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V.K. RATHEESH
v.
STATE OF KERALA

JULY 6, 2006

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[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Code of Criminal Procedure, 1973 :

C

S.378—Appeal against acquittal—Trial court found discrepancies in prosecution case and ordered acquittal—High Court set aside the order of acquittal holding that discrepancies pointed out by trial court were trivial—Held: The High Court's judgment is indefensible as it did not indicate any reason for discarding the conclusion of trial court.

D

S.378—Appeal against acquittal—Re-appreciation of evidence by appellate court—Scope of—Discussed.

S.378—Two views possible on the evidence adduced—One pointing to the guilt of the accused and the other to his innocence—Held: View favourable to accused to be adopted—Administration of criminal justice.

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Appellant was tried in a murder case. Trial court found discrepancies in the prosecution case and ordered acquittal. On appeal, High Court held that the order of acquittal was not proper as the discrepancies pointed out by trial Court were trivial and immaterial.

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In appeal to this Court, appellant contended that High Court has not even indicated any reason as to why it discarded the conclusion of trial Court.

Allowing the appeal, the Court,

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HELD: 1.1. 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

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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 re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [318-C-E]

Bhagwan Singh and Ors. v. State of Madhya Pradesh, (2002) 2 Supreme 567, relied on.

1.2. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. [318-E-F]

Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra, AIR (1973) SC 2622; *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 4 Supreme 167; *Jaswant Singh v. State of Haryana*, (2000) 3 Supreme 320; *Raj Kishore Jha v. State of Bihar and Ors.*, (2003) 7 Supreme 152; *State of Punjab v. Karnail Singh*, (2003) 5 Supreme 508 and *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17, relied on.

2. By making observations in an abstract and general manner High Court concluded that the discrepancies were immaterial, without even discussing the factors which weighed with the trial court to hold that the prosecution evidence was not cogent and credible. Therefore, the order of acquittal should not have been set aside in the manner as done. [318-H; 319-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1375 of 1999.

From the Judgment and Order dated 6.1.1998 of the Kerala High Court at Ernakulam in Criminal Appeal No. 485/1996.

V.J. Francis for the Appellant.

Ramesh Babu M.R. for the Respondents.

A The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Appellant calls in question legality of the judgment rendered by a Division Bench of the Kerala High Court upsetting the order of acquittal passed by learned Sessions Judge Kasaragod, Kerala. Appellant faced trial for alleged commission of offence punishable under Section 302 Indian Penal Code, 1860 (in short the 'IPC'). According to the prosecution on 23.12.1994 at about 11.15 a.m. he stabbed one Narayanan (hereinafter referred to as the 'deceased') to death at the private bus stand. The High Court by the impugned judgment held that the order of acquittal passed by the trial court was not proper and the appellant was convicted for the offence punishable under Section 304 Part I IPC and sentenced to undergo seven years rigorous imprisonment. The prosecution version as unfolded during trial was as follows :

On 23.12.1994 at 11.15 a.m. the accused stabbed deceased to death at the private bus stand, Kanhangad. On Ext.P1 complaint of H.R. Ashokan (PW1) and V.K. Raghavan (PW 9), Sub Inspector of Police, Kanhangad Police Station, registered Ext. P.9 F.I.R. in Crime No. 648 of 1994. The accused had been taken to the police station by PW1 and another, from whom MO1 dagger and MO2 sheath were seized under Ext.P2 mahazar, which was attested by K. Kanna (PW4), who was allegedly an eye witness. PW 9 also visited the scene of incident where PW4 gave the details. P. Habib Rahiman (PW10), Circle inspector took over the investigation at about 2.45 p.m. on the same day. He held inquest over the dead body from the mortuary of the District Hospital, Kanhangad and gave his findings in Ext.P.11, inquest report, under which MOs.3 and 4, clothes worn by the deceased, were seized. Dr. C.V. Jayarajan (PW8), Asst. Surgeon, District Hospital, Kanhangad, conducted the postmortem and he set out his findings in Ext.P8 postmortem certificate. The accused was arrested, produced before the Magistrate and he was remanded. Witnesses were questioned, statements recorded and final report was filed against him for the aforesaid offence. He pleaded not guilty to the charge, whereupon prosecution examined ten witnesses, marked sixteen exhibits and MOs. 1 to 4. When questioned under Sections 313 of the Criminal Procedure Code, 1973 (in short the 'Cr.PC') he denied the incident as alleged, gave his own version and said that the deceased Tharingil Sunny (PW 2) and others never let him live in peace, that on 19.8.1994 they trespassed into his house, assaulted him, his wife and children. He was hospitalized for treatment of the injuries sustained. On his complaint a case was also registered against them. He had to leave the place and take up residence in another place. On

