REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 989 of 2003

S. Ganesan …Appellant

Versus

Rama Raghuraman & Ors. …Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred by the complainant, father of the deceased, against the judgment and order dated 13.2.2003 in Criminal Appeal No. 1088 of 2002 passed by the High Court of Andhra Pradesh at Hyderabad acquitting the respondents of the charges under Sections 302 read with 120-B of Indian Penal Code (hereinafter referred to as "IPC") for committing the murder of G. Arulmozhi by hitting him with a hammer on his head.

2. Facts and circumstances giving rise to this appeal are as under:

(A) Rama Raghuraman (Accused 1)(hereinafter referred to as `A-1') made a statement to Mr. V. Narasaiah, Sub-Inspector of Police (PW.1) that on 29.4.1997 at about 9.00 A.M., when she tried to wake up deceased, G. Arulmozhi, who was sleeping in the other room of the flat, he misbehaved with her and thus A-1 tried to get out of his clutches in order to save herself. As she could not succeed in her attempt, she got the hammer lying in the room and hit him on his head. On hearing her cries, her husband Raghuraman (A.2) came at the spot and also hit deceased several times on his head with the same hammer and thus, the deceased suffered grievous injuries. Immediately, Rama Raghuraman (A.1) went to the nearby hospital and informed Dr. U. Srinivas (PW.3) that her brother was seriously injured on the head and she brought him to examine the deceased. Dr. U. Srinivas (PW.3) came to her flat and after examining the injured, he advised that he should be taken to the hospital immediately. An ambulance was called and with the help of two attendants, Rama Raghuraman (A.1) and Raghuraman (A.2) took the injured to the hospital. He was examined there by the doctors. The doctor also informed the police, on which Mr. V. Narasaiah, Sub Inspector of

Police (PW.1) reached the hospital and recorded the statement of Rama Raghuraman (A.1) and lodged a complaint to Mr. K. Chakrapani, Station House Officer, (PW.16).

(B) On receiving such information, Crime No. 235 of 1997 under Section 307 IPC was registered against Rama Raghuraman (A.1) and Raghuraman (A.2). However, when the police came to the hospital to record the statement of the injured, he was found to be unconscious. Thereafter, Mr. K. Chakrapani (PW.16) proceeded to the place of occurrence and made a rough sketch of the site in the presence of witnesses Mr. Kamal Bukhada (PW.6) and Mr. Premchand (PW.7) and also seized M.Os. 2 to 12 from the place of occurrence. Mr. K. Chakrapani (PW.16) also examined PWs 2 to 5 and recorded their statements.

(C) On the next day i.e. 30.4.1997 at about 11.45 P.M., Mr. K. Chakrapani (PW.16) received the information that G. Arulmozhi had died and, therefore, he altered the case from Section 307 IPC to Section 302 IPC. He conducted the inquest over the body of the deceased in presence of two witnesses. Dr. Ramachander Rao, the Medical Officer in NIMS Hospital (PW.9) examined the deceased and found four injuries on the person of the deceased. After the death of

the deceased, Dr. M. Ravinder Reddy, the professor in Forensic Medicine, Gandhi Medical College, Hyderabad (PW.18), conducted an autopsy of the dead body of the deceased.

(D) Mr. T.V. Raja Gopal, Investigating Officer, (PW.17), took over further investigation and recorded the statements of a large number of witnesses and submitted the chargesheet. The Magistrate committed the matter to the Sessions Court, wherein the respondents pleaded not guilty and claimed trial. After concluding the trial and appreciating the evidence, oral as well as documentary, the trial court vide judgment and order dated 9.9.2002 in Sessions Case No. 40 of 1999 convicted both the respondents for offences punishable under Section 302 r/w Section 120-B IPC and awarded life imprisonment with a fine of Rs.5,000/- each and in default of payment of fine, they were directed to undergo further three months simple imprisonment.

