

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CRIMINAL APPEAL No.1700 of 2004

JUDGMENT:

This appeal is preferred by the State questioning the judgment dt.26-07-1996 in S.C.No.3 of 1988 of the Special Judge for trial of Cases under E.C.Act-cum-III Additional Metropolitan Sessions Judge, Hyderabad acquitting respondent of offences under Sections 395, 148, 307 and 396 IPC.

2. Charge sheet was filed by Inspector of Police, CBCID, Hyderabad before the Additional Judicial First Class Magistrate, Kovvur against 4 persons alleging that they have committed the offences under Sections 402, 397 and 396 IPC.

3. In the said charge sheet, it is alleged that A-1 to A-4 and others are residents of Maharashtra and belong to a dacoity group of Parthies. A-1 to A-4 along with others on 18-09-1984 about 7-30 p.m., assembled with deadly weapons like axes, knives and sticks for the purpose of committing dacoities and murders at the over bridge on the Kovvur bypass road, that they way laid P.W.1, P.W.13, P.W.2, one S.Venkateswrlu and P.Ashok Kumar Reddy, that they beat them with sticks, murdered S.Venkateswarlu and P.Ashok Kumar Reddy in the

commission of dacoity and took away their wrist watch and cash worth Rs.425/-. It is contended that a case was registered by the concerned police and subsequently investigation was handed over to the C.B.C.I.D. During the course of investigation, the Inspector, CBCID took the accused into his custody from Maharashtra police, interrogated them and recovered part of the stolen property from the possession of absconding accused.

4. The case against respondent, who was one of those accused in the charge sheet, was transferred by Addl. Judicial First Class Magistrate, Kovvur to the Court of IX Metropolitan Magistrate, Hyderabad, after separating the case against absconding accused. It was committed to the Court of Sessions.

5. The prosecution examined P.Ws.1 to 18 and marked Exs.P-1 to P-15 and M.Os.1 to 32. The defence marked Ex.D-1.

6. By judgment dt.26-07-1996, the Court below acquitted the accused on the ground of lack of identification.

7. Challenging the same, this appeal is filed by the prosecution.

8. The learned Public Prosecutor contended that the judgment of the Court below is erroneous, that the Court below ought not to have acquitted the accused of

offence of dacoity committed and that the evidence on record establishes the guilt of accused beyond reasonable doubt.

9. The case of the prosecution is that accused and other culprits murdered S.Venkateswarlu and P.Ashok Kumar Reddy and beat P.Ws.1, 2 and 13 during the course of dacoity and snatched away M.O.29 wrist watch and cash of Rs.450/- from Ashok Kumar Reddy, who died. Both P.Ws.1 and 13 stated that they were traveling on the scooter of P.W.1 and they were attacked by the dacoits at about 7-30 p.m., on the upgradient of the approach road of the over bridge and by the time they reached there, they saw S.Venkateswarlu and Ashok Kumar Reddy lying there dead. So they did not witness the attack on the said individuals by the dacoits. Therefore the attack on P.Ws.1 and 13 took place subsequent to the attack on the deceased.

10. So one has to see whether the deceased two individuals were attacked by the same dacoits, who also attacked P.Ws.1 and 13.

11. Only P.W.1 identified the respondent/accused as one of the assailants who committed the dacoity. P.W.13 failed to identify any of the assailants. P.W.2, a victim in the incident, also failed to identify any of the assailants.

12. It is not disputed that P.W.1 identified in the identification parade the accused herein and two others, but P.W.1 did not give any descriptive particulars of the accused as to how he was identifying the accused. According to P.W.1, the assailants were all wearing black masks. In such a situation it is not possible to any person to identify any of the assailants, particularly when he was driving the scooter, all of a sudden he was attacked by some culprits, and he received stone injury on his head and lost his balance and fell near the edge. Unless the participation of respondent/accused in the incident of dacoity is established beyond reasonable doubt, he cannot be convicted for the offence of dacoity.

13. In the facts narrated above, and in the situation in which P.W.1 was in after receiving stone injury on his head, having fallen to the ground, it would be very difficult to identify the accused. Therefore, I am of the opinion that the Court below had rightly acquitted the respondent of offence alleged against him.

14. The scope of interference in appeal under Section 378 of the Code is laid down succinctly in **Chandrappa and others Vs. State of Karnataka**^[1], as under :

“(1) An appellate court has full power to review, reappreciate 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 emphasise 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.

(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."

15. The above principle was reiterated in **State of Rajasthan v. Mohan Lal**^[2] and recently in **Satvir Singh v. State of Delhi**^[3].

16. Having regard to the above legal position, since the conclusion arrived at by the Court below appears to be a reasonable conclusion and since prosecution has not been able to show any infirmity in the

reasoning of the Court below, I do not think this is a fit case to interfere with the judgment of the Court below.

17. Therefore, I do not find any merit in the appeal and the Criminal Appeal is accordingly dismissed.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-02-2015

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[\[1\]](#) (2007) 4 SCC 415

[\[2\]](#) (2009) 12 SCC 515

[\[3\]](#) (2014) 13 SCC 143