

C.K. DASEGOWDA & ORS.

v.

STATE OF KARNATAKA
(Criminal Appeal No.1381 of 2014)

JULY 15, 2014

[DIPAK MISRA AND V. GOPALA GOWDA, JJ.]

Penal Code, 1860 - s.324 r/w s.34 - Voluntarily causing hurt by dangerous weapons - Conviction - Sustainability - Accused-appellants allegedly attacked PW1 and PW3 with deadly weapons and caused them injuries - Trial court gave them benefit of doubt and ordered their acquittal - Appeal before High Court which set aside the order of acquittal and convicted the appellants u/s.324 r/w s.34 IPC - Propriety - Held: High Court erred in reversing the order of trial court - Legal principles laid down by Supreme Court in the case of Chandrappa v. State of Karnataka applied - High Court erred in setting aside the order of acquittal of appellants in absence of any legal and factual evidence on record to prove the findings and reasons recorded in the judgment of the trial court as perverse - Order of acquittal by the trial court reinforced - Appeal against acquittal.

The accused-appellants allegedly attacked PW1 and PW3 with deadly weapons and caused them injuries. They were charge-sheeted for committing offences under Sections 143, 147, 148, 323, 324, 326, 307 read with Section 114 IPC. The trial court gave benefit of doubt to the appellants and ordered their acquittal. Aggrieved, the State filed appeal before the High Court which set aside the order of acquittal as passed by the trial court; and held that from the nature and manner of assault, it could be said that the appellants were guilty under Section 324 read with Section 34 IPC for causing injuries to PW-1 and PW-3 and accordingly convicted them.

A In the instant appeal, the question which arose for consideration before this Court was whether the High Court erred in reversing the order of the trial court.

B The appellants contended that the High Court erred in reversing the order of the trial court since the trial court had acquitted the accused-appellants only after proper appreciation of the evidence on record and inconsistencies and contradictions found in the evidence of prosecution witnesses; and that noticing the previous enmity between the parties, delay in recording the statements of the prosecution witnesses and also statement of eye witness, it had held that a reasonable doubt was created as to the guilt of the accused. The appellants further contended that conviction of the accused-appellants under Section 324 of IPC read with C D Section 34 was absolutely arbitrary, unreasonable and contrary to the above provisions of IPC; that there was discrepancy regarding the names of the assailants in the FIR and in the wound certificate and further that the motive behind the alleged assault by the accused-appellants was also not proved by the prosecution by E adducing evidence.

Allowing the appeal, the Court

F HELD:1.1. In the instant case, the facts and the evidence on record made it clear that the High Court erred in reversing the order of the trial court in the absence of any substantial material evidence on record which regarded the decision of the trial court as perverse. [Para 16] [301-E]

G 1.2. From the legal principles laid down by this Court in the case of Chandrappa v. State of Karnataka, and applying the same to the facts and evidence on record of this case, it is clear that the High Court erred in setting H aside the order of the acquittal of the appellants in the

absence of any legal and factual evidence on record to prove the findings and reasons recorded in the judgment of the trial court as perverse. The contentions urged on behalf of the appellants are well founded as the same are in conformity with the legal principles laid down by the Supreme Court. The order of the High Court is therefore set aside and the order of acquittal by the trial court is reinforced. [Paras 18, 19] [304-E-G]

Chandrappa v. State of Karnataka 2007 (2) SCR 630:(2007) 4 SCC 415 - held applicable.

Case Law Reference :

2007 (2) SCR 630 held applicable Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1381 of 2014.

From the Judgment and Order dated 11.08.2010 in CRLA 1256/2005 of the High Court of Karnataka at Bangalore.

Kiran Suri, Apurva Upmanyu, Dr. Vipin Gupta for the Appellants.

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. This appeal is filed by the appellants questioning the correctness of the judgment and final order dated 11.08.2010 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 1256 of 2005 in setting aside the order of acquittal of the appellants passed by the trial court thereby imposing sentence of conviction on the accused for offences punishable under Section 324 read with Section 34 of IPC for causing injuries on separate count.

