

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL No.1011 of 2011

Between:

The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Appellant

and

Sangaraboina Shiva and another

..Respondents

JUDGMENT PRONOUNCED ON: 24th July, 2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD
+ CRIMINAL APPEAL No.1011 of 2011

% 24.07.2018

The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Appellant

Vs.

\$ Sangaraboina Shiva and another

..Respondents

! Counsel for the appellant: Public Prosecutor (T.S.)

Counsel for the respondents: Mr.A.Prabhakar Rao

<Gist :

>Head Note:

? Cases referred:

1. AIR 1963 SC 200
2. AIR 2007 SC (Supp) 997

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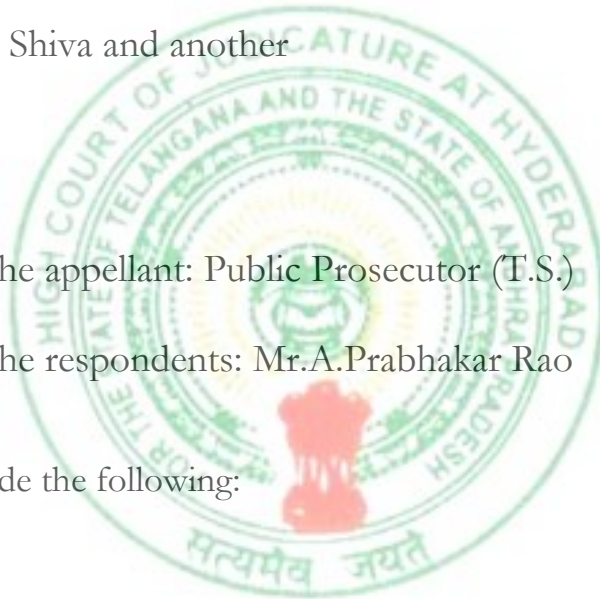
Sangaraboina Shiva and another

..Respondents

Counsel for the appellant: Public Prosecutor (T.S.)

Counsel for the respondents: Mr.A.Prabhakar Rao

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal by the State is against judgment, dated 09.02.2010, in Sessions Case No.898 of 2007 on the file of learned IV Additional Sessions Judge, (Fast Track Court), Warangal. By the aforementioned judgment, the two accused, who were charged for the offence punishable under Section 302 I.P.C., were acquitted, *inter alia*, of the charge.

2. As the case of the prosecution has been narrated in detail by the Court below, it is unnecessary for us to restate the same once over. It would suffice to note that the Court below has believed the evidence of P.Ws.9 and 10 – the alleged eyewitnesses, but acquitted the accused on two grounds *viz.*, (i) even before the F.I.R. was registered, the Police started investigation and that (ii) recovery of the crime weapons is not proved by the prosecution.

3. While the learned Public Prosecutor (T.S.) appearing for the appellant has urged that once the testimony of the eyewitnesses is believed, the Court has no option other than convicting the accused even if the investigation suffered from defects as pointed out by the Court below.

4. Mr.A.Prabhakar Rao, learned counsel for the respondents/accused, has opposed the above submission and stated that the findings of the Court below regarding the evidence of P.Ws.9 and 10 are perverse and that though those findings were rendered against the accused, still this Court has the power to re-appreciate the evidence and reverse the findings of the Court below so as to support the conclusion arrived at by it and confirm the judgment.

5. This is a peculiar case, where we are faced with a situation where the State is relying upon the findings of the Court below and questioning the result as being contrary to the said findings, while the defence is questioning the findings and supporting the conclusion. This necessitated us to refer to the scope of the powers of this Court envisaged under Section 386 Cr.P.C. For proper appreciation, this provision, to the extent it is relevant, is reproduced hereunder.

“386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re- tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;”

From the express language of Section 386 Cr.P.C. as reproduced above, it is evident that no specific power is conferred on the appellate Court to sustain the conclusion by reversing the findings unlike in a civil appeal as envisaged under Order XLI Rule 22 C.P.C. However, it needs to be borne in mind that having succeeded before the trial Court, the accused had no opportunity of filing an appeal only for the purpose of questioning the findings of the trial Court. Indeed, such an appeal is barred under Section 372 Cr.P.C., which prohibited filing of any appeal except as provided for by the Code or by any other law for the time being in force. The accused are, therefore, entitled to canvass the correctness or otherwise of

the findings of the Sessions Court in order to support the conclusion arrived at by it.

6. A Constitution Bench of the Supreme Court in **M.K.Kulkarni vs. State of Maharashtra**¹ discussed the scope of powers of the appellate Court in an appeal against conviction or acquittal with reference to Section 423(1) of the Code of Criminal Procedure, 1898. The relevant portion of the said judgment reads as follows.

“16. Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused

¹ AIR 1963 SC 200

person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. Emperor, 61 Ind App 398: (AIR 1934 PC 227(2)).” (emphasis added)

In **Jagdish vs. State of Madhya Pradesh**², the Supreme Court had this to say.

“12. The High Court while dealing with an appeal from a judgment of acquittal was, thus, required to meet the aforementioned reasonings of the learned Trial Judge.

² AIR 2007 SC (Supp) 997

There cannot be any doubt whatsoever that irrespective of the fact that the High Court was dealing with a judgment of acquittal, it was open to it to re-appreciate the materials brought on records by the parties, but it is a well-settled principle of law that where two view are possible, the High Court would not ordinarily interfere with the judgment of acquittal. (See Rattan Lal v. State of Jammu and Kashmir [2007 (5) Scale 472].” (emphasis added)

7. Following the reasons assigned hereinbefore and the case law discussed above, we have no hesitation to hold that even in an appeal against acquittal filed by the State, it is open to the accused to assail the correctness or otherwise of any finding of the Sessions Court with a view to support his acquittal.

8. We shall now consider whether the finding of the Court below that the evidence of P.Ws.9 and 10 is worthy of acceptance and that through their evidence, the prosecution proved the guilt of the accused. In Ex.P-1 report given by P.W.1, the names of P.Ws.9 and 10 were not referred to. They did not figure as eyewitnesses to Ex.P-6 - inquest panchanama. For the first time, they were examined by the Police two days after the occurrence. Further more, each of these two witnesses did not speak to the presence of the other witness.

The following omissions were elicited by the defence from P.W.9 in his cross-examination.

“...I did not state to the Police that the A2 beat the deceased with a stick as in Ex.D4....I did not state to the Police that the A1 chased the said Bhaskar at a distance and hacked with an axe as in Ex.D5. I did not go to the Police Station at any time....”

The defence was also able to elicit the following omissions from the cross-examination of P.W.15 – the investigation officer.

“....The P.W.10 stated to me as in Ex.D6. P.W.10 stated to me that he is a coolie and he did not state to me that he is working in Gram Panchayat. P.W.10 did not state to me at the time of alleged incident that he was bringing water on bicycle. P.W.10 did not state to me that while A1 was beating the deceased the A2 stand by his side. The P.Ws.9 and 10 are not shown as eyewitnesses in Ex.P6....”

9. The aforementioned lacunae in the case of the prosecution *qua* P.Ws.9 and 10 render their testimony unworthy of acceptance. Therefore, as rightly submitted by the learned counsel for the respondents/accused, the Court below has rendered an erroneous finding that through the evidence of P.Ws.9 and 10, the prosecution was able to prove the guilt of the accused. Accordingly, while reversing the finding of the

Court below to the above extent, we confirm all other findings rendered by it including the conclusion and the result of the case.

10. In the result, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24th July, 2018

Note: L.R. copies to be marked.

(B/o)
GHN

