



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICITON**

CRIMINAL APPEAL NO. 1467 OF 2012

Ramesh and another

..... Appellants

Versus

State of Karnataka

..... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. The two appellants before us were implicated in FIR No. 26 of 2005 registered under Sections 143, 147, 148 and 302 read with 149 of the Indian Penal Code, 1860 (IPC), by Bannerghatta Police Station, Bangalore Rural District. They were tried by the learned Sessions Judge, Fast Track Court-II, Bangalore Rural District, in Sessions Case No. 232 of 2005, along with three other accused persons, for offences under the aforesaid provisions

and also Section 120B IPC. By judgment dated 03.05.2006, the Trial Court acquitted all five of them of all charges. Aggrieved by their acquittal, the State of Karnataka preferred Criminal Appeal No. 1544 of 2006 before the High Court. By the impugned judgment dated 29.03.2011, a Division Bench of the High Court reversed the acquittal judgment passed by the Trial Court and held all five accused guilty of offences punishable under Sections 143, 147, 148, 120B and 302 read with 149 IPC.

2. Aggrieved thereby, all the five accused persons joined together in filing this appeal before this Court. However, as they failed to surrender after their application for exemption from surrendering was rejected, the appeal stood dismissed in its entirety, pursuant to the order dated 01.03.2012. Thereafter, upon the surrender of Ramesh, Kumara and Praveen Alexander, Appellant Nos. 1, 2 and 5, the appeal was restored in so far as they were concerned. The appeal was admitted on 28.03.2016 and at that time, this Court dismissed the appeal in so far as Appellant Nos. 3 and 4 were concerned, as they had not surrendered. Praveen Alexander, Appellant No. 5, expired thereafter and taking note of the same, vide order dated 01.04.2019, this Court dismissed the appeal in so far as he was concerned on the ground of abatement. In effect, only Appellant Nos. 1 and

2 remain in the picture. They were granted bail by this Court on 29.04.2019.

3. The crucial aspect to be noted first and foremost is that the High Court has reversed a judgment of acquittal. The High Court was also conscious of this, as it was duly noted in paragraph 9 of the impugned judgment. The parameters for interference with an acquittal judgment being well defined, we would have to see whether the High Court was justified in doing so.

4. The case of the prosecution was that the five accused hatched a criminal conspiracy to murder Babureddy, the deceased, and attacked him with deadly weapons on 07.02.2005 at about 7:30 AM. This attack was stated to have taken place near Hullahalli Gate Bus Stand in Bangalore Rural District. The deceased was doing real estate business in partnership with M. Ramaiah (PW-1). Ramesh, Appellant No. 1 and his brother are stated to have approached the deceased for selling their land admeasuring Acs. 2.06 Guntas. Thereupon, the deceased is said to have mediated the sale of this land to one Narayanareddy (PW-10) and ₹2,50,000/- was allegedly given as advance to Appellant No. 1 and his family members by Narayanareddy (PW-10). However, about 15 days prior to the death of the deceased, Appellant No. 1 is said to have approached him along with his

mother and asked him to get the sale transaction cancelled by taking back the advance amount received by them. The deceased supposedly told them to approach Narayanareddy (PW-10) directly as he was only a mediator. Appellant No. 1 is stated to have abused the deceased saying that he would teach him a lesson. This was the alleged motive for the criminal conspiracy and the consequential fatal attack upon the deceased.

5. It is the case of the prosecution that on 07.02.2005 at about 7:30 AM, the deceased was standing along with M. Ramaiah (PW-1), Munikrishnappa (PW-2) and Venkatesh (PW-3) near Hullahalli Gate Bus Stand and at that time, Ramesh, Appellant No. 1 came there on a scooter while the other accused came in an autorickshaw, armed with deadly weapons like longs (akin to swords), choppers and knives, and assaulted the deceased. The deceased was then shifted in a Maruti Van to St. John's Hospital at Bangalore but he succumbed to his injuries *en route*. M. Ramaiah (PW-1) lodged a written complaint at 9:30 AM on 07.02.2005 before the Police Sub-Inspector, on the strength of which, FIR No. 26 of 2005 was registered.

