IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

*** * ***

CRIMINAL APPEAL No.624 of 2014

Between:
Koppu Jyothi.

Appellant

VERSUS

Sandepaga Chenraidu and Others.

Respondents

JUDGMENT PRONOUNCED ON: 04.06.2024

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

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! Counsel for Appellant(s) : Ms. Ande Vishala

^Counsel for the respondent(s) : Learned Public Prosecutor

<GIST:
> HEAD NOTE:

? Cases referred
1) (2021) 17 Supreme Court Cases 783
2) (1973) 2 Supreme Court Cases 793
3) 2024 SCC OnLine SC 481
4) (1984) 4 SCC 116 = 1984 INSC 121

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL No.624 of 2014

JUDGMENT: (per the Hon'ble Sri Justice **P.SAM KOSHY**)

The instant is an appeal under Section 372 of the Code of Criminal Procedure, 1973 filed by the appellant/complainant challenging the judgment of acquittal passed by the IX Additional District and Sessions Judge, Wanaparthy (for short, the 'Trial Court') in S.C.No.282 of 2012.

2. Since the counsel who was appearing for the appellant had not been representing for long, Ms. Ande Vishala, was appointed as Amicus Curiae to represent the appellant vide order dated 19.02.2024. Accordingly, the matter was argued on behalf of the appellant by Ms. Ande Vishala and the learned Public Prosecutor argued on behalf of the respondents/accused.

3. Vide the impugned judgment, the six (06) accused persons i.e. respondent Nos.1 to 6 in the present appeal were acquitted from the charges punishable under Section 148, 302, 302 read with Section 149 of the Indian Penal Code, 1860.

4. The case of the prosecution in brief is that the dispute revolves around a land that situates in Survey Nos.154 and 15 admeasuring Ac.6-00 which was assigned by the Government in favour of twelve (12) families including the accused and Balaraju (hereinafter the 'deceased'). Some dispute arose in between the twelve (12) families in respect of the said land. The said land was given to one Golla Ramulu for a lease amount of Rs.24,000/-. The said Golla Ramulu paid the lease amount to the accused No.6 who in turn was required to disburse the said amount to the twelve (12) families. However, in the course of disbursement, the share which fell to the deceased was not paid which gave rise to the dispute. On demand of his share in the lease amount, the accused persons are said to have joined together and assaulted the deceased and the matter was reported to the police station where a crime No.149 of 2011 was registered against the accused persons. This filing of the First Information Report (for short, the 'FIR') and registering of the crime led to the accused persons having grudge against the deceased and the family members.

5. That on 12.09.2011 at around 11:30 PM when the deceased was returning from the field after watering the crops reached in front

of the house of Rampogu Balaswamy, the accused persons attacked the deceased with sticks and hunting sickles on account of which the deceased received grievous injuries to which he later succumbed. PWs.2 and 3 are said to be the eye witnesses to the incident and it is PW.2 who is said to have informed PW.1 (Jyothi), the wife of the deceased. It is also said that PWs.6 and 11 have also witnessed the incident.

6. The complaint was lodged by PW.1 at Pebbair Police Station. The accused persons were named in the FIR where it was registered as crime No.149 of 2011 at Police Station, Pebbair, Mahabubnagar District. All the accused persons were charged for the offences punishable under Section 148, 302, 302 read with Section 149 of the Indian Penal Code and the matter was put to trial. In all twelve (12) witnesses were examined on behalf of the prosecution and five (05) witnesses were examined on behalf of the defence. Initially, when the FIR was lodged, the appellant had named fourteen (14) persons who had joined together in assaulting the deceased. The names of fourteen (14) accused persons are as under:

