2019 INSC 1328

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.66 OF 2012

NAGARAJA ... APPELLANT

VERSUS

STATE OF KARNATAKA ... RESPONDENT

J U D G M E N T

K.M. JOSEPH, J.

1. By the impugned judgment, the High court has allowed the appeal filed by the State and found the appellant (Accused No.4) guilty of the offence under Section 397 of the Indian Penal code (for short "IPC") and he was ordered to undergo R.I. for a period of 7 years and to pay a fine of Rs.1000/- with default clause. Though the State has challenged the acquittal of the sixth accused, his acquittal was confirmed by the High court.

2. A complaint was submitted by PW 1 on 16.9.1996 at about 10.15 p.m. to PW 12, the Head constable. It was her complaint *inter alia* as follows:

> **While she was in her house with her husband, son-in-law and other relatives, they heard the barking of dogs and came outside. It was found 6-7 unknown persons wearing lungi and shirt armed with the club surrounded the complainant and their family members and insisted upon them to give their ornaments, watch and cash threatening that in case it is not so given they will be finished. They were pushed inside the house and PW4, PW5 and PW6 were assaulted with clubs. A golden chain was snatched. So also was the mangal sutra of PW1. A silver chain, ear rings and an amount of Rs.400/- were also snatched and they ran away from the place.**

3. It is on this complaint that finally after investigation was carried out charge sheet was filed. It would appear that accused No.1 to 3 though were on bail, they did not appear for the trial. Rest of the

accused except the appellant and accused No.6 were absconding. The case was split up and trial proceeded against appellant and A6 for the charge under Section 397 IPC. During the trial, PWs 1 to PW 15 were examined. Documents were marked as Exhibits P1 to P15 and MOs 1 to 17 were produced. The High court found as follows:

(1) The incident took place on 16.9.1996 in the night at about 9.00 p.m.. PW1, the wife of PW4, PW5 and PW6 were all present besides other members.

(2) The complaint was lodged within one hour of the incident

(3) The names of the accused are not revealed and it is stated to be only against the unknown persons

(4) There is no identification parade held. The High court found that as the incident took place in the night, the identification parade was essential and the evidence of the prosecution witness could not be accepted insofar as the identity is concerned.

4. It is thereafter that three circumstance described by the High Court as strong circumstances were found against the appellant.

1. **The appellant was apprehended in the neighbouring village during night and was chased by PWs 7, 8 and 11 and was produced before the Police immediately thereafter. Appellants conduct was noted.**
2. **During interrogation by the officer, the appellant volunteered to produce some articles which were looted from the house of PW1. PW3, the attesting witness was led with the police officers to the place by the side of the national highway and from from the ditch in the 'naala' appellant produced the trunk MO2 which contains the articles, clothes MOs 8 to 17. This recovery took place immediately on the very next day of incident, that is, on 17.9.1996. The High Court finds that the fact that these articles were kept in the ditch in the'naala' was not known to anybody other than the appellant. The**

evidence of PW3, witness to the recovery, was found acceptable. It was also found corroborated by the evidence of PW 15 (apparently PW 14).

3. The third circumstance relied upon by the prosecution successfully before the High Court was as follows:

> **PW15 is a Police Inspector and handwriting expert. He visited the spot and checked finger prints upon the utensils. After the arrest of the appellant, PW 14 had obtained the finger prints of the appellant. The fingerprints were compared. PW15 issued Ex.P12 certificate. The High Court relies on the Certificate and the evidence of PW15. Chance prints on Q-1 were found identical with the left thumb print and Q-2 was found identical to the finger print of the appellant. It is noted that the vessels were not seized by the investigating officer. It was found to be a mistake which was not to be considered in appreciating the evidence of PW15. PW15 was found to have visited the farmhouse of PW-1 on the very next day and developed five**

chance prints Q1 to Q5. The High Court, further, finds that the finger prints were lifted by means of transparent adhesive lifting tape and pasted them on the glass pieces for which Exh.P-13 certificate was issued. It was found that P-13 certificate along with P-12 letter reveals the clinching evidence with regard to appellant's finger prints tallying with the chance finger prints obtained by PW15. The deposition of PW-11 was referred to find that he was a police constable and was on duty on 16.9.1996 at 10:30 A.M. at Challakere fair. He was found to have gone to the house of PW-1 at night and came to know about the accused having run away after the dacoity. He went towards forest and saw a person running in the jungle and after chasing the person running ahead assaulted him with stones and tried to escape. At that time some persons came to help PW-11 and they apprehended the person who was found to be the appellant. The High Court relied on the circumstances revealed from the evidence of PW-

