

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1153 OF 2007

JUDGMENT:

This appeal is filed under Section 378(3) & (1) of Cr.P.C., by the State represented by the Public Prosecutor, assailing the judgment dated 17.3.2005 passed in Criminal Appeal No.89 of 2004 on the file of the Court of I Additional District & Sessions Judge, Kurnool wherein and whereby the conviction and sentence imposed against the respondent-accused for the offences under Sections 307, 506(2), 353 of IPC and Section 27 of the Arms Act in S.C.No.130 of 2002 on the file of the Court of Assistant Sessions Judge, Atmakur, was set aside.

2. The facts leading to filing of the present appeal are as follows:

(a) At the relevant point of time, the accused was working as Armed Security Guard in State Bank of India, Township Branch, Sunnipenta, Kurnool. Basing on the complaint-Ex.P.1 lodged by K.Prasada Rao-P.W.1, who was working as Head Cashier, K.Pardha Saradhi Sharma-P.W.12 registered a case in Crime No.13 of 2000 for the offences under Section 307 of IPC and Section 27 of the Arms Act against the accused and issued the First Information Report-Ex.P.6. During the course of investigation, it is revealed that on 07.8.2000, the accused, while discharging his duties, entered into the Record Room of the Bank and opened fire thrice due to which P.W.1 sustained injuries. The case of the prosecution is that the accused made an attempt to kill P.Ws.1 to 3. P.W.12 took up investigation, sent P.W.1 to the Hospital, visited the Bank and seized M.Os.3 to 8. Dr.H.Srinivasa Rao-P.W.11 examined

P.W.1 and issued Wound Certificate–Ex.P4. After completion of the investigation, charge sheet was laid before the Court of Judicial Magistrate of First Class, Atkamur, against the accused for the offences punishable under Sections 307, 506(2) and 353 of IPC and Section 27 of the Arms Act. The learned Magistrate took the cognizance of the offence and numbered the charge sheet as P.R.C. No.34 of 2001.

(b) On appearance of the accused, learned Magistrate had supplied copies of the documents as contemplated under Section 207 of Cr.P.C., and committed the case to the District and Sessions Division, Kurnool, as the offence under Section 307 of IPC is exclusively triable by a Court of Session. The learned Principal Sessions Judge, Kurnool has taken the case on file and numbered it as S.C. No.130 of 2000 and made over the same to the Assistant Sessions Judge, Atmakur for trial and disposal in accordance with law.

(c) The learned Assistant Sessions Judge, Atmakur on appearance of the accused, heard the learned Additional Public Prosecutor for the State and the learned counsel for the accused, framed charges against the accused under Sections 307, 506(2) and 353 of IPC and Section 27 of the Arms Act, read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

(d) To prove the guilt of the accused, on behalf of the Prosecution, P.Ws.1 to 12 were examined and Exs.P.1 to P.7 and M.Os.1 to 8 were marked. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion

that the accused was found guilty for the offences under Sections 307, 506(2) and 353 of IPC and Section 27 of the Arms Act, convicted and accordingly sentenced him to undergo (i) rigorous imprisonment for a period of seven years and pay a fine of Rs.500/- in default to suffer rigorous imprisonment for a further period of five months for the offence under Section 307 of IPC; (ii) rigorous imprisonment for a period of three years for the offence under Section 506(2) of IPC; (iii) rigorous imprisonment for a period of one year for the offence under Section 353 of IPC; (iv) rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment for a period of five months for the offence under Section 27 of the Arms Act.

(e) Feeling aggrieved by the judgment of the trial Court, the accused preferred Criminal Appeal No.89 of 2004 on the file of the Court of I Additional District and Sessions Judge, Kurnool. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the Prosecution failed to prove the guilt of the accused for the offences under Sections 307, 506(2) and 353 of IPC and Section 27 of the Arms Act and consequently allowed the appeal by setting aside the conviction and sentence imposed against the accused vide judgment of the trial Court. Hence, the present appeal by the State represented by the Public Prosecutor.

3. Before this Court, the learned Public Prosecutor submitted that the first appellate Court misconstrued Section 84 of IPC and acquitted the respondent-accused. He further submitted that during the course of trial, no evidence was let in on behalf of the

defence to prove that the son of the accused sustained injuries on the date of incident in the Kargil war. He further submitted that the findings recorded by the first appellate Court are not sustainable either on facts or in law. ***Per contra***, learned counsel for the respondent-accused submitted that the trial Court misconstrued Section 84 of IPC and convicted and sentenced the accused. He further submitted that the testimony of prosecution witnesses more particularly P.Ws.8 and 9 clearly reveals the state of mind of the accused at the relevant point of time. He further submitted that even if the testimony of P.Ws.1 to 8 is taken into consideration, the Prosecution failed to prove that the accused opened fire with an intention to kill P.Ws.1 and 3. He further submitted that the first appellate Court considered oral and documentary evidence in right perspective and arrived at just and reasonable conclusion that the Prosecution failed to prove the guilt of the accused. He further submitted that there are no grounds much less valid grounds to interfere with the findings arrived at by the first appellate Court consequent upon which the accused was acquitted of the offences charged against him.