6. Twenty-five witnesses were examined by the prosecution to prove its case. Documents and material objects were also marked in evidence. Noting that the deceased had suffered as many as 21 external injuries and

4 internal injuries, the Trial Court held that he had suffered a homicidal death. The partner of the deceased, M. Ramaiah (PW-1) was the star witness for the prosecution as he described, in great detail, the attack upon the deceased by each of the accused. In his deposition before the Trial Court, he named the accused, one by one, with full particulars of the weapons wielded by each of them. He stated that there were 10 people at the bus stand but no efforts were made by those present at the scene to intervene and rescue the deceased, as the accused could have assaulted them also. He then stated that the deceased was shifted in a white Maruti Van to St. John's Hospital, Bangalore, and Munikrishnappa (PW-2) and Venkatesh (PW-3) along with Muniswamy, the younger brother of the deceased, came with him to the hospital. He stated that their clothes were stained with blood while lifting the deceased. He then stated that he, along with Venu and Manjunath, went to Bannerghatta Police Station at 9:30 AM and lodged a written complaint. According to him, on the same day at about 3:00 PM, the police visited the scene of occurrence and recorded the Spot Mahazar (Ex-P2). In his cross-examination, PW-1 stated that Ramesh, Appellant No. 1, was his brother-in-law, but he never went to his house. He further stated that Munikrishnappa (PW-2) was the son of his maternal aunt and Venkatesh (PW-3) was his cousin. He admitted that he and

Munikrishnappa (PW-2) had mobile phones with them but they did not inform the police about the assault on the deceased either at the time it was taking place or thereafter, while taking the deceased to the hospital.

7. Munikrishnappa (PW-2), on the other hand, contradicted M. Ramaiah (PW-1) by stating that it was M. Ramaiah (PW-1) alone, who took the deceased to the hospital. He asserted that Venkatesh (PW-3), Krishnappa (PW-4) and he remained at the spot of the incident only. According to him, M. Ramaiah (PW-1) returned to the spot after some time and informed them that the deceased had passed away on the way to the hospital. He said that PW-1 then went to the police station and filed his complaint. He stated that the police visited the spot of the incident at about 8:30 or 9:00 AM and recorded the Spot Mahazar in their presence. In his cross-examination, PW-2 stated that there were about 20 to 25 persons waiting at the bus stand. He changed his earlier version and said that M. Ramaiah (PW-1) informed him about the death of the deceased at 8:00 AM on that day over the phone, while he was still at the spot of the incident.

8. Venkatesh (PW-3) also stated that M. Ramaiah (PW-1) alone took the deceased to the hospital. In his cross-examination, PW-3 changed his story and said that M. Ramaiah (PW-1), Munikrishnappa (PW-2), Muniswamireddy and he had taken the deceased to the hospital in a white

Maruti Van. He further said that their clothes were stained with blood. According to him, the police visited the scene of the occurrence at about 6:00 PM and recorded the Spot Mahazar in their presence.

9. Krishnappa (PW-4) stated that he had a petty shop at Hullahalli Gate which he usually opened between 6:00 and 7:00 AM every day. He further stated that on 07.02.2005, when he opened his shop, he came to know that somebody had assaulted Babureddy at a distance of 20 to 25 meters from his shop and that he was taken to the hospital. He claimed that he informed the said fact to one Shivaramareddy, cousin of the deceased, over the phone and Shivaramareddy then came to the spot within 10 minutes. He said that they went to the Jigani Hospital to see Babureddy and came to know that Babureddy was taken to St. John's Hospital, Bangalore. Thereafter, they went to St. John's Hospital and saw that Babureddy had died.

10. The Trial Court duly took note of the discrepancies and contradictions in the above noted depositions of the witnesses. The fact that none of the witnesses tried to intervene and rescue the deceased weighed with the Trial Court. Their conduct in not informing the police despite having mobile phones was also taken note of. The Trial Court noted that none of the witnesses had anything to say about the autorickshaw in which Accused

Nos. 2 to 5 allegedly came to the spot. However, R. Shashikumar (PW-11) was produced by the prosecution, who claimed that it was his autorickshaw that was used by the accused persons. According to him, he dropped the accused persons near the bus stand and at that time, another person came there on a scooter and took Accused Nos. 2 to 5 with him and, after half an hour, they returned back with blood-stained clothes. Significantly, the police recorded the statement of this witness one month and two days after the date of the incident. No explanation was offered by the police as to how they detected the whereabouts of this witness and the role played by him in the incident. The credibility of this witness was found to be highly suspect, given the delay in his surfacing and the contradictions in his evidence. If he was waiting near the bus stand, PW-11 would have himself witnessed the actual attack on the deceased, but he did not state so. He merely said that the accused returned 'after half an hour' with blood-stained clothes.