11, namely, the conduct of the appellant running in the jungle at night and this conduct supported the version of the prosecution. It was found that the PW-11 was not cross-examined and his evidence can be accepted in toto. It is stated only after PW-11 produced the appellant before the Investigating Officer, interrogation was done and appellant volunteered with a statement resulting in the recovery being made. The High Court, further proceeds to hold that the only conclusion is that the appellant participated in the incident (dacoity). The Trial Court was found to have committed the illegality in acquitting the appellant.

5. We heard learned counsel for the appellant and also learned counsel appearing on behalf of the respondent-State. As already noticed, the High Court has found that the evidence of the prosecution witnesses were not reliable for identifying the appellant. Admittedly, the incident took place at night and no identification parade was held. The

appellant not being identified and the High Court having not accepted the deposition of the prosecution witnesses regarding the identity of the appellant, the finding of guilt rendered by the High Court and that too in an appeal against acquittal, is questioned as impermissible.

6. It is contended that the High Court was not right in relying upon the finger prints even when the articles from which the chance finger prints Q1 to Q5 were found were not produced before the Court. Reliance is placed in this regard of the judgment of this Court in *Mohd. Aman v. State of* Rajasthan[1].

7. It is further contended that no reliance could be placed on the so-called recovery. It is complained that the recovery was effected from a public place. It is the case of the appellant also that no negatives of the photograph were filed before the Court and the person who took the photograph was also not examined. Regarding the recovery the following

1 1997 (10) SCC 44

findings of the trial Court is enlisted by the appellant in his support.

> **11. PW2 is a spot panchaname PW3 is a panch for Ex. P3. His evidence is at the time of preparation of Ex.P3 i.e. recovery of the articles from accused persons, namely, as per panchaname Ex.p3 Narayana, Mohana and Nagaraja were present and at the instance of Nagaraja A4 the trunk was recovered along with the clothes. Ex.P3 is in respect of the recovery of trunk and clothes from accused Nagaraja is,**
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> **"…… Accused Nagaraj S/o. Bheemappa told that clothes and trunk had come to his share, which he had concealed at a place, and if he was taken there he would show the same. All the above said articles were seized in the presence of the Panchayatdars for further proceedings…" (Translated from Kannada)**
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> **Panchaname was drawn at Kengaiahna hatti. Exp3 does not disclose that the trunk was hidden any where and from which place accused took out and produced before the police and panchas. It was mentioned that panchaname Ex.P3 was drawn at Kengaiahna hatti but in the evidence PW3 Boomalingaiah states the police seized from accused Anjaneya manihara tali, 18 bagarada gundu and he further states the police seized silver leg chain Rs. 106/- and panchaname Ex.p3. In further evidence he says "P.C. took us the both panchas and accused person**

> **before the court. Harijana Kambajjara Hola the trunk mO2 was kept in a pit it was taken out. MO2 contains some cloth and the same was seized under panchaname Ex.P4." His evidence is that Anjaneya accused No. 6 was present on the date of Ex. P3 and Ex. P4 is in correct. Since PW14 has already stated that A6 was arrested on 26.9.1996 and no property was seized from him. In respect of the recovery from accused No. 4 Nagaraja has not a recovery at all at the instance of the accused Nagaraja as per the evidence of PW3 P.C. took them accused to Harijana Kambajjara hola and from there seized the articles under Ex.P4.**

It is also contended that the witnesses have not supported the recovery.