3. Being aggrieved, the respondents preferred Criminal Appeal No. 1088 of 2002 before the High Court of Andhra Pradesh at Hyderabad, which has been allowed by impugned judgment and order dated 13.2.2003. Hence, this appeal.

4. Shri R. Balasubramanian, learned senior counsel, duly assisted by Shri B. Balaji, for the appellant, has submitted that the High Court committed an error by reversing the well reasoned judgment and order of the trial court, wherein, in absence of any eye-witness to the incident, both the respondents had been convicted for committing the murder of G. Arulmozhi; the chain of circumstances was complete and each circumstance pointed out towards the guilt of the respondents. The deceased was in the flat which has been taken by the respondents on rent. None of them denied their presence at the relevant point of time, rather they had taken a false plea that Mr. N. Velayudham, brother-in-law of deceased, (PW.8), had come on the same day by air at Hyderabad and had tried to convince the deceased not to live with the respondents, instead to get married with the girl of the choice of his father, as his family members were under the belief that he had developed illicit relationship with the accused Rama Raghuraman (A.1). The defence taken by the accused was contrary to their own case pleaded in the bail application that the deceased tried to molest Rama Raghuraman (A.1) and, therefore, she became wild and lost all control and picked up a hammer lying in the room and caused injuries to the deceased. Even if the defence version is believed to be

true, it was a clear cut case of exceeding the right of self defence. The hammer which was recovered on the disclosure of the Rama Raghuraman (A.1) from the place of occurrence is not generally used in the household. Before calling Dr. U. Srinivas (PW.3), the accused had cleaned the blood stained floor. Doors and windows were found closed and there was darkness inside the flat at 9 O'Clock in the morning. The High Court did not consider each and every circumstance considered by the trial court pointing out to the guilt of the accused. Rather the High Court took a sympathetic view and passed a cryptic order without giving sufficient reasons for acquittal. Hence, the appeal deserves to be allowed.

5. On the contrary Ms. V. Mohana, learned amicus curiae, appearing for the respondents-accused, has submitted that accused persons were highly qualified as both of them passed their engineering course from IIT, Bombay. They developed love and affection and got married. They had two children at the time of incident. Their son was five years old and the girl was 2-1/2 years old. The deceased himself was a computer engineer and an MBA from Indian Institute of Management, Ahmedabad. He had opened a company alongwith accused persons and had the accused had any intention to kill the

deceased, they would not have called Dr. U. Srinivas (PW.3) and further taken him to the hospital for treatment. The accused Rama Raghuraman (A.1) herself had informed the father of the deceased (the present complainant) about his health condition. There could be no motive for the respondents to harm the deceased. Investigation has not proceeded in accordance with law. There was nothing for them to hide. In absence of any evidence of conspiracy between the two accused, the High Court has rightly quashed their conviction under Section 120-B IPC. In such a fact-situation, if it cannot be determined as which of the accused had caused the injuries, conviction of either of them is not sustainable. If the prosecution case is taken to be true, the respondents had acted in self defence and are entitled to the benefit of the provisions of Section 100 and Exception II to Section 300 IPC. The High Court after taking into consideration all the facts and circumstances, reached the correct conclusion of acquittal of the accused. Hence, no interference is required with the impugned judgment and order of the High Court.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. Admitted facts available on the record are that Rama Raghuraman (A.1) and Raghuraman (A.2) had passed out their engineering course from IIT, Bombay and got married on 10.9.1989. Out of this wedlock they had two children at the time of incident. They were not having good relations, as is evident from the averments contained in the divorce petition filed by Rama Raghuraman (A.1) against her husband Raghuraman (A.2) in the Family Court at Madras. The deceased had been employed in the Indian Oil Corporation as an Executive Assistant to the Executive Director. The deceased came in contact with Raghuraman (A.2) who had his own organization known as Pixel Graphics Multimedia at Madras. As the business of Raghuraman (A.2) was in trouble, the deceased helped him financially. The deceased resigned from his job and floated a company, namely, Indian Creations dealing in the Multimedia presentation field alongwith Rama Raghuraman (A.1). The deceased shifted his residence from the Chennai to Hyderabad and started earning by way of contracts. In the meantime, Raghuraman (A.2) also joined Rama Raghuraman (A.1), patching up the differences with her. Admittedly, the incident occurred at the place of occurrence i.e. flat of the respondents and at the time alleged herein. The defence pleaded