2. Necessary relevant facts are stated hereunder to

A appreciate the case of the appellants and also to find out whether they are entitled to the relief as prayed for in this appeal.

B 3. It is the case of the prosecution that on 11.8.1999, at about 7:00 a.m., PW-3 Kempanna had gone to the house of the complainant on a bicycle to take milk for his children. When the complainant and PW-3 were coming back, accused nos. 1 to 10 (A-1 to A-10) attacked them with deadly weapons. It is alleged by the prosecution that A-1 assaulted PW-3 with iron blade of a plough on his head. A-3 assaulted PW-3 on his back and thigh. A-4 assaulted PW-3 on both his legs with iron blade of plough. A-2 assaulted PW-1 with iron rod on his left shoulder. A-6, A-8 and A-10 kicked PW-1. A-5 and A-7 assaulted Bhagyamma- PW-6 with iron blade of plough and A-9 kicked her.

D 4. A complaint (Ex.-P1) was lodged on 11.8.1999 at 9:00 a.m. before the police. The Crime Case No. CC 728 of 2000 was registered by the Investigating Officer. The injured were taken to the hospital at around 2:00 p.m. PW-3 had sustained fracture of tibia, fibula and ankle. PW-6 had sustained simple injuries. PW-4 Jalaiah and PW-9- Shivanna are the eye witnesses to the incident.

F 5. The accused after their arrest, on their voluntary instance, M.O. 1 to M.O. 3 (clubs), M.O. 4 & M.O. 5 (iron blade of plough) and M.O. 6 (iron rod) were recovered. However, the said weapons had no incriminating marks like blood stains on them. The accused were charge-sheeted for committing offences under Sections 143, 147, 148, 323, 324, 326, 307, read with Section 114 of IPC. Thereafter, the learned Magistrate took cognizance of the alleged offences and registered CC No. 728 of 2000. The learned Magistrate complying with the provisions of Section 209 of CrPC, committed the case to the Sessions Court for trial since offences alleged under Section 307 are to be exclusively tried

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by that court. The accused persons pleaded not guilty and claimed trial. The prosecution in support of its case, got examined PW-1 to PW-10 and marked Ex. P-1 to P-9 and MOs. 1 to 6. The accused-appellants got marked Ex. D-1 and had also submitted their written reply while recording their statements under Section 313 of CrPC.

6. In the evidence, PW-1 has stated that A-2 had assaulted him with iron rod, A-5 held him, A-1 assaulted PW-3 with iron rod. He further stated that A-4 assaulted PW-3 on his legs with iron blade of plough. A-3, A-6 and A-7 were holding clubs and assaulting PW-3. A-1 instigated other accused persons to kill PW-1.

7. The evidence of PW-3 also discloses that A-4 assaulted him with iron blade of plough on his legs and hands. A-6, A-7 and A-5 assaulted him with clubs on his back, thigh and shoulder. The other accused persons kicked him.

8. PW-6 in her evidence, stated that she was assaulted by the accused persons but she could not name the persons. This witness was treated as hostile.

9. The trial court, on appreciation of the evidence on record has held that the prosecution has failed to prove any of the offences alleged against the accused persons. There is an element of reasonable doubt on many counts, which have already been explained. The benefit of doubt always goes to the accused. Accordingly, the trial court ordered the acquittal of accused-appellant nos. 1 to 10 under Section 235(1) of CrPC for offences punishable under Sections 143, 147, 148, 323, 324, 326, 307 read with Section 114 of IPC. Aggrieved by the same, the State of Karnataka appealed before the High Court challenging the judgment and order of acquittal passed by the learned trial judge.

