[2023] 14 S.C.R. 47 : 2023 INSC 858

# H. D. SUNDARA & ORS.
# v.
# STATE OF KARNATAKA

(Criminal Appeal No. 247 of 2011)

SEPTEMBER 26, 2023

**[ABHAY S. OKA* AND SANJAY KAROL, JJ.]**

**Issue for consideration:**

The question which arose for consideration was whether the High Court was justified in setting aside the order of acquittal passed by the trial court.

**Code of Criminal Procedure, 1973 – s. 378 – Appeal against acquittal – Matter pertaining to dispute over property between accused and the family of complainant – Accused assaulted the complainant and his family – Acquittal of all the accused by the trial court, however conviction for the offences punishable u/s. 304 Part I and s. 324/149 IPC by the High Court – Correctness:**

**Held:** No findings recorded by the High Court after re-appreciating the evidence, no discussion about the testimony of eyewitnesses and no finding to indicate that the High Court considered the question whether the view taken by the trial court was a possible view – High Court held the accused guilty without recording any reasons and without recording any finding regarding the role played by the accused individually and collectively – Nothing stated as to who were the authors of the injuries sustained by deceased and injured witnesses – No finding as to how s.149 IPC attracted – Thus, the High Court, as an appellate court, while hearing the appeal against acquittal, has not done its duty – However, matter cannot be remanded back since the offence took place about two decades back – Findings of the trial court and evidence of eyewitnesses have been perused – Trial court was unable to accept the testimony of the witnesses after in-depth scrutiny –Conclusions recorded by the trial court were possible conclusions – Thus, the impugned judgment set aside – Penal Code, 1860 – ss. 304 Part I and 324/149 . [Paras 11-15]

* Author

**Code of Criminal Procedure, 1973 – s. 378 – Appeal against acquittal – Exercise of appellate jurisdiction while dealing with an appeal against acquittal u/s. 378 – General principles – Stated.[Paras 7 and 8]**

**Appeal against acquittal – Appreciation of evidence:**

**Held:** In many cases, the trial judge passing the order of acquittal has an occasion to record the oral testimony of all material witnesses – While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the trial judge – Demeanour of a witness frequently furnishes a clue to the weight of his testimony – It has to be borne in mind while dealing with an appeal against acquittal. [Para 9]

**Law of Evidence by Sarkar – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.247 of 2011.

From the Judgment and Order dated 21.09.2010 of the High Court of Karnataka at Bangalore in CRLA No.1807 of 2004.

S. Nagamuthu, Sr. Adv., C. B. Gururaj, Shreyas Kaushal, Sudhakaran, Prakash Ranjan Nayak, Animesh Dubey, Advs. for the Appellants.

Nishanth Patil, AAG, V. N. Raghupathy, Mahendra Pal Gupta, Md. Apzal Ansari, Ayush P. Shah, Vignesh Adithiya S., Shubhranshu Padhi, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY S. OKA, J.**

**1.** This is an appeal preferred by the accused challenging the impugned judgment of the High Court of Karnataka at Bangalore by which the order of their acquittal, passed by the Sessions Court, was overturned. The appellants were convicted for the offences punishable under Part I of Section 304 and Section 324 read with Section 149 of the Indian Penal Code, 1860 (for short, 'IPC'). They were sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs. 5,000/-.

**FACTUAL ASPECTS**

**2.** We may refer to a few factual aspects of the case. PW-1 (Jagadeesha) is the complainant. The complainant's family had property in the village Hebbale. The appellant no.1 - accused no.1-Mariyappa is PW-1's uncle, with whom PW-1's family was having a dispute over water. Manjunatha and Shivarama are the brothers of PW-1, who are the victims of the offence. On 29th August 1999, both entered the village Hebbale to engage labourers for plucking ginger. PW-1 followed them. On the road to the village, he found that PW-2 (Sundara) and PW-6 (Ravi) were sitting on a culvert. When he was talking to them, they heard the hue and cry from the village, and therefore, they rushed to the village and found that the appellants, who are relatives of PW-1, were holding various weapons like sticks, kathi and club and they were assaulting Manjunatha and Shivarama. It is alleged that accused no.1-Mariyappa assaulted Shivarama by using a club. Accused no.8-Puttappa also assaulted Manjunatha by using a club. Accused no.7-Rajappa used a stick as a weapon of assault for assaulting Shivarama. Accused no.5-Somashekara stabbed Shivarama by using a knife. Accused no.6-Krishnappa assaulted Manjunatha on his head by using a club. Further, an assault was made by accused no.3-Chandrahasa by putting a stone on the chest of Shivarama. Even accused no.4-Rajakumara crushed the leg of Shivarama with a stone. Though PW-1, PW-2 and PW-6 tried to rescue the deceased, they could not save the deceased. Accused no.3-Chandrahasa caught hold of PW-2 (Sundara) and assaulted him by using a sickle (kathi). Accused no. 1 assaulted PW-1 with a club. Accused no.1 also assaulted PW-1's mother on the right hand.

**3.** The Trial Court acquitted all the accused. However, by the impugned judgment, the High Court has interfered and convicted the appellants as narrated above.