8. In regard to reliance placed on the circumstances that the appellant ran away when PW-11 chased him, the contention of the appellant is that the evidence of PW-11 has been misconstrued. The evidence of PW-11 was not at all relevant in respect of the appellant and the evidence of PW-11 actually relates to the apprehending of another accused, namely, Venkataramanappa. The error has led the High Court to find the circumstance against the appellant, though

none existed. Per contra, learned counsel for State supported the impugned order.

9. The principles are well-settled in regard to the approach to be adopted by this Court in an appeal against the order reversing an acquittal. The principles are well settled in regard to the power of High Court in the matter of reversal of acquittal. The presumption of innocence prior to a verdict by the criminal court become strengthened with an acquittal rendered by the Trial Court. The High Court would be slow to interfere with an acquittal, particularly, if the view taken by the Trial Court is one of the two views possible and it is not perverse.

WHETHER THE HIGH COURT WAS CORRECT IN PLACING THE RELIANCE ON THE DEPOSITION OF PW-11 TO FIND THAT THE APPELLANT RAN AWAY AND THIS CONDUCT STRENGTHENED THE PROSECUTION CASE AGAINST HIM.

The deposition of PW-11 reads as follows:-

> **'I was working in year 1996 at Challakera P.S. I was deputed on 16.9.96, at Challakere Jatre Bandobast 10:30 p.m. CW 25 and 26 took me to**

> **police station my self 24, 25, and 26 went to Giriminahalli Kapile as there was a dacoit, we went to the house of PW1 and came to that the accused person ran towards the forest we went in the jungle I saw one person running the jungle I followed that person he through the stone on me and has sustained injury that person escaped my clutches meanwhile CW24, 25, 26 came there in a jeep again we followed and apprehended that person. I can identify the person is before the court he is A4. He discloses as Venkatramanappa S/o Ramachandrappa Pillhalli A4 has disclosed as name Venkataramanappa.'**

10. Next, we may also notice that in the evidence of PW-12 who was working as Head Constable, he says that at 2:00 A.M., PW-11 brought one person to the police station. He secured CW-2 and CW-3 to a police station and he seized HMT watch MO4 in the Panchanama. In the cross-examination, he says that he seized the watch from a person by name Venkataramanappa. He is A1. The evidence of PW-11 would thus show that he along with charge witnesses 24, 25 and 26 and the accused ran

towards the forest and the person was followed. He sustained injuries as the stones were thrown. That thereafter, CW-24, 25 and 26 came there in a jeep and that person was apprehended. As the officer identified the person before the Court and he is appellant and his name is disclosed as Venkataramanappa s/o Ramachandrappa Pillhalli. He states that the appellant disclosed his name as Venkataramanappa. PW-12 also refers to Venkataramanappa but he says that he is A1.

11. The evidence of PW-14 may be noticed. He was CPI Traffic R.S. On receiving information, he collected staff and proceeded to Giriyammana hally village. The PSI, and the staff produced before him one person by name Venkataramana. He directed his S.I. to take the persons to the police station for further investigation. Then, he visited the police station at 3:30 a.m.. He received information about some persons attacking house at Kengaiahna hatty. On getting information of three persons being apprehended, he proceeded. Three persons were arrested, their names

were disclosed as Narayana, Mohan and Nagaraj. Nagaraj appears to be appellant before us. If Nagaraj is arrested by PW-14, then reliance on evidence of PW-11 by the Court does not appear to be justified at all.

12. Continuing with deposition of PW-14 he states he proves the statement of the appellant marked as Ex.P11 and he claims to have seized the trunk and clothes as per PW4. He also says that he recorded voluntary statement of Venkataramanappa. He claims to have taken the finger prints of person arrested by him and forwarded it to PW-15 for comparison. In his cross examination he *inter alia* states that has not taken permission from the Magistrate for taking the finger prints of the accused. The upshot of the above discussion is that the High Court may not be justified in relying on deposition of PW11 to conclude that appellant, according to PW11, ran away and this conduct constituted a circumstance against the appellant.