I. S. Chandrayudu S/o. Madanna
II. S. Anjaneyulu S/o. Chinnaiah

III. S. Hanumanthu S/o. Kurmanna

IV. S. Raju S/o. Chinna Kurmanna

V. S. Kurumurthy S/o. Jampanna

VI. S. Pedda Kurmanna S/o. Maddanna

VII. S. Ramulu S/o. Chinnaiah

VIII. K. Bojjanna S/o. Narsanna

IX. Balaswamy S/o. Yellanna

X. Podugu Kurmanna S/o. Kistanna

XI. P. Venkatesh S/o. Sunkanna

XII. M. Chandraih S/o. Kistanna

XIII. M. Nagaraju S/o. Yellanna

XIV. M. Beesanna S/o. Chinna Chandraiah

7. However, when the charge sheet was filed on 07.03.2012, it was only the present six (06) respondents who were made as the accused persons and the other accused persons who were named in the FIR were not charge sheeted. After the evidences on behalf of the prosecution as also on behalf of the defence was recorded and the statement of the accused persons under Section 313 of Cr.P.C, the Trial Court finally vide the impugned judgment acquitted the six (06) respondents holding that the prosecution has not been able to produce cogent, convincing and substantial evidence against the six (06) accused persons so as to prove the charges leveled against them

for the offences punishable under Section 148, 302, 302 read with Section 149 of the Indian Penal Code.

8. It is this judgment which has been challenged by the appellant in the instant appeal.

9. According to the learned counsel for the appellant, the Trial Court has not properly appreciated the evidences given by the eye witnesses, particularly, PWs.2, 3, 6 and 11. It was also contended that the Trial Court has also not given due weightage to the evidence of PW.1, the wife of the deceased, who had reached the spot first and that too immediately after the incident and it was the eye witnesses who had informed the narration of facts to PW.1 on the basis of which she lodged the complaint and on the basis of which the FIR was lodged.

10. According to the learned counsel for the appellant, the Trial Court also failed to appreciate the fact that there was a family dispute in respect of sharing of the lease amount of the property in which the deceased and the accused persons who had equal share.

11. Having heard the learned counsel for the appellant and on perusal of records, the first and foremost infirmity on the part of the

prosecution is that when the FIR was lodged, PW.1 had specifically named fourteen (14) persons who were involved in commission of the offence wherein the deceased got killed. Whereas, when the charge sheet was filed, only six (06) persons were charged and the remaining eight (08) persons were excluded from the charges.

12. Upon reading of the charge sheet and also on perusal of the evidences on the part of the eye witness, PW.12, no substantial material was available on record so as to exclude the eight (08) persons who were also named with the accused persons in the FIR. There was no extra material available on record to fix the charges only against the six (06) persons and not against all the fourteen (14) persons.

13. The other infirmity that was reflected from the evidence was that none of the witnesses including the eye witnesses in the course of recording their statement under Section 161 of Cr.P.C had deposed any specific and overt act on the part of the six (06) accused persons only, whereas, the 161 statement was a general omnibus statement in respect of the fourteen (14) persons named in the FIR to have jointly assaulted the accused persons without giving individual details of their overt act on their part.

14. The other infirmity which is reflected from perusal of the records is that, there seems to be a considerable improvement in the statement of the so-called eye witness PWs.2, 3, 6 and 11 on comparison of their 161 statement and with that of their Court statement. Unlike their deposition in the 161 statement in the Court, they have specifically named the six (06) accused persons to have assaulted the deceased. This improvement on the part of the eye witnesses themselves gives rise to a great element of doubt so far as the truthfulness on the part of all these witnesses while making their statement of oath before the Court. Thus, there is material improvement, contradiction and embellishments in their evidences.

15. Yet another infirmity which is found on record is that the mediators in whose presence the weapons were recovered by the Investigating Officer have turned hostile and have not supported the case of the prosecution which again weakens the case of the prosecution so far as establishing the charges against the accused persons beyond all reasonable doubt. Another infirmity is that the evidence of PW.2 shows that it was he who had gone to the house of the deceased and informed PW.1 about the incident, whereas, in the evidence of PW.1 she does not name PW.2 to have informed her. So

far as PW.11 is concerned, in his cross-examination he has admitted the fact that he had not stated to the Police of having seen the accused persons hacking the deceased which further weakens the evidence of PW.11 so far as he being an eye witness is concerned. The improvement of the statement of PWs.2 and 3 stands further established from the evidence of PW.12 who in his cross-examination has accepted the fact that PWs.2 and 3 did not state before him at the first instance that they saw the accused hacking and assaulting the deceased and also threatened of dire consequences. This material improvement on the part of the so-called eye witnesses PWs.2 and 3 also weakens the case of the prosecution.