4. Before advertng to the findings of the Courts below, it is not out of place to refer the following decisions.

(i) **State of Rajasthan vs. Mohan Lal¹**, wherein the Hon'ble Apex Court held at Para No.34 as follows:

34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka, (2007) 4 SCC 415, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

¹ AIR 2009 SC 1872

(1) An appellate court has full power to review, re-appreciate 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.

(ii) **State of Maharashtra v Dnyaneshwar Laxman Rao**

Wankhede², wherein the Hon'ble apex Court held at Para Nos.15,

21 and 22 as follows:

15. Before embarking on the rival contentions raised before us, it is our duty to remind ourselves that we are dealing with a judgment of acquittal and, thus, it is absolutely essential to keep in mind the well-settled principles of law that in the event two views are possible to be taken, this Court shall not interfere with a judgment of acquittal. There cannot be any doubt that in the event, having regard to the materials brought on record, the Court comes to the conclusion on the basis thereof that only one view is possible, a judgment of acquittal may be interfered with. (See *Shivappa v. State of Karnataka*, (2008) 11 SCC 337, *State of Maharashtra v. Rashid B. Mulani*, (2006) 1 SCC 407 and *State v. K. Narasimhachary*, (2005) 8 SCC 364.)

21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts. (See *Noor Aga v. State of Punjabi*, (2008) 16 SCC 417 and *Jayendra Vishnu Thakur v. State of Maharashtra*, (2009) 7 SCC 104.)

22. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. (See *Dilip v. State of M.P.*, (2007) 1 SCC 450 and *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516.)

² (2009) 15 SCC 200

5. As per the principle enunciated in the cases cited supra, where it is possible to have two views – one in favour of the Prosecution and the other in favour of the accused – the latter view should prevail. Let me consider the facts of the case on hand in the light of the principles enunciated in the case cited supra.

6. P.Ws.1 to 8, who are the employees of State Bank of India, Township Branch, Sunnipenta, Kurnool, are the competent persons to speak about the alleged incident. At the relevant point of time, the accused was working as Armed Security Guard in Township Branch of SBI. It is not in dispute that the concerned Authority provided gun and bullets to the accused for the purpose of safeguarding the property and personnel of the Branch. It is not the case of the Prosecution that on the date of the incident, the accused was in possession of fire arm in contravention of Section 27 of the Arms Act. In such circumstances, as rightly held by the first appellate Court, Section 27 of the Arms Act is not applicable to the facts of the case on hand.

7. The next question that falls for consideration is whether the accused fired the gun with an intention to kill P.Ws.1 to 3. Establishment of the evil intention on the part of the accused is *sine qua non* to convict him for the offence under Section 307 of IPC. As seen from the testimony of P.W.1, on the date of the incident, the accused opened fire due to which he sustained bullet injury to the left hand. As seen from the testimony of P.W.11- Dr.H.Srinivasa Rao, on 07.8.2000 at about 01.45 pm, he examined and treated P.W.1 and issued Ex.P4-wound certificate. The oral testimony of P.W.11 coupled with Ex.P.4 reveals that P.W.1

sustained simple injury. Admittedly, except P.W.1 no other person received injuries in the said incident that occurred on 07.8.2000. The testimony of P.Ws.1 to 8 reveals that on 07.8.2000 the accused opened fire in the record room of the Bank.

8. The defence version is that on 07.8.2000, at about 11.00 am, the accused received information that his son, who was working in the Indian Army, sustained injuries in the Kargil war. The trial Court made an observation that P.Ws.1 to 3 denied the suggestion about receiving of injuries by the son of the accused in Kargil war. I have carefully perused the testimony of P.Ws.1 to 3. Nowhere P.Ws.1 to 3 denied about sustaining of injuries by the son of the accused in Kargil war. In the cross-examination, these three witnesses stated that they do not know whether the accused received information about sustaining of injuries by his son in Kargil war. There is no whisper in the testimony of P.Ws.1 to 3 that the accused opened fire with an intention to kill P.Ws.1 to 3. The testimony of P.Ws.1 to 8 reveals that on the date of the incident, the behaviour of the accused is not normal. P.W.5, in his chief-examination itself, deposed that the accused pointing the gun towards himself stating that he is going to die. P.W.8, in his chief-examination, deposed that the accused made an attempt to press the trigger of the gun, aiming the gun towards himself, in order to commit suicide. P.W.8 further deposed that in the meanwhile P.W.5 came and pushed the gun. In the chief-examination, P.W.8 in unequivocal terms deposed that the accused behaved in an abnormal manner. A careful perusal of the testimony of P.Ws.1 to 8 reveals that prior to the alleged incident; the respondent came to know about his son sustaining injuries in Kargil war.

