REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1466 OF 2005

BEERE GOWDA .. APPELLANT(S)

vs.

STATE OF KARNATAKA .. RESPONDENT(S)

O R D E R

This appeal at the instance of the accused arises out of the following facts:

Pallavi, aged two and half years, was the daughter of the appellant Beere Gowda and his first wife Jayanthi Gowda. The marriage between the appellant and Jayanthi had taken place about five or six years earlier. It appears that at the time of the marriage Jayanthi was pregnant but

after some time the two fell out and the appellant left her in her parents' home promising to take her back after performing the marriage of his sister. A few days later however he performed a marriage with Indramma co-accused, since acquitted. After the marriage of the appellant and Indramma the relations between the appellant and Jayanthi became unpleasant and Jayanthi was often assaulted and was made to do all the household chores and was also compelled

to undergo a Family Planning Operation at

Kalsapura P.H.C., as the appellant apparently did not want to have any child from her. It is the case of the prosecution that as Pallavi was an unwanted child, the two

accused, thought it fit to get rid of her so that she could not claim any share in her father's property. The appellant accordingly obtained nitric & sulphuric acid from PW.16 Ranganatha-Chari, a goldsmith, and it is further the prosecution case that this was administered to Pallavi on 22nd September 1996 which ultimately led to her death. An FIR was accordingly lodged by Jayanthi PW.1 in which the above facts were given in detail. The appellant who had in

the meanwhile, absconded was arrested on 26th September 1996 and on his statement under Section 27 of the Evidence Act a bottle containing a mixture of the two acids was found from the kitchen of his home. On the completion of the investigation the appellant and Indramma were charged for offences punishable under Sections 498A and 302 read with Section 34 of the IPC and as they denied all allegations they were brought to trial.

The Sessions Judge vide his judgment dated 28th April 1999 held that the greater possibility on the evidence was that Pallavi had taken the acid by accident and that there was no evidence to suggest that it had been administered to

her forcibly. The Court further held that there was no

evidence to show that the two accused had in any way misbehaved with Jayanthi prior to the murder. The Trial Court also observed that the discrepancies inter se the statements of the witnesses went to the root of the matter and as such there was a doubt as to the truthfulness of the prosecution story.

An appeal was thereafter taken to the High Court. The High Court has, by the impugned judgment, set aside the

acquittal of appellant No.1 while maintaining that of the second accused and convicted and sentenced him under Section 302 of the IPC, with a sentence of imprisonment for life and fine of Rs.2000/- and in default six months R.I.

It is in this situation the present appeal is before us.

Mr. Ajit Kumar Panda, the learned amicus curiae for the appellant, has raised three arguments before us in the

course of the hearing of this appeal. He has first pointed out that it was by now well settled that if two views were possible on the evidence and the Trial Court had chosen to take one view in favour of an accused it was not open to the High Court to take a different view, unless the judgment of the Trial Court could be said to be perverse although the High Court was entitled to reappraise the evidence in its entirety. It has also been submitted that

the finding of the High Court that the acid had been forcibly administered to Pallavi was based on mere conjectures and did not emanate from the evidence. It has finally been urged that Indramma, the co-accused, having been given the benefit of doubt, the appellant ought to

have been given the same benefit as well.

The learned State counsel has however pointed out that the Trial Court had completely ignored the fact that it was on the statement of the appellant under Section 27 of the Evidence Act that a bottle containing a mixture of nitric acid and sulphuric acid had been recovered from his house and the fact that it was not possible for the child to have consumed the acid accidentally was the only

possible view on the evidence, was erroneous.

We have heard the arguments advanced by the learned counsel for the parties very carefully. It is undoubtedly true that if two views are possible and the Trial Court has recorded an acquittal interference by the High Court should be restricted. However, in case the High Court finds that the view taken by the Trial Court was not based on the evidence, it would defeat the ends of justice if the order

was not set aside. We are of the opinion that the present

case falls under the category where the High Court was fully justified in interfering in the matter. The view

taken by the Trial Court to our mind was not justified to say the least. There is one strong circumstance which has not been noticed by the either of the courts below but has been pointed out by the learned State Counsel, that nitric and sulphuric acid would not be of any domestic use and would not be available as a household article. It has come in evidence that the acid had been obtained from PW.17 and after the two acids had been mixed the concoction had been

put into the mouth of child. The High Court's observation that acid had been forcibly put into the mouth is based on the medical evidence as injuries had been found all over the body including the mouth, arms and the chest which clearly showed that the child had tried to save herself and had fought back when the acid was being administered. It has rightly been pointed out by the High Court that if the acid had been taken accidentally by the child there would

have been no burn injuries on other parts of the body as they would have been confined only to the mouth and the lips.

We also find no merit in Mr. Panda's arguments with regard to the parity claimed vis-a-vis Indramma. This

matter has been dealt with by the High Court and it has been observed that though there appeared to be some suspicion, but no concrete evidence of abetment of the murder by her as she had come to the house after the

incident. We therefore find no merit in this appeal.

Dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(C.K. PRASAD)

New Delhi,
July 28, 2010.