that Mr. N. Velayudham, (PW.8), had come there and as he quarreled with the deceased, he had hit him on the head. In fact the accused had furnished the same explanation to the staff at the Nizam's Institute of Medical Sciences, Hyderabad on the date of incident i.e. 29.4.1997 (Ex.P-6). This theory had been rejected by the trial court giving sufficient and cogent reasons and we do not see any reason to disturb the said finding of fact. Had it been so, the accused could have informed the police and also tried to save the deceased or to apprehend Mr. N. Velayudham, (PW.8)

8. The inconsistent pleas taken by the accused are apparent from the FIR that states that the deceased tried to molest Rama Raghuraman (A.1) when she went to wake him up. She got wild and beat him with a hammer. After hearing the hue and cry, Raghuraman (A.2) came there and also caused injuries to him. The same plea had been taken by Rama Raghuraman (A.1) in her bail application dated 8.5.1997. The contents of the bail application reveal that she was having some marital problems with her husband Raghuraman (A.2) which was in the knowledge of the deceased and, thus, he was hopeful of getting married to Rama Raghuraman (A.1) as and when she got separated from her husband, as the divorce petition was pending on

the date of incident. The deceased was not merely the business partner but also a very close friend of Rama Raghuraman (A.1) and had fantasies about marrying her. However, she further pleaded that after causing injuries to the deceased, they realised what had happened and had suffered from utter shock. She immediately went and called a doctor from the nearby hospital and on his advice, shifted the deceased to the hospital. The accused gave their own blood to him to save his life. Paragraph 11 of the bail application reads as under :

> *"The petitioner respectfully submits that **even going by the prosecution case,** she comes within the scope of Sec. 100(3) IPC wherein she exercised her right of self defence to ward off the attempts of the deceased to sexually assault her and rape her. The petitioner submits that what happened was sad and a great tragedy and neither she nor her husband had any idea that such a sort of thing would happen. They realised only after the incident happened."*
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> (Emphasis added)

9. The trial court rejected the evidence of Dr. Ramachander Rao (PW.9) for giving two different versions with regard to the weapons. However, the court considered the following incriminating circumstances against the accused :

I) The deceased was with the accused in their flat on the fateful day.

II) The deceased received fatal injuries in the same flat which ultimately led to his death.

III) Rama Raghuraman (A.1) approached Dr. U.Srinivas (PW.3) immediately after the incident and brought him to the flat and Dr. U.Srinivas (PW.3) deposed that the deceased was lying in a pool of blood and **the doors and windows were closed and there was complete darkness inside at 9 O'Clock in the morning**. Unless the accused had some guilty conscience, there was no need to close all the doors and windows at 9 A.M.

IV) The weapon i.e. MO. 1 seized at the instance of Rama Raghuraman (A.1), though such a hammer is not generally found in the household.

V) The seizure of MOs. 2 to 12 i.e. blood stained articles which consist of sarees, pants of the deceased and other items which had been used for mopping/cleaning the place of occurrence.

VI) The panchnama and the evidence of Dr. U.Srinivas (PW.3) made it clear that there were the circumstances of

cleaning of the blood of the deceased before the arrival of Dr. U.Srinivas (PW.3) and as none other than the accused were living in that flat and as no other person had an opportunity to clean the flat and had the accused not had a guilty conscience, they would not have hurriedly cleaned the floor to ensure the disappearance of the blood stains.

VII) It was fully established that the injuries suffered by the deceased could not be caused by a fall.

