

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL APPEAL No. 1092 of 2011

JUDGMENT:

This Criminal Appeal is filed under Section 378 (1) and (3) of Cr.P.C. by the State, challenging the judgment, dated 19.01.2010 passed in S.C.No.322 of 2009 on the file of the Assistant Sessions Judge, Bodhan, wherein the accused were acquitted for the offence punishable under Section 307 read with Section 34 of I.P.C.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in S.C.No.322 of 2009.

The facts in issue are as under:

On 14.04.2009 at about 3.30 p.m., P.W.1-Koulas Shankar, lodged Ex.P1-complaint stating that on 14.04.2009 at about 1.00 p.m. while he himself, his wife and his son were cutting the maize crop in his field, accused No.1, who belongs to Teekaram Thanda, came to his field and questioned him as to why they were cutting the standing crop as there was a dispute over the land and that the same was not yet resolved. Thereafter, accused Nos.1 to 4 picked up a quarrel with P.Ws.1 to 3 and attacked them with kamma-katti and sticks with an intention to kill them. Basing on these allegations a charge sheet came to be

filed, which was taken on file as P.R.C.No.6 of 2009 and on committal it was numbered as S.C.No.322 of 2009.

On appearance of the accused, the material was perused and on being satisfied, a charge under Section 307 read with Section 34 of I.P.C. was framed, read over and explained to the accused in Telugu, to which they pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 10 and got marked Exs.P1 to P7 and M.O.1. After closure of the prosecution evidence, the accused were examined U/s. 313 Cr.P.C. explaining the incriminating material available on record, but the same was denied by the accused. Neither oral nor documentary evidence was produced on behalf of the accused.

After appreciating the evidence available on record, the learned trial Court acquitted the accused holding that the ingredients constituting the offence punishable under Section 307 IPC are not made out. Challenging the same the appeal is filed by the State.

Heard learned Additional Public Prosecutor for the State and learned Counsel appearing for the accused.

In case of appeal against acquittal the scope of appeal is circumscribed by limitation. Unless the approach of lower

Court to the consideration of evidence is vitiated by manifest illegality or conclusion arrived at by the lower Court is perverse, no interference with the order of acquittal is permissible.

In *Mrinal Das Vs. State of Tripura*¹ the Apex Court held as under:

“It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the

¹ (2011) 9 SCC 479

appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

In *Maloth Somaraju Vs. State of Andhra Pradesh*² the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is found to be perverse or not at all supportable and where the

² (2011) 8 SCC 635

appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset. The appellate Court has to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

P.Ws.1 to 3, who are injured persons, have deposed that on the date of incident while they were cutting maize crop in their field, accused Nos.1 to 4 came and assaulted them with sticks and kamma katti. P.W.1 sustained injury on his right leg. P.W.2, who is the wife of P.W.1, sustained injury on her waist and P.W.3, who is the son of P.W.1, sustained fracture on his left hand.

P.W.4, who was alleged to be the eye witness to the incident, deposed that on the date of incident while P.Ws.1 to 3 were cutting the maize crop in their field, accused Nos.1 to 4, armed with sticks and kamma katti, came there and assaulted P.Ws.1 to 3. He along with his brother-in-law Ramulu, were present and witnessed the incident. He further deposed that when they intervened and advised accused Nos.1 to 4 not to beat P.Ws.1 to 3, they threatened him.

P.W.5, who was also an alleged eye witness to the incident, deposed that on the date of incident, he came to the village of P.W.4, who is his brother-in-law. As P.W.4 was in the

fields, he went to the agricultural fields and when he reached, he heard a galata near the adjacent fields of P.W.3. Therefore, they went to the place, where accused Nos.1 to 4, who were armed with sticks, have assaulted P.Ws.1 to 3 with sticks.

P.W.8-Doctor, who treated P.Ws.1 to 3, deposed that he examined P.Ws.1 to 3 and issued wound certificates (Exs.P4 to P6). He further deposed that P.W.1 sustained injury on his left thigh, which might have been caused with stick, contusion on his left shoulder, and injury on his right shoulder, which might have been caused due to hitting with the heavy object. During the examination of P.W.2, he found that there was tender lower spine over her lower lumbar region, which might have been caused due to hitting of heavy object. P.W.3 sustained fracture to the lower 1/3rd of ulna on left side, which might have been caused due to hitting of heavy object.

P.W.10, who is the Investigating officer, deposed that on 14.04.2009 P.W.1 came to the police station and lodged Ex.P1. Basing on the contents of Ex.P1, he registered a case in Crime No.55 of 2009 and issued F.I.R. He recorded the statements of P.Ws.1 to 3 and referred them to the Government Hospital, Bichkunda for treatment. He also recorded the statements of P.Ws.4 and 5 at the place of offence.

The prosecution claims that accused Nos.1 to 4 assaulted P.Ws.1 to 3 with sticks and kamma katti, while they were cutting maize crop in their field, but the doctor-P.W.8, who treated P.Ws.1 to 3 categorically opined that P.Ws.1 to 3 were beaten with heavy object and he did not whisper anything about the sticks and kamma katti as deposed by P.Ws.1 to 4. Apart from that, during the course of cross-examination, P.W.10, who is the Investigating Officer, categorically admitted that on the date of incident itself, accused No.1 came to the Police Station with injuries and lodged a complaint against the co-brother of P.W.1 and others and he registered a case against the co-brother of P.W.1 and the same is still pending. Therefore, the entire prosecution case against accused Nos.1 to 4 is doubtful and the present complaint was filed only to counter blast the complaint lodged by accused No.1 against the co-brother of P.W.1.

In view of the foregoing discussion, I have no hesitation to hold that the prosecution miserably failed to establish the guilt of the accused beyond all reasonable doubt. The trial Court after appreciating the evidence in a proper perspective, rightly acquitted the accused. None of the findings of the trial Court are found to be perverse or illegal and contrary to law. In

the absence of any compelling or substantial reasons, the judgment under appeal needs no interference by this Court.

Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 19.01.2010 passed in S.C.No.322 of 2009 on the file of the Assistant Sessions Judge at Bodhan.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

07.02.2020
Gsn

JUSTICE G. SRI DEVI

