

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 104 OF 2010

State, rep. By  
The Inspector of Police  
Currency Wing  
Crime Branch CID, Chennai. .. Appellant/Complainant

- Vs -

Thangaraj .. Respondent/Accused No.1

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 04.09.08 passed by the learned Addl. Sessions Judge, Fast Track Court No.1, Poonamallee, in S.C. No.139/08.

For Appellant : Mr. C.Iyyapparaj, APP

For Respondent : Mr. N.Rajesh Khanna

JUDGMENT

The accused/respondent herein, along with three other accused, who were arrayed as A-2 to A-4, were charged and tried before the learned Addl. Sessions Judge, Fast Track Court No.1, Poonamallee, in C.C. No.139/08 for the offences u/s 120 (B) r/w 489 (b) and 489 (c) IPC and 489 (b) and 489 (c) IPC and the prosecution, having not proved the case as against the accused beyond reasonable doubt, the trial court acquitted the accused. However, the State, aggrieved by the said order of acquittal of the accused, has preferred the present appeal as against the acquittal of the accused/respondent herein alone.

2. For the sake of convenience, the respondent herein as well as the other accused will be referred to as A-1 to A-4.

3. The brief facts, necessary for disposal of this appeal, are as hereunder :-

P.W.1 is a vegetable vendor at Koyambedu market. On the occurrence day in the year 1999, while P.W.1 was carrying out

his avocation of selling vegetables, A-1 came to his shop and purchased two kilos of tomatoes and gave two ten rupee notes towards the said purchase. P.W.1 on receiving the said amount, found that the both currency notes had the same serial number and, therefore, P.W.1 caught hold of A-1 and sent information to Koyambedu Police Station, whereupon the police authorities came to the shop of P.W.1 and arrested A-1. P.W.1 gave the complaint, Ex.P-1 and the two ten rupee notes were seized and marked as M.O.1 series.

4. P.W.8, the Inspector of Police (Law & Order) attached to Koyambedu Police Station, on receipt of information from P.W.1, reached the shop of P.W.1 and arrested A-1. At that time P.W.1 gave the complaint, Ex.P-1 and also produced the two counterfeit currency notes and the same were seized under the cover of mahazar, Ex.P-7. A-1 was interrogated at the same place and at that time, A-1 came forward and gave a confession statement, which was recorded in the presence of P.W.6 and another. A-1 took P.W.8 to the Koyambedu Bus Terminal and from the thorny bush, produced 92 Nos., of ten rupee notes, M.O.3 series, which were seized under the cover of mahazar. Thereafter, A-1 was brought to the police station along with the seized counterfeit currency and a case in crime No.1455/99 was registered u/s 489 (b) and (c) IPC and prepared printed FIR, Ex.P-8. P.W.8 examined the witnesses and recorded their statements. A-1 was sent for judicial remand and the seized material objects were sent to the Court under Form-95. Since the case involved counterfeit currency notes, the case was transferred to the special branch dealing with the said crime.

5. P.W.7, the investigating officer, attached to the special branch dealing with counterfeit currency notes, on taking up investigation, deputed teams to arrest the other accused, viz., A-2 to A-4 connected with the counterfeit currency. Accordingly, A-2 was arrested on 20.7.00 and he came forward and gave a confession statement, which was recorded in the presence of witnesses. P.W.7 sent a requisition to the concerned Court to send the counterfeit currency for forensic analysis. A-3 was arrested on 5.9.00 and he came forward and gave a confession statement, which was recorded in the presence of witnesses. A-2 and A-3 were sent for judicial remand. On transfer, the investigation of the case was handed over to P.W.9.

6. P.W.9, on taking up investigation, arrested A-4 on 19.12.00 and A-4 came forward to give a confession statement, which was recorded in the presence of witnesses. A-4 was sent for judicial remand. The forensic analysis report, Ex.P-9, regarding the counterfeit currency was received. P.W.9 examined

other witnesses and recorded their statements. After completing the investigation, P.W.9 filed the final report against A-1 to A-4 for the offences u/s 120 (B) r/w 489 (b) and 489 (C) IPC.

7. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Addl. Sessions Court after framing charges u/s 120 (B), 489 (b) and 489 (c) IPC. When questioned, the accused pleaded not guilty.

8. To prove the case, the prosecution examined P.W.s 1 to 9, marked Exs.P-1 to P-9 and M.O.s 1 to 3. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, acquitted the appellant as well as the other accused, aggrieved by which the State/appellant has filed the present appeal as against the appellant/A-1 alone. Insofar as the acquittal as against A-2 to A-4, the State has not preferred any appeal and, therefore, the order of the trial court has attained finality.

9. Ms.Saradha Devi, learned Government Advocate (Crl. Side), appearing for the appellant contended that P.W.1, the complainant, has caught A-1 red handed and based on the confession of A-1, the counterfeit currency notes, numbering 92 were recovered from a thorny bush. The said recovery was made in the presence of P.W.6, who is an independent witness, who had come to the market to purchase vegetables. Further, P.W.s 2 and 3 are also independent witnesses, who have spoken about the arrest and confession of A-2 and A-3. It is the submission of the learned Government Advocate that the evidence of the investigating officer, P.W.8, is corroborated on all material aspects by P.W.6, who is an independent witness. However, the trial court has not appreciated the evidence in proper perspective, and had acquitted the appellant and, therefore, interest of justice warrants interference with the order passed by the court below.

10. Per contra, learned counsel appearing for the appellant submits that there are contradictions in the evidence of P.W.1, who at one place deposed that he is working in the vegetable market, while in another place he has deposed that he is collecting charges for the vehicles parked. Therefore, the presence of P.W.1 itself is doubtful, as his avocation has not been established and, therefore, the complaint at the behest of

P.W.1 is doubtful. Once the complaint itself is prone to doubt, automatically, the other sequence of events also would necessarily have to be doubted. It is therefore submitted that the trial court has analyzed the evidence threadbare and has acquitted the accused and unless perversity or illegality is spotted in the order, the same does not call for any interference and, therefore, prays to dismiss the present appeal.

11. Heard the learned Government Advocate (Crl. Side) appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record to which this Court's attention was drawn.

12. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In *Shailendra Pratap & Anr. - Vs - State of U.P.* (2003 (1) SCC 761), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

13. Yet again, in *Ram Kumar - Vs - State of Haryana* (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons

including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. ...."

14. The Hon'ble Apex Court, in V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41] , this Court reiterated the well-

settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690] , this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota

Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial

court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

15. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the court below for acquitting the accused/respondent herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

16. A careful analysis of the evidence on record reveals that the crucial evidence which has to be tested on the touchstone of acceptability and credibility is the evidence of P.W.s 1, 6 and 8. P.W.1 is the complainant, while P.W.3 is the witness to the recovery of the counterfeit notes produced by A-1 and P.W.8 is the investigating officer.

17. Though it is the contention of the learned counsel for the respondent/A-1 that there is very many contradiction in the evidence of P.W.1 and, therefore, the presence of P.W.1 at the scene itself is doubtful, however, a careful analysis of the deposition of P.W.,1 reveals that he was in the vegetable shop of his uncle selling vegetables on the day of occurrence. It is the further evidence of P.W.1 that his normal work is to collect parking charges for the vehicles that come to the market and on the day of occurrence, in the absence of his uncle, he had tended to the work in the vegetable shop, in which shop he was used to work on and off. It is the further deposition of P.W.1 that A-1 had purchased tomatoes and had given him two ten rupee notes and a scrutiny of the same revealed that both carried the

same serial numbers and doubting the authenticity, he had caught hold of A-1 and had informed the police authorities. In spite of detailed cross examination, the defence was not able to elicit any contradiction in the evidence of P.W.1 vis-a-vis the other witnesses. Though certain discrepancies are stated to be in the evidence of P.W.1, according to the defence, but a harmonious reading of the entire evidence of P.W.1 reveals that there are no contradictions and that the evidence is cogent and convincing and, this Court has no reason to doubt the veracity of the said evidence.

