CASE NO.:
Appeal (crl.) 725 of 2001

PETITIONER:
HARIJANA THIRUPALA & ORS.

Vs.

RESPONDENT:
PUOBFLIAC.PP.R,OSHEYCDUETROARB,ADHIGH COURT

DATE OF JUDGMENT: 01/08/2002

BENCH:
DORAISWAMY RAJU, SHIVARAJ V. PATIL.

JUDGMENT:

Shivaraj V. Patil J.

In this appeal, the appellants are assailing the judgment of the High Court by which the order of acquittal passed by the trial court was set aside and they were convicted for the offence under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life.

In brief, according to the prosecution, the deceased Kuruva Naganna purchased a house site from one Harijana Madanna and erected a kottam and was running a hotel in it. Appellants 1 and 2 are the neighbours of the deceased. The deceased desired to sell the said site owing to losses sustained by him in running the hotel. Appellants 1 and 2 insisted that he should sell the site to them and threatened him that he should not sell the same to others except them. Thus, there were ill-feelings between the deceased and appellants 1 and 2. On 17.7.1991, while the deceased, PWs 1 and 2, wife and daughter respectively, were in their kottam, the third parties came to see the site in order to purchase it and proposed to come the next day to settle the bargain. Appellants 1 & 2 came there at about 6.00 p.m. and questioned the deceased as to why he proposed to sell the said site to others ignoring them. The deceased asserted that he had every right to sell the site to any person of his choice, being its owner. On this, there were exchange of words between the deceased and the appellants 1 and 2. In the meanwhile, appellants 1 and 2 picked up sticks and beat the deceased on his knees. The deceased fell down after receiving injuries. Thereafter, the appellant no. 3 came armed with crow-bar and beat the deceased three or four times on his head. The incident was witnessed by PWs 1 and 2. After assaulting the deceased, the appellants left the scene of offence with their weapons. PW-3, son of the deceased, had gone for Hamali work. After coming to know about the incident, PW-4, the mother of the deceased, rushed to the scene

and PWs 1 and 2 narrated about the incident to her. At about 9.00 p.m., PW-3 came there and found the dead body of his father lying on the road near the house and he was told about the incident by PWs 1 and 2. Thereafter, PWs 1 to 3 proceeded to Kallur police station where PW-1 orally reported about the occurrence to PW-7, the Sub-Inspector of Police, at about 10.30 p.m. The report was reduced into writing and a case as Crime No. 70/91 was registered under Section 302 IPC. After the completion of investigation, a charge-sheet was filed.

The learned Sessions Judge, on the basis of material placed on record, framed charge against all the appellants under Section 302 IPC and tried them for the said offence. The trial court, after appreciating the evidence brought before it and looking to the infirmities appearing in the case, concluded that the prosecution could not bring home the guilt of the accused beyond reasonable doubt. In that view, not finding the accused guilty under Section 302 IPC, giving them benefit of doubt, acquitted them.

The State filed appeal before the High Court challenging the order of acquittal made by the learned Sessions Judge. The High Court by the impugned judgment upset the order of acquittal made by the trial court. The High Court disagreed with the reasons given and findings recorded by the learned Sessions Judge and found the appellants guilty of committing offence punishable under Section 302 read with Section 34 IPC and consequently sentenced them to undergo imprisonment for life. The appellants, being aggrieved by the impugned judgment and order, have approached this Court in the appeal.

