IN THE HIGH COURT OF ORISSA AT CUTTACK
GA No.23 of 1996

State of Odisha **.....** ***Appellant***
Mr. C.K. Pradhan, AGA

-versus-

Dillip Magar & Ors. **.....** ***Respondents***
Mr. S.K. Dwivedi, Advocate
(Amicus Curiae)

CORAM:
THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY
ORDER
09.12.2024

Order No. 13

1. This matter is taken up through hybrid mode.

2. Heard Mr. C.K. Pradhan, learned Addl. Govt. Advocate appearing for the Appellant and Mr. S.K. Dwivedi, learned Amicus Curiae appearing for Respondents.

3. This appeal has been filed challenging order of acquittal passed by the learned Asst. Sessions Judge, Kuchinda vide his Judgment dtd.12.09.1995 in ST Case No. 122/4 of 1995.

4. Learned AGA contended that all the Respondents faced trial for the offences under Sec. 458/342/395/397 of the Indian Penal Code.

4.1. It is the main contention of the learned AGA appearing for the Appellant that since Respondent Nos. 1, 2 & 4 have been identified in the T.I. Parade conducted after the alleged incident, on the face of such identification of the Respondent Nos. 1, 2 & 4 in the T.I. Parade so conducted on 26.09.1994, order of acquittal could not have been passed by acquitting Respondent Nos. 1, 2 & 4.

4.2. Placing reliance on the materials available on record, learned AGA contended that Respondent Nos. 1, 2 & 4 since were identified during trial by P.W. 3 and the said conduct of the T.I. Parade was admitted by the SDJM, Kuchinda, who conducted the T.I. Parade, on the face of such evidence available on record no order of acquittal could not have been passed by acquitting Respondent Nos. 1, 2 & 4 specifically. It is accordingly contended that the impugned Judgment so far as it relates to acquittal of Respondent Nos. 1 to 4 needs interference of this Court.

5. Mr. S.K. Dwivedi, learned Amicus Curiae appearing on behalf of the Respondents on the other hand contended that even though Respondent Nos. 1, 2 & 4 were identified in the T.I. Parade so conducted, but it is contended that the said T.I. Parade was conducted much after the arrest of the Appellant on 16.09.2024. It is contended that the T.I. Parade was conducted on 26.09.1994 and the alleged incident had taken place on 07.07.1994.

5.1. It is also contended that the learned SDJM who had conducted the T.I. Parade and was examined as a witness in her deposition also contended that the accused persons were not brought for such T.I. Parade with covering of their faces. It is accordingly contended that since T.I. Parade was not conducted in accordance with law and the same is not out of suspicion, taking into account the statement of the Magistrate who conducted the T.I. Parade, learned trial court by disbelieving such identification of Respondent Nos. 1 to 4, has rightly acquitted all of them. It is also contended that there is no material available against Respondent No. 3, whose acquittal is under challenge in the present appeal. In support of the aforesaid

submission Mr. Dwivedi relied on a decision of the Hon'ble Apex Court in the case of ***Ramesh & Anr. Vs. State of Karnataka*** (Criminal Appeal No. 1467 of 2012).

5.2. Hon'ble Apex Court in Para 15 & 16 of the said Judgment has held as follows:-

> *"15. We may point out that, once the Trial Court found no evidence to convict the accused, the burden was upon the High Court, while reversing the said judgment, to record clear findings in relation to each of the charges and, more particularly, the charge of criminal conspiracy under Section 120B IPC. However, no such exercise was undertaken by the High Court. At this stage, it would be relevant to refer to the general principles culled out by this Court in* ***Chandrappa and others vs. State of Karnataka (2007) 4 SCC 415****, regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:*
>
> > *(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 emphasize 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.

16. In ***Rajendra Prasad v. State of Bihar*** *(1977) 2 SCC 205, a 3-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."*

6. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that all the Respondents were acquitted by the learned Asst. Sessions Judge vide Judgment dtd.12.09.1995. The present appeal was filed by the State challenging such order of acquittal only on the ground that Respondent Nos. 1, 2 & 4 having been identified in the T.I. Parade so conducted; no order of acquittal could have been passed.

6.1. It is found from the record that even though Respondent Nos. 1, 2 & 4 have been identified in the T.I. Parade so conducted on 26.09.1994, but taking into account the deposition of the learned SDJM, who conducted the T.I. Parade and the conduct of the T.I. Parade after so many days of the arrest, this Court finds no illegality or irregularity with regard to the finding of the learned Asst. Sessions Judge in disbelieving such T.I. Parade report. Therefore, this Court placing reliance on the decision as cited by the learned Amicus Curiae, finds no illegality or irregularity with the impugned Judgment.

7. Accordingly, the appeal fails and stands dismissed.

(BIRAJA PRASANNA SATAPATHY)
Judge

Sneha

Signature Not Verified
Digitally Signed
Signed by: SNEHANJALI PARIDA
Designation: Sr. Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 12-Dec-2024 17:14:13