10. The High Court, on the basis of facts and evidence on record, held that with regard to the nature of offences, the

A evidence and facts narrated in the FIR discloses that A-3 assaulted PW-3 with iron blade of plough. In the evidence, it is further stated that A-4 also assaulted PW-3 with iron blade of plough. But in the wound certificate, there is no mention of presence or participation of A-4. It is evident that there are fractures in the tibia and fibula which could have occurred because of fall from bicycle as well. The fracture injury is not caused intentionally. Therefore, from the nature and manner of assault, as narrated, it can only be said that the accused is guilty under Section 324 read with Section 34 of IPC for causing injuries to PW-1 and PW-3 on separate counts. Therefore, the High Court convicted and sentenced the appellants to pay a fine of 10,000/- each on separate counts and in default, to undergo simple imprisonment for a period of one year.

D 11. The accused-appellants challenged the decision of the High Court raising various facts and legal contentions and have prayed for setting aside the impugned judgment of the High Court.

E 12. The learned senior counsel on behalf of the appellants, Ms. Kiran Suri contended that the High Court has erred in reversing the Order of the trial court since the trial court had acquitted the accused-appellants only after proper appreciation of the evidence on record and inconsistencies and contradictions found in the evidence of prosecution witnesses and noticing the previous enmity between the parties, delay in recording the statements of the prosecution witnesses and also statement of eye witness, it has held that it creates a reasonable doubt as to the guilt of the accused.

G 13. The learned senior counsel on behalf of the appellants further contended that conviction of the accused-appellants under Section 324 of IPC read with Section 34 is absolutely arbitrary, unreasonable and contrary to the above provisions of IPC.

H 14. It was further contended by the learned senior counsel

that there is discrepancy regarding the names of the assailants in the FIR and in the wound certificate and further the motive behind the alleged assault by the accused-appellants has also not been proved by the prosecution by adducing evidence.

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15. On the other hand, the learned counsel on behalf of the respondent contended that PW-1 and PW-3 are injured eye witnesses. The fact that the accused-appellants had assaulted these persons with iron rod, gula and club is corroborated by the medical evidence of PW-5 and PW-7. It was further argued by the learned counsel that the appellants had assaulted the complainant on account of previous enmity with them. According to the learned counsel for the respondent, PW-2 is an independent witness. Therefore, according to the learned counsel, the ingredients of unlawful assembly, rioting, causing grievous hurt with dangerous weapons with an intention to kill, have been proved.

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16. We have perused the facts and legal evidence on record. We have also carefully appreciated the contentions of both the parties. On the basis of the facts and evidence on record, we are of the opinion that the High Court erred in reversing the Order of the trial court in the absence of any substantial material evidence on record which regarded the decision of the trial court as perverse.

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17. In the case of *Chandrappa v. State of Karnataka*, it has been held by this Court as under:

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"39. In *Harijana Thirupala v. Public Prosecutor, High Court of A.P.*, this Court said:

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of

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A *acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is*
 B *cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.*

C 40. In *Ramanand Yadav v. Prabhunat Jha* this Court observed;

21. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based.
 D 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
 E 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
 F 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 in a case where the accused has been acquitted, for the purpose of
 G ascertaining as to whether any of the accused committed any offence or not”.

41. Recently, in *Kallu v. State of M.P.*, this Court stated;

H 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)

42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate 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 emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of

A the Court to review the evidence and to come to its own conclusion.

B (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 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.

C (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.”

D 18. Therefore, based on the legal principles laid down by this Court in the abovementioned case and applying the same to the facts and evidence on record of this case, we are of the opinion that the High Court erred in setting aside the order of the acquittal of the appellants in the absence of any legal and factual evidence on record to prove the findings and reasons recorded in the judgment of the trial court as perverse. The contentions urged on behalf of the appellants are well founded as the same are in conformity with the legal principles laid down in the aforesaid cases.

E F 19. We therefore, set aside the order of the High Court and reinforce the order of acquittal by the trial court. The appeal is allowed.

G Bibhuti Bhushan Bose

Appeal allowed.