The learned counsel for the appellants urged that the High Court manifestly erred in setting aside the well-considered order of acquittal passed by the trial court; the order of acquittal could not be disturbed merely because the High Court could take a different view when it was not shown that either reasons recorded or appreciation of evidence by the trial court were neither perverse nor untenable nor any material evidence was ignored; the case registered by the police was only for offence under Section 302 IPC and the charge was framed by the trial court under Section 302 IPC only and not read with Section 34 IPC; the High Court applied Section 34 IPC and convicted all the appellants which is patently unsustainable; the High Court failed to see that the prosecution failed to establish motive; PWs 1 and 2 being related to the deceased were interested and looking to the contradictions and omissions in their statements coupled with their conduct, their evidence could not be believed; further the evidence of the Doctor, PW-6, contradicts the evidence of PW-1 in regard to the very overt act or assault by the appellants 1 and 2; though several eye-witnesses were available, none of them were examined by the prosecution which was fatal to the prosecution case; the learned Sessions Judge having regard to the infirmities recorded sound reasons for not relying upon the evidence of PWs 1 and 2, the so-called eye-witnesses; the High Court was not right and justified in taking a contrary view lightly brushing

aside the reasons given by the trial court; while disturbing the order of acquittal, the High Court failed to keep in view the well-settled principles of justice laid down by this Court.

On the other hand, the learned counsel for the State made submissions supporting the impugned judgment more or less on the reasons given by the High Court in the impugned judgment.

We have carefully considered the submissions made by the learned counsel for the parties.

The charge against the accused is that on 17.7.1991 at about 6.30 p.m. at Kothakottalu, Indira Nagar Colony, Kallur, the accused committed murder of the deceased near his house, the motive for the murder being the deceased's refusal to sell the site to the appellants 1 and 2 inspite of their insistence and threatening not to sell the same to the third parties. The trial court, looking to the evidence held that the prosecution failed to prove the motive itself for the reasons that there was no proof that the deceased had purchased the site because no document was produced although claimed to be available with the PW-1 nor the vendor of the site was examined and the evidence of PWs 1-3 was contradictory as to when the site was purchased; even there was no evidence to support that the deceased ran hotel in the said site. PWs 1-3 could not say the name of the vendor and other details such as plot number, survey number etc.; though the PWs 1 and 2 stated that third parties came to see the site, they could not tell their names and the said fact does not find place in Exbt. P/1. This being the position, in our view, the trial court was right in holding that the motive part was not proved. It was a specific case of the prosecution that appellants 1 and 2 beat with sticks on the legs of the deceased and caused injuries. PWs 1 and 2 deposed to that effect but as per the evidence of doctor, PW-6, no injuries were found on the legs of the deceased. Exbt. P/3, post-mortem certificate, also does not disclose injuries on the legs of the deceased. In Exbt. P/1, it is not stated by the PWs 1 and 2 that the appellants beat the deceased on his legs. In the light of this material as to the overt act of the appellants 1 and 2, the trial court doubted the very presence of PWs 1 and 2 at the time of occurrence.

Exbt. P/1, the F.I.R., contained the name of the appellant no. 3 besides the names of appellants 1 and 2. PW-1 deposed that appellant no. 3 is their neighbour but she did not know his name; she merely stated before the police that besides appellants 1 and 2, one Muslim attacked her husband. Admittedly, identification parade was not held and PWs 1 and 2 identified appellants no. 3 in the court nearly after four years after the occurrence as the Muslim person who gave fatal blow to the deceased. On behalf of the appellants, it was contended that the name of appellant no. 3 was incorporated at the instance of some others. The learned Sessions Judge has stated in the judgment that no evidentiary value could be given to the testimony of PWs 1 and 2 as to identification of appellant no. 3, as the muslim person who gave a fatal

