

A MANJUNATH GANESH HEGDE & ORS.

v.

STATE OF KARNATAKA
(Criminal Appeal No. 826 of 2002)

NOVEMBER 5, 2008

B [C.K. THAKKER AND D.K. JAIN, JJ.]

C *Appeal – Criminal appeal – Power of First appellate Court/High Court – Exercise of – Scope – Trial court acquitted accused of all charges – Acquittal set aside by High Court for some of the offences, without indicating reasons – Propriety of – Held: Not proper – High Court while exercising appellate power as first appellate court ought to have considered the evidence of prosecution witnesses – Matter remitted to High Court.*

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E **Charges were framed against the appellants-accused persons under ss.341, 324, 326, 504, 506, r.w. s.34 IPC. Trial Court acquitted all the accused persons on the ground that the prosecution failed to prove its case. High Court partly allowed the appeal and set aside the acquittal for offences punishable under ss.324 and 325, IPC read with s. 34, IPC. Hence the instant appeal.**

F **Allowing the appeal and remitting the matter to High Court, the Court**

G **HELD: In a brief order, the High Court partly allowed the appeal, but there was no reasoning or basis as to what weighed with the High Court in confirming the order of acquittal recorded in favour of the appellants-accused for certain offences and for setting aside the order of acquittal and ordering conviction of the accused for offences punishable under ss. 324 and 325 read with s.34, IPC. The High Court was exercising appellate power as**

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the first appellate Court. It was, therefore, expected of the High Court to consider the evidence of Prosecution Witnesses, particularly because they were eye-witnesses as also injured witnesses. The High Court had failed to discharge its duty of exercising appellate power as a regular court of appeal. [Paras 13 and 14] [456-F-H; 457-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 826 of 2002.

From the Judgment and final Order dated 6.2.2002 of the High Court of Karnataka at Bangalore in CrI. Appeal No. 775 of 2001.

Kiran Suri for the Appellants.

A. Rohan Singh and Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. This appeal is filed by the appellant-accused against the order of conviction recorded by the High Court of Karnataka on February 06, 2002 in Criminal Appeal No. 775 of 2001.

2. To appreciate the case of the appellants, few relevant facts may be noted.

3. It was the case of the prosecution that on January 04, 2000, at about 3.00 p.m., near Kallaimane Cross at village Tatagar, Taluka Yellapur, appellant-accused attacked complainant Gopal Sitaram Hegde with stones and wooden sticks. They also attacked and caused injuries to Nagesh Ganapati Bandekar and Smt. Nagaveni. The accused persons also administered threat to kill Gopal Hegde. All the accused thereby committed offences punishable under Sections 341, 324, 326, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC).

A 4. Usual investigation was carried out by the police authorities. Charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

B 5. The prosecution in order to prove the case against the accused examined eight witnesses including three injured witnesses, PW 1 Gopal Sitaram Hegde-complainant, PW 2 Nagesh Ganapati Bandekar, coolie of PW 1 and PW 3, Smt. Nagaveni, wife of PW 1 Gopal-complainant. The prosecution also examined two Doctors, PW 4 Doctor Sadanand Krishna
C Kamat and PW 5 Dr. N.K. Katri.

D 6. The learned Judicial Magistrate, First Class, Yellapur held that there was discrepancy between the medical evidence and ocular evidence. He also held that there were contradictions in the depositions of eye-witnesses and in the circumstances, it cannot be concluded that the prosecution was successful in proving the guilt against the accused beyond reasonable doubt. Accordingly, by the judgment and order dated March 27, 2001, he acquitted all the accused.

E 7. The State of Karnataka being aggrieved by the order of acquittal preferred an appeal in the High Court of Karnataka under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). The High Court heard the learned Additional Special Public Prosecutor in favour of
F the appeal as also the learned counsel representing the respondent-accused. The High Court observed that so far as the inconsistencies in the ocular evidence of PWs 1, 2 and 3 were concerned, inconsistencies and contradictions were on minor matters. The incident in question was clearly established.
G The Court also held that injuries sustained by the prosecution witnesses were established from medical certificates issued by doctors as also from the testimony of doctors. The trial Court was, therefore, not right in discarding the sworn testimonies of
H the witnesses when they were doubly supported and corroborated from other evidence on record. It was also proved

that there was hostility between the parties and property disputes were going on in a Court of law. The relations between the parties were very bitter and a long standing litigation was pending in a civil Court. The High Court, in the circumstances, held that the trial Court was wrong in totally acquitting the accused.