11. Further, the Trial Court noted that, in terms of the evidence of Krishnappa (PW-4), the attack on the deceased occurred not at 07:30 AM as claimed by the prosecution but much earlier. The contradiction in the testimonies of the so-called eyewitnesses as to when the Spot Mahazar was recorded by the police was one more factor to dilute their credibility. According to Prema Sai Guddappa Rai, Circle Police Inspector (PW-22),

who was the Investigating Officer, the Spot Mahazar was recorded from 10:30 AM to 11:00 AM. However, each of the so-called eyewitnesses had a different time to offer in that regard. This clearly cast a suspicion on their presence at the spot and indicated clear possibility of manipulation of the evidence to suit the prosecution's case. No independent witness was found by the Investigating Officer except for related witnesses, who were projected as eyewitnesses to prove the prosecution's case. No effort was made to seize the clothes of these so-called eyewitnesses, which were stated to have been stained with the blood of the deceased while they were lifting him into the Maruti Van.

12. More damaging is the fact that the statements of PW-2 and PW-3, the so-called eyewitnesses, were recorded under Section 161 CrPC one month after the date of the incident. This delay on the part of the Investigating Officer in recording their statements weighed heavily against the prosecution. Reliance was placed by the Trial Court on the judgment of this court in **Gayadin vs. State of M.P.**¹ to infer the possibility of these witnesses being planted witnesses.

13. The Trial Court also noted the fact that, in his complaint lodged with the police in the first instance, M. Ramaiah (PW-1) did not name Accused Nos. 2 and 5 but in the course of his deposition, he not only named them

¹ (2005) 12 SCC 267

but also furnished minute details of the attack by each of them. Even the motive attributed to the accused stood diluted as the Investigating Officer admitted that he had not obtained any record in proof of the deceased mediating the alleged sale transaction between Ramesh, Appellant No. 1 and Narayanareddy (PW-10). It was in these circumstances that the Trial Court held that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt and extended the benefit of such doubt to them.

14. However, in appeal, the High Court merely summed up the depositions of the so-called eyewitnesses and baldly concluded that the presence of the eyewitnesses, PWs 1 to 3, could not be doubted. Surprisingly, despite the Trial Court detailing, at great length, the contradictions and discrepancies in their depositions, the High Court observed that the Trial Court had not pointed out any major contradictions which would discredit the evidence of PWs 1 to 3 and the evidence of other witnesses. According to the High Court, the evidence adduced by the prosecution outweighed the findings recorded by the Trial Court, but no reasons worth the name were recorded by the High Court to support this conclusion. On the strength of these cryptic observations, the High Court deemed it fit to reverse the judgment of acquittal; hold the accused guilty of the offences as charged and sentence them to imprisonment for life.

15. We may point out that, once the Trial Court found no evidence to convict the accused, the burden was upon the High Court, while reversing the said judgment, to record clear findings in relation to each of the charges and, more particularly, the charge of criminal conspiracy under Section 120B IPC. However, no such exercise was undertaken by the High Court. At this stage, it would be relevant to refer to the general principles culled out by this Court in ***Chandrappa and others vs. State of Karnataka***², regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

- (1) An appellate court has full power to review, reappraise 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 the court to review the evidence and to come to its own conclusion.
- (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 is 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.

² (2007) 4 SCC 415

- (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.

16. In ***Rajendra Prasad v. State of Bihar***³, a 3-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained.

The appeal is accordingly allowed, setting aside the conviction of Appellant Nos. 1 and 2 on all charges. The judgment dated 29.03.2012 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.

³ (1977) 2 SCC 205

1544 of 2006 is set side to that extent. Bail bonds and sureties furnished by and on behalf of Appellant Nos.1 and 2 shall stand discharged.

.....,J
(SANJAY KUMAR)

.....,J
(ARAVIND KUMAR)

**September 18, 2024;
New Delhi.**