18. The next piece is the evidence of P.W.6, who has deposed to the occurrence and has went on to state that on the police reaching the place of occurrence and arresting A-1, A-1 took the police party to the Koyambedu Bus Terminus and from a thorny bush, produced 92 Nos., of ten rupee alleged counterfeit notes, which were recovered by P.W.8. P.W.6 has further deposed that he was a witness to the arrest of A-1 as well as to the recovery of the currency notes. The evidence of P.W.6, on material aspects, corroborates the evidence of P.W.8, the investigating officer, who arrested the accused, recovered the currency and registered the case. It is to be pointed out that P.W.6 is an independent witness and has no axe to grind against A-1. In spite of detailed cross examination by the defence, no worthwhile contradiction has been elicited. It is further to be pointed out that the confession statement of A-1 was recorded in the presence of the above witness and P.W.6 has deposed that the said confession was free and voluntary. The evidence of P.W.6 is in total corroboration with the evidence of P.W.8 and the evidence of both witnesses, viz., P.W.s 6 and 8, inspires the confidence of this Court and this Court has no hesitation in accepting the said evidence.

19. Once the said evidence of P.W.s 6 and 8 is accepted, the same, coupled with the evidence of P.W.1, the complainant, which is found to be trustworthy and there being no perversity in the said evidence, the culpability of A-1 in the commission of offence stands proved. Though such is the nature of evidence on record, this Court is at a total loss to understand as to what weighed in the mind of the trial court to render a verdict of acquittal, without there being any perversity or illegality in the evidence tendered by the prosecution witnesses. The ratio laid down in the above decisions relating to interference with cases, where acquittal has been recorded, clearly portrays that without there being perversity or illegality in the evidence, the acquittal recorded should not be interfered with. But in the case on hand, the perversity and illegality in the reasons adduced by the trial court stands to reason, as above,

and this Court is of the considered view that the judgment recorded by the trial court is perverse and illegal and not on the basis of the material deposition available on record. The prosecution, on the materials available on record, as discussed above, has clearly proved the culpability of the appellant in the commission of the offence and, therefore, the acquittal of the respondent/A-1 by the trial court deserves interference.

20. Since this Court is reversing the acquittal recorded by the trial court and, thereby, convicts the respondent/A-1 of the charges framed against him, as mandated u/s 235 (2) Cr.P.C., this Court heard the respondent/A-1 on the question of imposition of sentence.

21. The respondent herein/A-1 appeared before the Court and pleaded that he has not committed the crime and that the confession statement was obtained from him against his volition. However, he further pleaded that if this Court proposes to sentence him, lesser sentence may be awarded to him considering his age and passage of time.

22. This Court, after taking into consideration the submissions of the respondent/A-1 and also considering his age and also the fact that the offence was committed during 1999 and that almost two decades have passed since the commission of the offence, this Court is of the considered view that the statute having not prescribed any minimum sentence, hence, it would meet the ends of justice if the respondent/A-1 is sentenced to simple imprisonment for a period of four months for each of the charge along with a composite fine of Rs.2,000/-

23. Accordingly, this appeal is allowed setting aside the order of acquittal of the respondent/accused and he is convicted of the charges framed u/s 489 (B) & 489 (C) and is hereby sentenced to undergo simple imprisonment for a period of four months for each of the charge along with a composite fine of Rs.2,000/-. The sentences are directed to run concurrently. The respondent/accused is entitled for set off u/s 428 Cr.P.C. The respondent/accused undertakes to surrender before the trial court within a week from today. Accordingly, the respondent/accused is directed to surrender before the trial court on or before 25.12.2019 and on such surrender, the trial court is directed to commit the respondent/accused to prison to serve the sentence imposed upon him by this Court. If the respondent/accused does not surrender, as undertaken above, the

trial court is directed to secure the presence of the respondent/accused and commit him to prison to serve the sentence imposed upon him.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Addl. Sessions Judge  
Fast Track Court No.1  
Poonamallee.
2. The Inspector of Police,  
Currency wing,  
Crime Branch, CID, Chennai.
3. The Superintendent,  
Central Prison,  
Chennai.
4. The Inspector General of Police,  
Vepery, Chennai.
5. The Public Prosecutor  
High Court, Madras.

+3cc to Mr. N.Rajesh Khanna, Advocate sr.105177

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