

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1022 OF 2011

JAYASWAMY

...APPELLANT

VERSUS

STATE OF KARNATAKA

...RESPONDENTS

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

By the impugned judgment dated 12.08.2010 in Criminal Appeal No. 1498 of 2004, the High Court has reversed the judgment of acquittal passed by the Trial Court in S.C. No. 143/1994 insofar as the appellant (accused No.1) is concerned, and consequently convicted the appellant for the offences under Sections 302 and 326 of IPC. The High Court further, confirmed the judgment and order of acquittal passed by the Trial Court insofar as it relates to accused Nos. 2 to 5.

2. The case of the prosecution in brief is that at about 4:30 pm on 15.01.1994, the accused Nos. 1 to 3 (including the appellant) along with accused Nos.4 and 5, with the common intention of

committing murder of deceased persons, namely Kumari Radhika (aged about 11 years) and Smt. Manjula, as well as to cause grievous hurt to the informant Smt. Honnamma, trespassed into the house of Smt. Honnamma and quarrelled with her in filthy language; the appellant assaulted the informant with a chopper on her head and hands and caused grievous injuries to her; the accused No.2 assaulted the deceased Smt. Manjula with a chopper; the accused No.3 assaulted the deceased Kumari Radhika with a chopper on her head. Due to the said assault, Kumari Radhika sustained grievous injuries as a result of which she died at 7:15 p.m. on 15.01.1994 at B.M. Hospital, Mysore. Smt. Manjula also sustained grievous injuries and succumbed to the same at 2:35 p.m. on 04.02.1994. Based on the information lodged by the injured eye-witness Smt. Honnamma, the crime came to be registered. All the five accused were tried for the offences punishable under Sections 326, 302, and 114 read with Section 34, IPC. The Trial Court acquitted all the accused, after evaluation of the material on record and after hearing both the parties. As mentioned supra, the High Court confirmed the judgment of acquittal passed by the Trial Court in respect of the accused Nos. 2 to 5. However, the High Court set aside the

judgment of the Trial Court acquitting the appellant and consequently convicted him for the offences punishable under Sections 302 and 326, IPC.

3 Mr. Shanthkumar V. Mahale, advocate, appearing on behalf of the appellant, having taken us through the material on record submits that the High Court reversed the well-considered judgment of the Sessions Court qua the appellant herein even though there is no cogent evidence against the appellant. The first appellate court should not have interfered with the judgment of acquittal, particularly when the judgment of acquittal was based on settled principles of law as well as on due appreciation of the evidence on record. The judgment of acquittal cannot be said to be perverse, and the view taken by the Trial Court is one of the possible views under the facts and circumstances of the case, hence the High Court should not have interfered with the judgment of the Trial Court. Per contra, Mr. Joseph Aristotle S., advocate for the State, argued in support of the judgment of the High Court.

4 As mentioned supra, the informant Smt. Honnamma is an injured eye-witness. The first information report details the

sequence of events which took place on the date of the incident, i.e., on 15.01.1994. Apart from narrating the incident, it narrates about motive for commission of offence also, i.e., there was a dispute between the accused and the informant with regard to partition of the property. The first information discloses that at 4:00 p.m. on 15.01.1994, the appellant and his elder brother, Puttaswamy and Rajesh came to the house of the informant and started quarrelling with her asking as to why she was not giving the property to Jayamma (accused No.5), sister of the appellant. So saying, the appellant assaulted the informant, Smt. Honnamma (PW. 23) with a chopper on her head and hands. Puttaswamy (accused No.2) assaulted Smt. Manjula (who was present in the house) with a chopper on her head three to four times. H.M. Rajesh (accused No.3) assaulted Kumari Radhika (minor-who was also present in the house of informant) with a chopper on her head. No overt acts are attributed to Shankar (accused No.4) and Jayamma (accused No.5) in the first information. It is needless to observe that specific allegations are found as mentioned supra against Jayaswamy (the appellant), Puttaswamy (accused No.2) and H.M. Rajesh (accused No.3) only.

5. In order to prove its allegations, the prosecution examined 31 witnesses. However, the important witness in the matter is PW.23 i.e., the injured eye-witness/informant Smt. Honnamma. The case of the prosecution, thus, fully and mainly centres around the evidence of Smt. Honnamma (PW.23), who survived after the assault by the appellant. The doctor (PW.7) examined Smt. Honnamma, Kumari Radhika and Smt. Manjula initially and issued wound certificates (Ex. P-7, Ex. P-6 and Ex. P-8 respectively). PW.14 (doctor) conducted the post-mortem examination of the dead body of Manjula. The doctor (PW.30) conducted the post-mortem examination of the dead body of Radhika. None of the witnesses (except PW.23) are eye-witnesses; the other witnesses examined are either panch witnesses or police officials.

6. It is not in dispute that the incident had taken place inside the house of Smt. Honnamma (PW.23), therefore, it is but natural that there was no other eye-witness except PW.23. Three persons sustained injuries and out of them two persons, namely Kumari Radhika and Smt. Manjula, succumbed to the injuries. The incident has taken place in broad daylight at about 4:30 p.m. It

is not the story of the prosecution that the accused persons closed the door after trespassing into the house and committed the offences secretly; on the other hand, according to the prosecution, the accused have committed the offence openly. None of the neighbouring witnesses had come for the help of the deceased and injured. Although the prosecution examined two neighbouring witnesses, they are not the eye-witnesses.

7. Looking to the evidence on record, the Trial Court as well as the High Court were justified in concluding that the incident had taken place for the reason of a property dispute.