10. On the basis of the aforesaid incriminating circumstances, the trial court found the chain of circumstances complete and the circumstances pointing out towards the guilt of the accused and thus convicted them accordingly.

11. The High Court dealt with the case having sympathetic attitude towards the respondents and decided the appeal in a very cryptic manner. After making reference to statements of some of the prosecution witnesses, the High Court reached the conclusion that as none of the witnesses had stated anything regarding the conspiracy being hatched between Rama Raghuraman (A.1) and Raghuraman

(A.2) to do away with the life of the deceased, the question of their conviction under Section 120-B IPC could not arise; inconsistent pleas taken by the accused may not come as a help of the prosecution case as the prosecution has to prove its case beyond reasonable doubt by leading evidence in support of its case. The High Court was swayed by the fact that after the deceased suffered injuries, the accused had taken him to the hospital and Rama Raghuraman (A.1) informed the father of the deceased about his health condition.

12. In fact, the High Court had not dealt with any of the aforementioned incriminating circumstances pointed out by the prosecution before the trial court. The court failed to appreciate the grievous injuries suffered by the deceased. Dr. M. Ravinder Reddy, Professor in Forensic Medicine, Gandhi Medical College, Hyderabad (PW.18), conducted autopsy over the dead body of the deceased. On examination, he noticed the following ante-mortem injuries on the person of the deceased :

1) Sutured wound 3 cms long obliquely placed over the left frontal region.

2) Sutured wound 1-1/2" cms long over right front parietal region.

3) Sutured wound 10 cms long over the right front parietal region.

4) Sutured wound with surrounding abraded laceration 4 x 2-1/2 cms with two sutured over left parietal region.

5) Sutured wound 4 cms long over posterior left parietal region.

6) Sutured wound 5 cms long over the occipital region.

7) Three sutured wounds 2 cms 8 cms and 4 cms over occipital region.

8) Abrasion 15 x ¼ cms over outer aspect of left upper arm.

9) Contusion scalp over right frontal right parietal left parietal left frontal and occipital areas with parietal haemotoma.

Dr. M. Ravinder Reddy (PW.18) opined that the deceased died due to head injuries and those injuries could be caused by a weapon like M.O.1 hammer. He has further stated that all the injuries mentioned in the above post mortem report are sufficient in the ordinary course of nature to cause the death of the deceased.

13. This Court in **Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra,** JT 2010 (12) SC 287, considered various

aspects of dealing with a case of acquittal and after placing reliance upon earlier judgments of this Court particularly in **Balak Ram & Anr**. **v. State of U.P.,** AIR 1974 SC 2165; **Budh Singh & Ors. v. State of U.P**., AIR 2006 SC 2500; **S. Rama Krishna v**. **S. Rami Reddy** (D) by his LRs. **& Ors.,** AIR 2008 SC 2066; **Arulvelu & Anr. v. State,** (2009) 10 SCC 206; and **Babu v. State of Kerala,** (2010) 9 SCC 189, held that :

> *"22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as* ***to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider****, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.*
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> *23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The*

nature of the offence, its seriousness and gravity has to be taken into consideration.

The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

Thus, unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

14. So far as the issue of setting aside the conviction under Section 120-B IPC against both the respondents and not framing the charge under any other penal provision is concerned - it has to be considered, as to whether conviction under any other provision for which the charge has not been framed, is sustainable in law. The issue is no

longer *res integra* and has been considered by the Court from time to time. The accused must be aware as to what is the case against them and what defence they could lead. Unless the parties satisfy the Court that there has been a failure of justice from non framing of charge under a particular penal provision, and some prejudice has been caused to them, conviction under such provision of law is sustainable. (Vide: **Amar Singh v. State of Haryana,** AIR 1973 SC 2221)

