of Punjab v. Karnail Singh[8]: "6. 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 reappreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. …"

(Emphasis supplied)

15. In this context, yet another caution struck by this Court in Chandrappa and others v. State of Karnataka[9] would also be relevant.

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge: (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of

his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(Emphasis supplied)

16. The High Court in the impugned Judgment does not seem to have taken a view that the judgment of the trial court acquitting the accused is based on no material or it is perverse or the view by the trial court is wholly unreasonable or it is not a plausible view or there is non- consideration of any evidence or there is palpable misreading of evidence, etc. It is not the stand of the High Court that there had been some miscarriage of justice in the way the trial court has appreciated the evidence. On the contrary, it is the only stand of the High Court that on the available evidence, another view is also reasonably possible in the sense that the appellant-accused could have been convicted. In such circumstances, the High Court was not justified in reversing the acquittal. The High Court itself having acquitted the appellant under Section 187 of the MV Act on the ground of no evidence, whether it was possible, to hold him guilty under Sections 279 and 304A of IPC, is itself a seriously doubtful question. However, it is not necessary to pronounce on that issue since the appellant is liable to succeed otherwise.

17. The appeal is allowed. The impugned Judgment is set aside and that of the trial court is restored.

[1] (2009) 10 SCC 636
[2] (2008) 1 SCC 258
[3] (2006) 1 SCC 401
[4] (2002) 10 SCC 461
[5] (2006) 10 SCC 313
[6] (1996) 9 SCC 225
[7] (2010) 12 SCC 59
[8] (2003) 11 SCC 271
[9] (2007) 4 SCC 415