9. The trial Court made an observation that no evidence was adduced by the accused in order to prove that his son sustained injuries in Kargil war. It is needless to say that the accused can adduce oral and documentary evidence on his behalf to prove his version. At the same time, the accused can establish his defence by eliciting certain information from the cross-examination of the prosecution witnesses. The defence counsel elicited from the cross-examination of P.Ws.1 to 8 that on 07.8.2000 the accused behaved in an abnormal manner after coming to know about his son sustaining injuries in Kargil war. It is not out of place to extract the observations made by the trial Court at paragraph No.7, which read as follows:

7. After the evidence on the side of the prosecution is closed, the accused is examined under Section 313 of Cr.P.C., for which he denied the incriminating material that appears against him and stated that on the date of the alleged incident at about 11.00 am his son-in-law approached him and informed that the son of the accused who was working at the Cargil (*sic* Kargil) war sustained injuries and he does not know the events that took place subsequently.

In Section 313 Cr.P.C., examination also, the accused has taken a specific plea that on 07.8.2000 his son-in-law came to the Bank, where he (accused) was on duty as Armed Security Guard, and informed that his son sustained injuries in Kargil war, thereafter he (accused) does not know what happened.

10. The Court has to consider the totality of the facts and circumstances in order to arrive at just and reasonable conclusion. Appreciation of evidence does not mean placing reliance on the stray sentences of the prosecution witnesses. In order to arrive at just and reasonable conclusion, the Court has to consider the overall facts and circumstances of the case viz., cross-examination

of the prosecution witnesses and the version put-forth by the accused in his examination under Section 313 Cr.P.C., besides oral and documentary evidence, if any, adduced on his behalf. Even if the testimony of P.Ws.1 to 8 is taken into consideration, the Prosecution failed to establish that the accused opened fire with an intention to kill P.Ws.1 to 3. It is not the case of the Prosecution that due to previous animosity the accused opened fire against P.W.1. There is no such whisper in the testimony of P.Ws.1 to 3. In such circumstances, it is not possible for the Court to arrive at a conclusion that the accused fired with an intention to kill P.Ws.1 to 3.

11. Whether the act alleged to have been committed by the accused falls within the ambit of Section 84 of IPC or not is the crucial question that falls for consideration. While considering the Prosecution version, the Court shall not lose sight of the human conduct. In the instant case, when the accused had been discharging his duty as an Armed Security Guard in the State Bank of India, Township Branch, all of a sudden, his son-in-law came and informed him that his son sustained injuries in Kargil war. Normally, if any person receives injuries in the war, his survival is very much doubtful. On receiving the information about his son sustaining injuries in Kargil war, the accused might have become panic and eventually lost his mental balance. No ordinary prudent man will glibly swallow the untoward incident that had happened in the family. Receiving of information as to his son sustaining injuries in the war certainly affects the mind of any father. Each individual may not react in the same manner on coming to know about the untoward incident more particularly

sustaining of injuries by the family member in the war. No one can expect a reasonable or rational act from an individual, who lost mental balance for the reasons beyond his control. Action or reaction, in a given situation, depends upon the mental capacity of each individual. There is no material on record to establish that the accused misbehaved with his superior officers at any point of time prior to the date of the incident. The Court shall not lose sight of all these aspects while appreciating the evidence available on record.

12. The trial Court has not considered the testimony of witnesses more particularly P.Ws.5 and 8 in touchstone with Section 84 of IPC whereas the first appellate Court has considered the totality of the facts and circumstances of the case and came to the conclusion that the act committed by the accused falls within the purview of Section 84 of IPC. The material placed before the Court clinchingly establishes that the respondent behaved in such a manner immediately after receiving the above said information. The testimony of P.Ws.1 to 8 also to certain extent strengthens the defence version that after receipt of the information about his son sustaining injuries in Kargil war, the accused lost mental balance, aimed the gun towards himself and after having been prevented by P.W.8, he opened fire without any aim or object, which caused injury to P.W.1. The Court has to consider the proximity of time between receiving of the information and the alleged act. The trial Court has taken one view and the first appellate Court has taken another view. The view taken by the first appellate Court is more probable and believable. Therefore, as held by the Hon'ble apex

Court in **Dnyaneshwar Laxman Rao Wankhede**, 2nd cited supra, the view, which is in favour of the accused, should prevail.

13. Having regard to the totality of the circumstances of the case and also the principle enunciated in the cases cited above, I am of the considered view that the act committed by the accused will fall within the purview of Section 84 of IPC. I am fully agreeing with the findings recorded by the first appellate Court. There is no legal flaw in the findings of the first appellate Court to warrant interference by this Court.

14. In the result, the appeal is dismissed. Miscellaneous petitions if any pending in this appeal shall stand closed.

Date: 25.1.2018
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T. SUNIL CHOWDARY, J