**4.** Accused no.6 died during the pendency of the trial. The accused no.1 - appellant no.1 and accused no.7 – appellant no.7 died during the pendency of this appeal. Counsel for the appellants has filed I.A. No. 71417 of 2023 – application for permission to file additional documents. Annexure A-1 and A-2 are copies of the

Death Certificates of appellant no.1 and appellant no.7 respectively. The said application is allowed and the Cause Title stands modified accordingly. Formal amendment to the Cause Title be carried out accordingly. The appeal stands abated as regards these two appellants. Accused no.2 - appellant no.2, accused no.3 - appellant no.3, accused no.4 - appellant no.4 and accused no.6 - appellant no.6 have so far undergone incarceration for a period of about one year and two months. Accused no.5 – appellant no.5-Somashekar has been incarcerated for five years and three months.

**SUBMISSIONS**

**5.** Mr. S. Nagamuthu, the learned senior counsel appearing for the appellants submitted that the High Court did not apply its mind to the evidence on record. Moreover, the High Court has not recorded any finding that the only conclusion possible was that the guilt of the accused has been established beyond a reasonable doubt. Without recording any such finding, the High Court has overturned the order of acquittal. Moreover, no specific finding is recorded by the High Court that every accused or any particular accused caused the death of the two deceased persons.He pointed out that there is no finding about the applicability of Section 149 of IPC. He would, therefore, submit that the impugned judgment cannot be sustained. Moreover, there is a delay in recording FIR. The learned senior counsel also pointed out that though a grievous injury was suffered by accused no.1 - appellant no.1, the prosecution offered no explanation about the said injury. He submitted that in view of the said injury, in fact, a First Information Report (for short, 'FIR') ought to have been registered, and an investigation ought to have been carried out.

**6.** Mr. Nishanth Patil, the Additional Advocate General for the State of Karnataka, submitted that the delay in registering the FIR may be of a very few hours, which has been explained. Moreover, the evidence of eyewitnesses PW-1, PW-2, PW-3, PW-6 and PW-7 proves the appellants' guilt beyond a reasonable doubt. In fact, that would have been the only conclusion which could be drawn on the basis of evidence on record. He submitted that if the impugned judgment is not satisfactory, this Court, after re-appreciating the evidence of

the prosecution witnesses and other material on record, can satisfy its conscience about the correctness of the ultimate conclusion of the High Court.

**CONSIDERATION OF SUBMISSIONS**

**7.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. can be summarised as follows: -

**(a)** The acquittal of the accused further strengthens the presumption of innocence;

**(b)** The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

**(c)** The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;

**(d)** If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

**(e)** The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

**8.** Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The Appellate Court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against

acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the ground that another view could have been taken.

**9.** There is one more aspect of the matter. In many cases, the learned Trial Judge who eventually passes the order of acquittal has an occasion to record the oral testimony of all material witnesses. Thus, in such cases, the Trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour. While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the learned Trial Judge. As observed in the commentary by Sarkar on the Law of Evidence, the demeanour of a witness frequently furnishes a clue to the weight of his testimony. This aspect has to be borne in mind while dealing with an appeal against acquittal.

**10.** Coming back to the facts of the case, after having carefully perused the impugned judgment, we find that there is no discussion about the testimony of eyewitnesses for deciding whether their testimony could be believed. In fact, there are no findings recorded by the High Court after re-appreciating the evidence. There is not even a finding to indicate that the High Court considered the question whether the view taken by the Trial Court was a possible view. Without recording any reasons and without recording any finding regarding the role played by the appellants individually and collectively, the High Court

has jumped to the conclusion that the guilt of the accused has been established. The judgment does not throw any light on the question who were the authors of the injuries sustained by the deceased and the injured witnesses. There is no finding as to how Section 149 of IPC gets attracted.

**11.** Thus, the only conclusion which can be drawn is that the High Court, as an Appellate Court, while hearing the appeal against acquittal, has not done its duty.

**12.** However, we cannot take recourse to the order of remand since the subject offence has taken place about twenty-three and half years back. We have perused the evidence of the eyewitnesses, namely PW-1, PW-2, PW-3, PW-6 and PW-7, and the Trial Court findings. We find that the Trial Court has made a very detailed analysis of the depositions of the witnesses. The incident was of 9:00 p.m. The Trial Court noted that at 11:40 p.m. on the date of the incident, PW-1 was examined by a doctor in a hospital. FIR was not lodged immediately thereafter. It was registered at 1:30 a.m. on the next date. The Trial Court noted that the appellant no.1's thumb was disfigured. For this grievous injury suffered by the appellant no.1 - accused no.1, there was no explanation by the prosecution.

**13.** The Trial Court found that the failure to investigate the cause of injury suffered by the accused no.1 is a serious lacuna in a prosecution case. On facts, it is further noted by the Trial Court that on the basis of prior complaint filed by the accused no.1 - appellant no.1 alleging commission of assault by PW-1, PW-2, PW-7, and PW-12, all of them got anticipatory bail from the competent court.

**14.** There was a fight over property between the accused and the family of the complainant. After in-depth scrutiny of the testimony of the eyewitnesses, for the reasons recorded, the Trial Court was unable to accept their testimony. After having examined the evidence of the material prosecution witnesses and findings of the Trial Court, we must hold that the conclusions recorded by the Trial Court were possible conclusions which could have been recorded on the basis of the evidence on record.

**15.** Therefore, the appeal succeeds, and we set aside the impugned Judgment dated 21st September 2010. We direct that unless the appellants are required to be detained in custody in connection with some other case, they shall be forthwith set at liberty.

**16.** The Appeal is accordingly allowed.

*Headnotes prepared by:* Nidhi Jain *Result of the case:* Appeal allowed.