

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2010
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 8045 OF 2009

SANGAPPA & ORS. ... APPELLANTS

VERSUS

STATE OF KARNATAKA ... RESPONDENT

JUDGMENT

B. SUDERSHAN REDDY, J.

Leave granted.

2. All the accused-appellants were charged and tried for the offences punishable under Sections 447, 504, 302 read with Section 34 of the Indian Penal Code (IPC) but were acquitted of all the charges by the trial court. On appeal preferred by the State of Karnataka, the High Court reversed the order of acquittal in relation to all the

appellants and convicted them under Section 304 (Part-II) read with Section 34 of the IPC and sentenced them to undergo rigorous imprisonment for a period of two years and imposed a fine of Rs.30,000/- each, in default, to suffer simple imprisonment for a period of three years.

Few Relevant Facts:

3. On 9th September, 1998 at about 6.00 p.m. one Shivalingayya lodged a first information report before the Sub-Inspector of Yedrami Police Station inter alia alleging that his son Sharanaiah was murdered by four persons namely Sangappa(A-1), Sharanappa(A-2), Malappa(A-3) and Jagadavappa (A-4). It is alleged in the report that on the fateful day Shivalingayya and his wife - Boramma (PW-1) joined their son Sharanaiah (deceased) in the fields to remove the unwanted weeds from their land. During that time all the accused persons were passing by the side of the complainant's land along with their bullocks and all of a sudden one bullock strayed into their fields and started grazing the crops. The deceased on finding that the bullock so entered into the fields asked the

appellants to ensure that no damages caused to the crops. Enraged by the demand so made by the deceased all the accused started abusing the deceased. The matter did not end there. It is further alleged that Sharanappa (A-2) caught hold of the deceased, floored him to the ground and gagged his mouth and Sangappa (A-1) attacked the deceased with a knife and the other two accused Mallapa and Jagadevappa (A-3 & A-4) respectively hit the deceased on his back and legs with stones. Shivalingayya and his wife (PW-1) made an attempt to rescue their son but A-2 and A-3 forcefully pushed them aside. In the report, it is alleged that all the accused trespassed into the fields with the common intention of committing murder of the deceased as the deceased interfered in a matter concerning some illicit relationship between the sister of the accused and one Siddanna.

4. Having received the first information report PW-11 registered a case against all the accused on the file of Yadrami Police Station for the offences punishable under Sections 447, 504, 302 read with Section 34, IPC. The

next day *i.e.* 10th September, 1998, PW-11 commenced the investigation and completed the formalities including recording of the statement of witnesses and handed over the case for further investigation by the Circle Inspector (PW-12) who also visited the scene of offence and drawn panchanama in the presence of two panch witnesses (Ex. P4) and seized the several incriminating articles. The accused were arrested on 25th September, 1998.

5. The learned 1st Additional Sessions Judge, Gulbarga, on the basis of the material available on record framed charges against all the accused for the offences punishable under Sections 447 and 302 read with Section 34, IPC. The accused pleaded not guilty and claimed to be tried. The Sessions case was transferred to the Fast Track Court, Gulbarga for the trial. The Fast Track Court vide judgment and order dated 4th December, 2003 acquitted the accused of all the charges framed against them and held that the prosecution miserably failed to establish its case beyond reasonable doubt.

6. On appeal preferred by the State of Karnataka against the order of acquittal the High Court by the

impugned order dated 10th June, 2009 reversed the order of acquittal and accordingly sentenced all the accused for the offence punishable under Section 304 (Part-II) read with Section 34, IPC. Be it noted, the High Court did not record any finding whatsoever with regard to the charge for the offence punishable under Section 447 IPC.

7. We have heard learned counsel for the appellants as well as the State.

8. The trial court after an elaborate consideration of the matter refused to place any reliance on the evidence of PW-1 (Boramma) who is none other than the mother of the deceased. The trial court did not discard the evidence of PW-1 on the sole ground that she was the interested witness. The trial court carefully scrutinised the evidence of PW-4 being an interested witness. We do not propose to discuss the evidence of PW-1 in detail for the simple reason that the High Court did not assign any reason whatsoever as to why it had chosen to rely upon the evidence of PW-1 without even discussing and considering the reasons assigned by the trial court in paragraphs 13 and 14 of its judgment. The High Court

merely observed that the evidence of PW-1 is very natural and credible. The High Court in the impugned Judgment did not even notice the details of the injuries found on the body of the deceased. There is no reason assigned by the High Court to set aside the finding of the trial court that the very presence of PW-1 at the scene of offence was highly doubtful. There is no mention about any recoveries in the impugned judgment.

9. We must express our reservation for the manner in which the High Court disposed of the appeal under Section 378(1) and (3) of Code of Criminal Procedure. It is true that in an appeal from acquittal the High Court has full power to re-appreciate and re-assess the entire evidence upon which the order of acquittal was founded and then to come to its own conclusion. There is no limitation placed on that power of the High Court. The Code makes no difference in the power of the appellate court, between appeal filed by the State or by other person but the appellate court would not be justified merely because it, feels that a different view should be taken for reasons which are not so strong. This Court repeatedly held that

the High Court in exercising the power conferred by the Code and before reaching its conclusion upon facts, it shall give always proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that they have been acquitted at trial; (3) the right of the accused to the benefit of any doubt.

10. The High Court in the present case did not discuss and re-appreciate the evidence of PW-1 who is stated to be the only eye witness to the incident but mainly observed that "the contents of IR and the evidence of PW-1 are very well corroborated by injuries found on the dead body noted in the P.M report." Surely, this is not re-appraisal or re-appreciation of the evidence of PW-1. The High Court did not even notice the nature of injuries on the body of the deceased. There is no discussion about the medical evidence. There is no discussion as to how all the accused could be convicted with the aid of Section 34, IPC. There is nothing on record suggesting as to the basis

on which the High Court arrived at conclusion that the accused would be guilty of offence under Section 304 (Part-II) and not for the offence under Section 302 read with Section 34, IPC. This Court in its judgment dated May 14, 2007 (**Narendra Bhat & Anr. Vs. State of Karnataka**) while dealing with similar judgment of the same High Court observed: "This Court has in a series of judgments held that a court exercising appellate power must not only consider questions of law but also questions of fact and in doing so it must subject the evidence to a critical scrutiny. The judgment of the High Court must show that the court really applied its mind to the facts of the case as particularly when the offence alleged is of a serious nature and may attract a heavy punishment.

.....The judgment of the High Court is in three short paragraphs. It leaves much to be desired. No serious attempt appears to have been made by the High Court to appreciate the evidence on record." The observations so made are equally applicable to the present case and we wish to say no more and leave the matter at there.

11. In such view of the matter, we set aside the impugned judgment and order and remit the matter to the High Court for fresh consideration and disposal in accordance with law. It is however, made clear that we have not expressed any opinion whatsoever on the merits of the case since it is for the High Court to re-appreciate the evidence and arrive at its own conclusions.

12. The appeal is allowed. We have already released the appellants on bail. They shall continue to be on bail. We request the High Court to dispose of the appeal as expeditiously as possible.

.....J.
(B. SUDERSHAN REDDY)

.....J.
(SURINDER SINGH NIJJAR)

**New Delhi,
March 9, 2010**