8. The High Court, taking note of all the factors observed that it was a case of extenuating circumstances, but not one of grant of benefit of doubt. Then without considering the evidence at all, the High Court partly allowed the appeal. Observing that the acquittal recorded by the trial Court for offences punishable under Sections 341, 326, 504 and 506 read with Section 34, IPC could not be said to be ill-founded, the High Court upheld the acquittal. It stated that the finding so far as the acquittal of accused for those offences was concerned, did not require interference. It, however, held that the acquittal for offences punishable under Sections 324 and 325, IPC was not meritted and the finding recorded by the trial Court so far as acquittal under those two sections was concerned, was liable to be set aside. The High Court, thus, partly allowed the appeal, confirmed the acquittal of the accused for offences punishable under Sections 341, 326, 504, 506 read with section 34, IPC, but set aside the acquittal recorded by the trial court and convicted the accused for offences punishable under Sections 324 and 325, IPC read with Section 34, IPC.

9. It also observed that it did not propose to award any substantive sentence directing the accused to undergo imprisonment but they should pay fine of Rs.3,000/- each meaning thereby that all the four accused will pay Rs.12,000/- in aggregate. The said amount was ordered to be deposited in the trial Court within a period of three months from the date of the judgment. It also ordered that after recovery of fine, notices would be issued to PWs 1,2 and 3 and directed the Court to pay over the amount of Rs. 1,000/- each to PWs 2 and 3 and a sum of Rs.10,000/- to PW 1 by way of compensation.

A The appeal was accordingly disposed of. The said order is challenged in the present proceedings.

10. We have heard the learned counsel for the parties.

B 11. The learned counsel for the appellants-accused contended that there is no reasoning on the part of the High Court as to why the accused were convicted. The High Court merely repeated the findings recorded by the trial Court that the accused were acquitted for all the offences. There is no indication in the judgment of the High Court what weighed with the Court for confirming acquittal in respect of certain offences as also setting aside an order of acquittal for offences punishable under Sections 324 and 325 read with Section 34, IPC. There is no appreciation of evidence either of PW1 Gopal-complainant, PW 2 Nagesh or PW 3 Smt. Nagaveni. It is, D therefore, impossible to imagine as to on what basis the High Court convicted the appellants for the offences under Sections 324 and 325 read with Section 34 IPC. It was, therefore, submitted that the appeal deserves to be allowed and the order passed by the High Court requires to be set aside.

E 12. The learned counsel for the respondent-State also stated that there is no reasoning why the accused were acquitted for certain offences with which they were charged without appreciating the evidence of prosecution witnesses.

F 13. Having heard the learned counsel for the parties, in our opinion, the contention raised by the learned counsel for the appellants is well-founded. In a brief order, the High Court partly allowed the appeal, but there is no reasoning or basis as to what weighed with the High Court in confirming the order of G acquittal recorded in favour of the appellants-accused for certain offences and for setting aside the order of acquittal and ordering conviction of the accused for offences punishable under Sections 324 and 325 read with Section 34, IPC.

H 14. The High Court was exercising appellate power as the

first appellate Court. It was, therefore, expected of the High Court to consider the evidence of Prosecution Witnesses, particularly because the three witnesses were eye-witnesses as also injured witnesses. The High Court had failed to discharge its duty of exercising appellate power as a regular court of appeal. The order passed by the High Court, therefore, deserves to be set aside by remitting the matter for fresh disposal in accordance with law.

15. For the foregoing reasons, the appeal deserves to be allowed and is allowed accordingly and the matter is remitted to the High Court for fresh disposal in accordance with law.

16. Before parting with the case, we may state that we may not be understood to have expressed any opinion one way or the other on the merits of the matter. As and when the High Court will hear the matter, the Court will decide the case without being influenced by any observations made by us in this judgment.

17. Ordered accordingly.

D.G.

Appeal allowed.