15. This Court in **Sanichar Sahni v. State of Bihar**, AIR 2010 SC 3786, while considering the issue placed reliance upon various judgments of this Court particularly in **Topandas v. State of Bombay**, AIR 1956 SC 33; **Willie (William) Slaney v. State of M.P.,** AIR 1956 SC 116; **Fakhruddin v. State of Madhya Pradesh,** AIR 1967 SC 1326; **State of A.P. v. Thakkidiram Reddy**, AIR 1998 SC 2702; **Ramji Singh v. State of Bihar,** AIR 2001 SC 3853; and **Gurpreet Singh v. State of Punjab,** AIR 2006 SC 191, and came to the following conclusion :

> *"17. Therefore,…… unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities.*

Conviction order in fact is to be tested on the touchstone of prejudice theory."

16. The case is required to be considered in the light of the aforesaid settled legal propositions.

In the instant case, the prosecution did not establish any motive to commit the crime. There is nothing on record to show as to whether Rama Raghuraman (A.1) had indulged in any physical intimacy with the deceased. The evidence of the doctor who examined the deceased, remained far from satisfactory and as he changed his version, he has been declared hostile. If the case of the prosecution is taken to be true, we have to examine as to whether the case of the respondents falls within the ambit of Section 100 and Exception II to Section 300 IPC and as to whether the High Court has dealt with the same taking into consideration all these incriminating circumstances considered by the trial court.

Admittedly, the High Court did not deal with any of the incriminating circumstances considered by the trial court for the purpose of conviction of the respondent and did not address itself to the relevant issues involved in the appeal. Therefore, the judgment

and order of the High Court cannot be held to be sustainable in law and it suffers from perversity.

17. In **Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra,** AIR 1973 SC 2622, this court held :

> *"...Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent ..." In short our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant..."*

We are of the considered view that the High Court unnecessarily shown misplaced sympathy in a case where conviction was eminent.

In the facts and circumstances of the case, the respondents are the only persons who could explain as under what circumstances the

deceased suffered the grievous injuries on the vital parts of his body. The court has to draw its own inference considering the totality of the circumstances.

18. In **State of U.P. v. Ram Swarup & Anr.,** AIR 1974 SC 1570, this Court held:

> *"……. the Civil Law rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case, it is open to a criminal court to find in favour of an accused on a plea not taken up by him and by so doing the Court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defence and yet the Court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private defence has been exceeded….."*

19. Though the accused did not plead, if we go by the case of the prosecution the nature and number of injuries found on the body of the deceased itself established that Rama Raghuraman (A.1) and Raghuraman (A.2) had exceeded their right of self defence. However, admitted facts remained that the respondents No.1 personally went to the nearby hospital and on the advice of Dr. U. Srinivas (PW.3), had

taken the deceased to the hospital. They not only got him admitted in the hospital, rather donated their own blood to save his life. Respondent No.1, Rama Raghuraman informed father of the deceased about his health conditions. Thus, these are the mitigating circumstances in the case in favour of the respondents to show that in spite of the fact that they had committed the offence they did not intend to kill the deceased. Thus, they are liable to be convicted under Section 304 Part-II IPC read with Section 34 IPC.

20. In view of above, appeal succeeds and is allowed. Judgment and order dated 13.2.2003 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1088 of 2002 is hereby set aside and the judgment and order dated 9.9.2002 in Sessions Case No. 40 of 1999 passed by the trial court is modified to the extent that respondents are held guilty for the offence punishable under Section 304 Part-II r/w Section 34 IPC and sentenced to five years rigorous imprisonment each. There is nothing on record to show as to whether the respondents have served any period during the trial or during the pendency of their appeal before the High Court. In case, they have served some period, it shall be set-off in accordance with law.

Before parting with the case, we record our appreciation for the efforts made by Ms. V. Mohana, learned advocate, for rendering full assistance to the Court on being appointed as amicus curiae.

……J.
(P. SATHASIVAM)

..……J.
(Dr. B.S. CHAUHAN)

New Delhi;
January 3, 2011