the ill-fated day he had come to Kanhangad for purchasing some articles for his pilgrimage to Sabarimala and medicines for his child. At the bus stand the seven accused persons, against whom he had filed complaint, along with Aravindakshan (PW3) and one Pappan, surrounded and attacked him. The deceased held him and he was assaulted by one Kutty. He tried to wriggle out to escape, when PW2 tried to stab him the blow accidentally fell upon the deceased. He denied that he inflicted injuries upon him as alleged, and maintained his innocence. He further stated that the local police was inimical towards him following a complaint filed by him against the then C.I. and three police constables. The investigation was one sided and biased. Exts. D1 to 3 were marked, but no witness was examined in defence.

The trial court after consideration of the evidence brought on record came to hold that so far as the eye witnesses PWs 2 and 3 were concerned, there was great deal of discrepancy in their version about the incident. PW.4 who was stated to be an eye witness did not support the prosecution case. Therefore, it was held that even if the discrepant part of his evidence is eschewed then also his evidence was not credible and did not inspire confidence. Similarly the evidence of PW1 did not inspire confidence. The trial court observed that on a conjoint reading of the evidence of PWs 2 and 3 it is clear that their version improbabilised the scenario described by the prosecution. The conduct of PW3 was also indicated to be highly suspicious. It was further noted that a friend of PW3, i.e. Pappan (father of Sasi and Saji) who was also stated to be standing by his side also resorted to the same unusual conduct i.e. leaving the deceased who had allegedly received knife blows even without caring to ascertain as to what had happened. Though there cannot be any universal standard as to how a witness would react, but in this case even after the accused had left the place of occurrence they did not care to ascertain as to what had happened to the deceased. Though this itself is not a determinative factor, the trial Court has rightly considered this to be a suspicious factor. The trial Court also referred to various other circumstances which clearly ruled out the presence of PWs 2 and 3. Highlighting the deficiencies in the prosecution evidence the trial Court directed acquittal. In the appeal filed by the State, the High Court came to hold that the discrepancies as pointed out by the trial Court were trivial and so called discrepancies were immaterial and insufficient to disbelieve them. Unfortunately the High Court did not analyse the evidence and in a very cryptic manner discarded the conclusions of the trial Court.

A Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. The High Court has not even indicated any reason as to why it discarded the conclusions of the trial Court and it did not even refer to the conclusions arrived at by the trial court to direct acquittal.

B In response, learned counsel for the State submitted that the High Court has taken an overall view of the matter. It is well settled that minor discrepancies in evidence cannot be a ground to discard the prosecution version.

C 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 D 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 re-appreciate the evidence where E the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors. v. State of Madhya Pradesh*, (2002) 2 Supreme 567]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and F relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra*, AIR (1973) SC 2622, *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 4 Supreme 167, *Jaswant Singh v. State of Haryana*, (2000) 3 Supreme 320, *Raj Kishore Jha v. State of Bihar and Ors.*, (2003) 7 Supreme 152, *State of Punjab v. Karnail Singh*, (2003) 5 Supreme 508 and *State of Punjab v. Pohla Singh and Anr.*, (2003) 7 Supreme 17. G

H Judged on the touchstone of the principles indicated above, the High Court's judgment is clearly indefensible. By making observations in an abstract and general manner it concluded that the discrepancies were immaterial,

without even discussing the factors which weighed with the trial court to hold that the prosecution evidence was not cogent and credible. Therefore, the order of acquittal should not have been set aside in the manner as done. A

The appeal is allowed. The judgment of the High Court is set aside. The appellant is on bail, bail bonds shall stand cancelled. B

D.G.

Appeal allowed.