16. In the given factual circumstances of the case, we are of the considered opinion that there does not seem to be any strong material brought on record by the appellant/complainant to hold that the finding of acquittal given by the Trial Court to be erroneous or bad in law. So far as interfering with the judgment of acquittal in an appeal by the Trial Court, it has been held by the Hon'ble Supreme Court in a catena of decisions that unless there is substantial strong evidence which is not been appreciated by the Trial Court and where the commission of offence by the accused

persons is glaringly established, the judgment of acquittal is not to be interfered as a matter of routine.

17. It would be relevant at this juncture to refer to a couple of judgments of the Hon'ble Supreme on this subject matter. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Sharad Goswani**[1] while referring to the judgment in the case of **Shivaji Sahabrao Bobade and Another vs. State of Maharashtra**[2] which dealt with guiding principle to kept in mind while deciding an appeal from acquittal in paragraph No.10 has held as under:

> "**10.** Apart from the above, the fact that the appellant State is in appeal against a finding of acquittal passed by the High Court should also not be lost sight of. An appellate court is usually reluctant to interfere with a judgment acquitting an accused on the principle that "*the presumption of innocence in favour of the accused is reinforced*" by such a judgment (see *Sadhu Saran Singh* v. *State of U.P.* [*Sadhu Saran Singh* v. *State of U.P.*, (2016) 4 SCC 357 : (2016) 2 SCC (Cri) 275]). As early as in 1973, a three-Judge Bench of this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] outlined the guiding principle to be kept in mind by an appellate court while deciding an appeal from an acquittal in the following manner : (*Shivaji Sahabrao Bobade case* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], SCC p. 799, para 5)
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> > "*5. … an acquitted accused should not be put in peril of conviction on appeal save were substantial and compelling*

[1] (2021) 17 Supreme Court Cases 783
[2] (1973) 2 Supreme Court Cases 793

> *grounds exist for such a course*. In India it is not jurisdictional limitation on the appellate court but a Judge-made guideline of circumspection. … In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that *the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration*."
>
> (emphasis supplied)
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> The above principle has been consistently followed by this Court while deciding appeals against acquittal by way of Article 136 of the Constitution as well (see *State of Rajasthan* v. *Shera Ram* [*State of Rajasthan* v. *Shera Ram*, (2012) 1 SCC 602 : (2012) 1 SCC (Cri) 406] ; *Dilawar Singh* v. *State of Haryana* [*Dilawar Singh* v. *State of Haryana*, (2015) 1 SCC 737 : (2015) 1 SCC (Cri) 759])."

18. Further, the Hon'ble Supreme Court in the case of **Ballu and Another vs. State of Madhya Pradesh**[3] in paragraph Nos.6 to 9 has held as under:

> "**6.** Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of *Sharad Birdhichand Sarda* v. *State of Maharashtra*[4], wherein this Court held thus:
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> > "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial

[3] 2024 SCC OnLine SC 481

[4] (1984) 4 SCC 116 = 1984 INSC 121

evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

> *"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be

proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held

that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

> "13. In case of *Sadhu Saran Singh* v. *State of U.P.* (2016) 4 SCC 357, the Supreme Court has held that:—
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> > "In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and !aw. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of

> the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar, In case of *Harljan Bhala Teja* v. *State of Gujarat* (2016) 12 SCC 665, the Supreme Court has held that:—

> "No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open far the appellate court to express the right conclusion after re-appreciating the evidence If the charge is proved beyond reasonable doubt on record, and convict the accused."

19. In the given backdrop and the judicial precedents flowing from the Hon'ble Supreme Court on interfering with the judgment of acquittal and also for the reasons narrated in the preceding paragraphs, we find it difficult to interfere with the judgment of acquittal. Thus, affirming the judgment of acquittal, the instant appeal being devoid of merits, fails and is accordingly dismissed. No costs.

20. As a sequel, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

SAMBASIVARAO NAIDU, J

Date: 04.06.2024

Note: LR Copy be marked.
B/o.GSD