13. The second circumstance relied upon by the High Court to convict the appellant, is the recovery of MO2 to MO 17 clothes. It is also not a matter which was overlooked by the Trial Court. However, the Trial Court after referring to the recovery concluded that so called recovery was effected from a public place. It is true that it is reasoned by the High Court that the fact of the articles being kept in a ditch was not known to anybody. Also, reference is made in this regard and support drawn from the evidences of PW-3 and Pw-14.

14. We may also refer to the other circumstance, namely, matching the fingerprints of the appellant with the chance fingerprints, which were found on certain utensils. PW-14, in his deposition admitted that he has not obtained permission from the Magistrate for taking the fingerprints of the accused. The Magistrate, in fact, has referred to the judgment of this Court reported in *Mohd. Aman's case* (supra). In the said case, it was held as follows *inter alia:-*

> **"Even though the specimen finger-prints of Mohd. A man had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger-prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. The other related infirmity from which the prosecution case suffers is that the brass, jug, production of which would have been the best evidence in proof of the claim of its seizure and subsequent examination by the Bureau, was not produced and exhibited during trial – for reasons best known to the prosecution and unknown to the Court. Thus the accused could not be convicted for murder."**

15. In this case also though seized, the utensils were not produced and exhibited. Though another view of the evidence of PW15 and the reasoning employed by the High Court may be possible, we cannot overlook that the High Court was considering an appeal against acquittal. We may remind ourselves that the High Court itself has found prosecution witnesses have not been able to identify the appellant. Further, out of

the three circumstances, quite clearly, one of the circumstances, namely, about the conduct of the appellant allegedly allegedly based on the evidence of PW-11 appears to have been the product of an error. We have also noticed the inadequacies as observed by the Trial court in regard to the finger-prints.

On 16.10.2019, we passed the following order: -

> **“Arguments concluded.**
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> **Judgment reserved.**
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> **We, however, note that the incident pertains to the year 1996 and there were 8 accused. Out of the 8 accused, only 5 were apprehended. Three of them were enlarged on bail and then absconded. It appears that these accused have still not been apprehended and put to trial. We find the aforesaid completely unacceptable that for these accused could not be apprehended, if proper measures were taken. It is not a case of one or two accused disappearing from the scene but six accused absconding.**
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> **We thus, call upon the respondent-state to file an affidavit under the signatures of superintendent of police of the District setting out as to what steps have been taken to apprehend these accused and as to what endeavours are being made now.**
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> **The affidavit be filed within four weeks.**

A copy of the order dasti be sent to the learned counsel for the State."

16. An affidavit has been filed on behalf of the respondent-State. Therein, it is stated that there were 8 accused who were chargesheeted in S.C. No. 60 of 99 in the Fast Track Court, Additional Sessions Judge, Chitradurga. The appellant and the accused no. 6 faced the trial and as we have noticed that though acquitted by the Trial court appellant stood convicted by the High Court.

17. As far as the other accused are concerned, it is stated as follows:

Venkatappa alias Venkataramana and accused no. 2 Narayana faced trial in S.C. No. 84 of 2002. It resulted in their acquittal. It further states that State had not preferred any appeal and acquittal is confirmed. In the order dated 16.10.2003 the chargesheet was made against the other absconding accused i.e. accused no. 3 and accused no. 8. Accused nos. 3 and 8 were also not found guilty and states that they had not preferred any appeal against the said judgment rendered in S.C. 85 of 2003. Still

further accused nos. 5 and 7 were tried in S.C. No. 57 of 2004 and they were also not found guilty by Sessions Judge and acquitted by the judgment dated 02.05.2005. Thus, against all the other accused, other than the appellant who stood charged under Section 397 have been acquitted.

18. Having regard to the circumstances, we are inclined to take the view that the High Court has erred in interfering with the acquittal of the appellant bearing in mind the principles which govern the question as to in what circumstances the Appellate Court can reverse an acquittal. The appeal is allowed and we set aside the judgment of the High Court convicting the appellant. We notice that the appellant has already been enlarged on bail by order dated 06.01.2012. The appellant's bail bond stand discharged and he need not surrender.

……J.
[SANJAY KISHAN KAUL]

……J.
[K.M. JOSEPH]

NEW DELHI
DECEMBER 06, 2019