SYED PEDA AOWLIA A

v.

PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD

(Criminal Appeal No. 1149 of 2001)

JUNE 13, 2008 B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860; s.302 r/w s.34/Code of Criminal Procedure, 1973; s.378 (1) & (3): C

Murder – Acquittal of accused persons by trial court – Affirmed by High Court as against all the accused persons except the appellant convicting him for committing the offence of murder and sentenced him to undergo imprisonment for life – Correctness of – Held: Unless there are compelling and D *substantial reasons, appellate Court not to interfere with the judgment of acquittal – If two views are possible on the evidence adduced, one pointing guilt of accused and the other to his innocence, the view favourable to accused should be adopted by the Court – In the instant case, High Court did not* E *apply its mind to various aspects and the position in law relating to scope for interference in appeal against an order of acquittal – Hence, the impugned order is set aside and the matter is remitted to High Court for consideration afresh – Appeal against acquittal – Interference with, by Appellate Court.* F

Appellant and four accused persons were tried for committing the offence of murder u/s.302 r/w s.34 IPC. Trial Court found that the prosecution had failed to establish the case against the accused persons and directed acquittal of all the accused persons. On appeal, High G **Court affirmed acquittal of all the accused persons except the appellant and found him guilty for committing the offence of murder punishable u/s.302 r/w.s.34 IPC and sentenced him to undergo imprisonment for life. Hence**

A the present appeal.

Accused-appellant contended that the High Court has not discussed the evidence of the witnesses and has come to abrupt conclusions about the acceptability of the evidence.

B

Respondent-State submitted that though the High Court has not analysed the evidence in detail, its conclusions are not erroneous.

Dismissing the appeal, the Court

C

HELD: 1.1 The appeal filed by the State has been disposed of by the High Court in perfunctory manner. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where D the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (Para 4 and 5) [1154-E,H; 1155-A]

1.2 There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. E Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. (Para 5) [1154-E & F]

1.3 The golden thread which runs through the web of administration of justice in criminal cases is that if two F 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. G A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. (Para – 5) [1154-F,G & H]

1.4 The principle to be followed by appellate Court considering the appeal against the judgment of acquittal H

is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para – 5) [1155-B & C]

Shivaji Sahabrao Bobade & Anr. vs. State of Maharashtra **AIR (1973) SC 2622;** *Ramesh Babulal Doshi vs. State of Gujarat* **(1996) 4 Supreme 167;** *Jaswant Singh vs. State of Haryana* **(2000) 3 Supreme 320;** *Raj Kishore Jha vs. State of Bihar & Ors.* **(2003) 7 Supreme 152;** *State of Punjab vs. Karnail Singh* **(2003) 5 Supreme 508;** *State of Punjab vs. Pohla Singh & Anr.* **(2003) 7 Supreme 17 and** *V.N. Ratheesh vs. State of Kerala* **(2006) 10 SCC 617 – relied on.**

2. In the instant case, the High Court has not applied its mind to the various aspects and the position in law relating to the scope for interference in appeal against an order of acquittal. In the circumstances, the impugned order is set aside and the matter is remitted to the High Court for fresh consideration in accordance with law only in respect of appellant. (Para – 7) [1156-H; 1157-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1149 of 2001

From the final Judgment and Order dated 17.8.2001 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Crl. Appeal No. 1937/1999

G. Ramakrishna Prasad for the Appellant.

D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court allowing the appeal filed by the State so far as present appellant is concerned while upholding the acquittal of other accused persons. The learned IV Additional Sessions Judge,

A Guntur had directed acquittal of all the five accused persons who faced trial for commission of offence punishable under Section 302 and Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court on analyzing the evidence had found that the prosecution has not B been able to establish its accusations and accordingly directed acquittal. The State filed an appeal in terms of Section 378 (1) and (3) of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court by the impugned order allowed the appeal so far as the present appellant is concerned while dis- C missing the appeal of the State so far as the other accused persons are concerned.

2. Learned counsel for the appellant submitted that the High Court has not discussed the evidence of the witnesses and has come to abrupt conclusions about the acceptability of D the evidence.

3. Learned counsel for the respondent-State on the other hand submitted that though the High Court has not analysed the evidence in detail, its conclusions are not erroneous.

E 4. It is not necessary to go into the factual position in detail as we find that the appeal filed by the State has been disposed of in perfunctory manner.

5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Gener- F ally, 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 G 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 H than from the conviction of an innocent. In a case where admis-

sible 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. [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 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, *State of Punjab v. Pohla Singh and Anr.* (2003 (7) Supreme 17) and *V.N. Ratheesh v. State of Kerala* (2006 (10) SCC 617).

6. The conclusions of the High Court read as follows:

"It is true that there is some delay in reaching a copy of FIR to the residence of the Magistrate, but it cannot be said that it is inordinate delay. According to the version of PW-1 and also the version of PWs 14 and 15 the first information was given by PW-1 at about 10.30 a.m. and on the strength of which PW-14 registered the case against the accused. The evidence of PW-15 shows that he got a copy of FIR at about 1.30 p.m. but he did not note down the timing on the copy of FIR on receipt of the same. But, it has been a positive case of PW-15 that he received copy of FIR at 1.30 p.m. Once this version is accepted, then the defence version that the FIR was given at 8.30 p.m. has to be rejected.

Mr. Movva Chandra Sekhar Rao, learned counsel

A appearing for the appellants relied upon a ruling reported in Meharaj Singh v. State of U.P. (1994 (5) SCC 188), in which the Apex court had laid down that inordinate delay in filing the first information has to be explained. We have no hesitation in accepting the above said proposition. We B have come to the conclusion that PW-1 had given the first information report at the Police Station at about 10.30 a.m., immediately after removing the injured to the Hospital at Guntur. If there is some delay in sending the copy of FIR to the Magistrate, then straight away a conclusion cannot C be drawn that the FIR was not laid at the time as spoken to by PW-1.

It is not the case of the defence that there is political rivalry between the accused party and the deceased party. Therefore, this Court finds no reason for PWs 1 to 3 and D 5 to concoct a story against A.1. Under these circumstances, we have no hesitation in holding that the prosecution was able to prove that A-1 was responsible for causing the death of the deceased and he is guilty of the offence punishable under Section 302 of the Indian E Penal Code.

The role attributed to A-2 to A-5 in this case by the prosecution witnesses is very minor. Only their presence was secured through their evidence. They had not participated in killing the deceased and, therefore, this F Court is of a considered view that A-2 to A-5 cannot be held responsible for causing the death of the deceased. Under these circumstances, we pass the following order:

> The appeal filed by the State is allowed as far as A-
> G 1 is concerned. A-1 is convicted and sentenced to suffer imprisonment for life and he is directed to surrender the learned IV Additional Sessions Judge, Guntur, forthwith. The appeal filed by the State against A-2 to A-5 stands dismissed."

H 7. We find that the High Court has not applied its mind to

the various aspects and the position in law as highlighted above relating to the scope for interference in appeal against an order of acquittal. In the circumstances, we set aside the impugned order and remit the matter to the High Court for fresh consideration in accordance with law only in respect of appellant. State has not questioned, it is to be noted, the High Court's order upholding acquittal of A2 to A5 as was done by the trial Court.

8. The appeal is allowed to the aforesaid extent.

S.K.S. Appeal Dismissed.