

(2009) 07 MAD CK 0422

In the Madras High Court

Case No : Criminal R.C. No. 430 of 2007

Gurukarappa

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Penal Code, 1860 (IPC) — Section 324, 448

Citation : (2009) 07 MAD CK 0422

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Tamilvanan, for the Appellant; A. Saravanan, Government Advocate for R1, for the Respondent

Judgement

G. Rajasuria, J.—At the hearing, it transpired that in fact, for and on behalf of the revision petitioner even though name of three Advocates were suggested as the persons who are going to file vakalat, no such vakalat was filed till date. Among them the learned Counsel Mr. A. Tamilvanan, submits that so far they have not received any instructions also and in fact to his knowledge, the revision petitioner himself is dead.

2. In these circumstances, the learned Government Advocate (Crl. side) would submit that no appeal has been filed as against the acquittal in this case and the revision petitioner alone has filed this revision for interfering with the judgment of acquittal. Hence, in such a case, this Court proceeds to see whether there is any substance in this revision.

3. The gist and kernel of the prosecution case was that on 23.11.2004 at about 20 hours within Thalavadi police station limits in Lingayath Street, Kumdapuram, owing to previous land dispute A1, trespassed into the house of Gurukarappa and attacked Logammal alias Mangammal with billhook; A2 pelted stone at the house of Gurukarappa and damaged the tiles ; A3 also attacked Logammal @ Mangammal and caused injuries to her and he also attacked Satish with club and

caused injuries to him and A4 attacked one Yasodha with a bamboo stick and caused injuries to her. Since the accused pleaded not guilty, trial was conducted.

4. During trial, on the prosecution side, P.Ws.1 to P.W.16 were examined and Exs. P1 to P18 and M.Os.1 to 11 were marked. On the defence side, no oral and documentary evidence was adduced.

5. Ultimately, the lower court acquitted all the four accused with a finding that the evidence available on record was not sufficient to drive home the guilt of the accused.

6. The point for consideration is as to whether there is any perversity or non-application of law in the order of acquittal passed by the lower court?

7. A plain reading of the judgment of the lower court and the perusal of the records would reveal that due to some previous enmity A1, Sivappa, trespassed into the house of the defacto complainant Gurukarappa and attempted to cut him with a billhook; at that time, his wife PW2 Logammal @ Mangammal intervened to save her husband and in that process A1, Sivappa attacked PW2, Logammal @ Mangammal and caused injuries on her right forearm, which resulted in fracture. The medical evidence was also in support of the same. However, the learned Magistrate simply referred to the history recorded by the Doctor and held that since before the Doctor the said PW2 stated that 20 persons were involved in the crime, the prosecution case was doubtful. The approach of the Magistrate is far from satisfactory. PW1 as well as PW2 and other available evidence would evince that prima facie, it was A1, who attacked PW2 and caused such injury. The Magistrate expected some independent witnesses to speak about it. In my opinion, her approach is totally wrong.

8. The Hon"ble Apex Court laid the dictum as under regarding the relatives witnesses.

(i) (2009) 1 SCC (Cri) 406 (Vinay Kumar Rai and Anr. v. State of Bihar). Certain excerpts from it would run thus:

11. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version.

5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

6. In Dalip Singh v. State of Punjab it has been laid down as under: (AIR p. 366,

para 26)

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

7. The above decision has since been followed in *Guli Chand v. State of Rajasthan* in which *Vadivelu Thevar v. State of Madras* was also relied upon.

8. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh* case in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p.366, para 25)

25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - "*Rameshwar v. State of Rajasthan*" AIR at p.59. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

9. Again in *Masalti v. State of U.P.* this Court observed: (AIR pp. 209-10, para 14):

14. ... But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

To the same effect are the decisions in *State of Punjab v. Jagir Singh*, *Lehna v. State of Haryana* SCC pp.81-82, paras 5-9 and *Gangadhar Behera v. State of Orissa*. The above position was also highlighted in *Babulal Bhagwan Khandare v. State of Maharashtra* and in *Salim Sahab v. State of M.P.*.

12. The overinsistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also. (See *State of Rajasthan v. Teja Ram*)

(ii) (2009) 2 Scc (Cri) 389 - *Gurdev Raj v. State of Punjab*, an excerpt from it would run thus:

14. It also cannot be said that since Rajani Bala and Pooja were closely related to deceased Bhushan Lata, their version could not have been believed. In our opinion, the trial Court was wholly right in holding that Rajani Bala and Pooja were no doubt relatives of the deceased but they could not be termed as "interested" witnesses. The court was also right in further stating that close relatives would be most reluctant to spare the real assailant and would falsely implicate an innocent person. After seeing the demeanour of witnesses, the trial Court believed both of them. The High Court again considered their evidence and confirmed the finding recorded by the trial Court. We see no infirmity in the approach of the trial court as well as of the High Court. It, therefore, cannot be said that by believing these two witnesses, any illegality was committed by the Courts below.

A plain reading of those decisions would highlight and spotlight the fact that simply because relative witnesses deposed about the occurrence of crime, the court is not bound to look askance at it or view it with a suspicious eye. It is for the Court to analyse the evidence with objectivity and if the deposition of the relative witness is otherwise reliable, the same could be the basis for conviction. It is quite understandable that whenever there is some fight between two families, neighbours would be very much reluctant to come forward and depose. As such, in this case also, the neighbours have not come forward to speak about the occurrence. Of course the learned Magistrate dealt with the matter in a different manner relating to the participation of the other accused persons as they were charged with minor offences.

9. But so far A1 is concerned, he was charged with the offence of house trespass u/s 448 IPC and also Section 324 IPC as he caused grievous injuries to PW2. In such a case, the learned Magistrate was not justified in simply jumping to the conclusion that no occurrence had taken place at all. As such, there is perversity and non application of law on the part of the learned Magistrate in analysing the evidence relating to the participation of A1 is concerned.

10. My mind is redolent and reminiscent of the following decision of the Hon'ble Apex Court regarding the revisional powers.

(i) Bindeshwari Prasad Singh @ B.P. Singh and Others Vs. State of Bihar (Now Jharkhand) and Another, ; an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

(ii) 2005 Scc (cri) 276 - Sathyajit Banerjee and Ors. v. State of W.B. and Ors., an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

A plain reading of the aforesaid decisions would highlight and spotlight the fact that revisional jurisdiction should be sovereignly exercised as against the order of acquittal and only in rare cases where there is clear injustice or perversity in the order of acquittal is found exemplified as per the records, the revisional court could interfere.

11. But, in this case, my discussion supra would indicate that the learned Magistrate without having a clear idea about the law relating to appreciation of

evidence gave undue importance to the insignificant and poco curante contradictions and simply jumped to the conclusion that all the accused should be acquitted. Adhering to the dictum laid down by the Hon"ble Apex Court, I am of the view that the acquittal relating to A1 is certainly has to be interfered with and the matter has to be remitted back to the lower court for considering the evidence relating to A1 after hearing both sides and arrive at a conclusion strictly in accordance with law. Simply because the matter is remitted back, it should not be taken by the lower court as the one sent by the High Court for convicting the accused and it is for the Magistrate to apply the law properly after hearing both sides and arrive at a conclusion as far as A1 alone is concerned.

12. Accordingly, the order of the lower court is set aside and the matter is remitted back to the learned Magistrate for considering the evidence relating to A1 after hearing both sides and arrive at a conclusion and dispose of the matter as per law.

13. With the above direction, this criminal revision is disposed of.