8. Specific overt act had been attributed to the appellant by the informant (PW.23) not only in her first information but also in her deposition. She has categorically deposed that the appellant assaulted her with chopper; neither did the appellant assault the two deceased, nor did he instigate others to assault the two deceased. PW.23 has further specifically stated in the first information as well as deposed before the Court that accused No.2, Puttaswamy assaulted the deceased Smt. Manjula with a chopper and accused No.3 assaulted Kumari Radhika with a chopper. Kumari Radhika expired on the very day, i.e.,

15.01.1994 at 7:15 p.m. in B.M. Hospital whereas Smt. Manjula succumbed to her injuries at 2:35 p.m. on 04.02.1994. The overt acts specified by PW.23 both in first information and her evidence reveal that there is no ambiguity in the deposition of PW.23 with regard to the overt acts of each of the accused. The acts of each of these accused Nos. 1 to 3 are compartmentalised, i.e., accused No.1 assaulted the complainant with a chopper, whereas accused No.2 assaulted Smt. Manjula with a chopper, and accused No.3 assaulted Kumari Radhika with a chopper. No allegations are found against the accused Nos.4 and 5. No overt acts are found against the appellant in so far as assault on both the deceased. Except specifying that the appellant assaulted the informant (PW.23), no other allegations are found against him. The ingredients of common intention on the part of the accused to do away with the life of the deceased Smt. Manjula and Kumari Radhika are not forthcoming from the evidence on record. Same is also the finding by the Trial Court and the High Court.

9. It is no doubt that the name of the appellant is found in all the three wound certificates, i.e., Ex. P6 to P8, as the assailant.

But, in view of the specific ocular testimony of PW.23 that the appellant has assaulted PW.23 only, (mother-in-law of the deceased Smt. Manjula and the foster mother of Kumari Radhika), aforementioned note in the wound certificates loses its importance. It is relevant to note that PW.23 has fully supported the case of the prosecution and she is the only eye-witness. Moreover, her evidence is consistent with her averments found in the first information. We do not find any reason to discard the evidence of PW.23, more particularly as her evidence is unambiguous, cogent and consistent with the case of the prosecution. By relying on the wound certificates, the High Court, as mentioned supra, convicted the appellant while confirming the acquittal of the other accused. Absolutely no reason, much less valid reason, is assigned by the High Court, to reverse the judgment of acquittal passed in favour of appellant.

10. It is by now well settled that the Appellate Court hearing the appeal filed against the judgment and order of acquittal will not overrule or otherwise disturb the Trial Court's acquittal if the Appellate Court does not find substantial and compelling reasons for doing so. If the Trial Court's conclusion with regard to the

facts is palpably wrong; if the Trial Court's decision was based on erroneous view of law; if the Trial Court's judgment is likely to result in grave miscarriage of justice; if the entire approach of the Trial Court in dealing with the evidence was patently illegal; if the Trial Court judgment was manifestly unjust and unreasonable; and if the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of the ballistic expert etc. the same may be construed as substantial and compelling reasons and the first appellate court may interfere in the order of acquittal. However, if the view taken by the Trial Court while acquitting the accused is one of the possible views under the facts and circumstances of the case, the Appellate Court generally will not interfere with the order of acquittal particularly in the absence of the aforementioned factors. It is relevant to note the observations of this Court in the case of **Ramanand Yadav vs. Prabhu Nath Jha And Ors., (2003) 12 SCC 606**, which reads thus:

“21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. 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 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 than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not.”

(emphasis supplied)

11. The High Court as mentioned Supra, while convicting the appellant has confirmed the judgment of acquittal passed in favour of the accused Nos.2 to 5. Their acquittal as confirmed by the High Court is not questioned by the State before this Court. Thus, the judgment of the High Court acquitting accused Nos.2 to 5 has attained finality. Therefore, it is clear that the Trial Court and the High Court have, on facts, not believed the case of the prosecution in respect of the assault by the accused Nos. 2 and 3. As mentioned supra, the specific case of the prosecution is that accused Nos.2 and 3 assaulted the deceased Smt. Manjula and Radhika consequent to which they lost their lives. Absolutely no material is found against the appellant herein to convict him

for the offences under Section 302 IPC inasmuch as he had not played any role in the death of the two deceased. In addition to the same, both the Courts have, on facts concluded that there was no common intention on the part of the accused, in commission of crime.

12. It is not in dispute that the injured, Smt. Honnamma (PW.23) sustained grievous injury as a result of assault by the appellant. She was referred to a neurologist for an expert opinion inasmuch as she had sustained an incised wound over the left parietal area. She had also sustained a fracture at the lower end of her right forearm. Since the evidence of PW.23 in respect of an overt act by the appellant in injuring Smt. Honnamma is believable, in our considered opinion, the High Court was justified in convicting the appellant for the offence under Section 326, IPC, but was not justified in convicting the appellant for the offence under Section 302, IPC. Accordingly, the appeal is allowed in part, in terms of the following order:

(a) The appellant is acquitted of the offence punishable under Section 302, IPC. Consequently, the judgment of the High Court convicting him for the said offence stands set aside.

(b) The judgment passed by the High Court convicting the appellant for the offence under Section 326 IPC and sentencing him for imprisonment of 7 years stands confirmed and is imposed a fine of Rs. 10,000/-. In default of deposit/payment of fine (if not already deposited) within eight weeks from today, the appellant shall undergo imprisonment for two years additionally. The fine, if recovered, shall be paid to PW.23 (informant-Honnamma) as compensation.

(c) It is brought to our notice that the appellant has already undergone imprisonment for 11 years. The appellant is also entitled to set-off the period of imprisonment already undergone with the sentence of seven years imposed. In view of the same, the appellant shall be released forthwith, if he is not required in any other matter.

.....J
L. NAGESWARA RAO

.....J
MOHAN M. SHANTANAGOUDAR

New Delhi
June 01, 2018