blow to the deceased. It is found in the evidence of PWs 1 and 2 that several independent persons of the locality witnessed the occurrence but none of them were examined in the court. In the absence of corroboration to the interested evidence of PWs 1 and 2 by independent witnesses, the trial court was of the opinion that it was not safe to place reliance on the testimony of PWs 1 and 2. The trial court yet referred to another infirmity in the prosecution case. The incident was claimed to have taken place at 6.00 p.m. or 6.30 p.m. From the evidence it appears that the distance between the place of occurrence and the police station could be covered by 1/4th or one hour depending upon the conveyance and including by walk but the report was given at 10.30 p.m. Thus, there was delay of four hours. PW-4, the mother of the deceased, admitted that the deceased was in the habit of taking drinks after day's work and she came to know about the incident at 9.00 p.m. through a girl. It appears that the incident occurred at about 9.00 p.m. The evidence of doctor suggests that the incident would have occurred at about 9.00 p.m. It was probable that the deceased was attacked during night while he was in a drunken condition according to the trial court. Further, from the statements of PWs 1 and 2, it is clear that they waited till 9.00 p.m. to give report; PW-3 also spoke to the same effect. The learned Sessions Judge expressed doubt whether PW-3 accompanied PWs 1 and 2 to police station as spoken to by them inasmuch as PW-7 did not examine him at the police station. The evidence of PW-7 indicates that at the time of inquest also, PW-3 was not present. This again was a circumstance pointed out by the trial court to create a doubt as to the truth of the prosecution case. Thus, taking the overall view based on the totality of the evidence and cumulative effect of the same, the trial court held that the prosecution failed to prove the accused guilty beyond all reasonable doubt and in our view rightly so in the light of the material placed on record and reasons given.

The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes high courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.

In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on

the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of evidence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

It is unfortunate that by the impugned order, the High Court has upset the well-reasoned order of acquittal passed by the trial court. It appears to us that the High Court while doing so, did not bear in mind the well-settled principles stated above as to what should be the approach in reversing an order of acquittal and under what circumstances it should be reversed.

On the motive aspect, it is what the High Court says:-

"It is no doubt true that motive assumes significance in a case where there are no direct eye-witnesses who have witnessed the murder or the incident. But in this case, the evidence of PWs 1n and 2 clearly establishes that they have witnessed the accused 1 and 3 beating the deceased with sticks and crow-bar."

The High Court proceeds on the ground that evidence of PWs 1 and 2 clearly established the case of prosecution. Hence, the motive aspect had no bearing on the case. The High Court recorded its finding on the aspect of motive without dispelling valid reasons given by the trial court. The High court held that evidence of PWs 1 and 2 was trustworthy; it is stated that nothing has been elicited in their cross-examination to discredit their testimony. Here again, it is not shown as to how the reasons recorded by the

trial court on appreciation of entire evidence were perverse or untenable in not relying on the evidence of PWs 1 and 2. As to the non-conducting of identification parade and its impact on the prosecution case, the High Court disagrees with the view taken by the trial court observing that the appellants and PWs 1 and 2 were from the same locality and as such not holding test identification parade was of no consequence. As to the non-examination of independent witnesses, though several independent persons had witnessed the incident, the High Court accepts the feeble explanation given by PW-7, the Investigation Officer, that none of them came forward to give evidence because of the fear of the accused. Nothing has come in evidence that the appellants were notorious criminals or they were a terror in the village. The trial court took a right view that non-examination of independent witnesses seriously impaired the credibility of the prosecution case. The High Court, in our view, was not right in this regard in accepting the explanation given by PW-7. In relation to the overt acts of appellants 1 and 2, the High Court was again not correct in ignoring the discrepancy which the trial court pointed out on the basis of conflicting evidence of PWs 1 and 2 on the one hand and that of the doctor on the other. According to the prosecution, the discrepancy was not fatal. The trial court had taken pains in scrutinizing the evidence of PWs 1, 2 and 6 and Exbt. P/1 on this aspect as already stated above.

From what is stated above, we are clearly of the opinion that the High Court committed a serious error in disturbing the order of acquittal recorded by the trial court that too without dislodging the reasons given by the trial court. Assuming one other view was possible, that itself was no ground to interfere with the order of acquittal unless it was shown that the appreciation of evidence by the trial court was either perverse or untenable and that in ordering acquittal, the trial court either ignored material evidence or that the view taken by it was patently untenable.

The High Court strangely convicts the appellants by taking aid of Section 34 IPC. The case was registered in the police station for an offence under Section 302 IPC. The appellants were tried for the charge under Section 302 IPC only. The evidence of PW-6, doctor, clearly shows that no injuries were found on the legs of the deceased attributable to appellants 1 and 2. The cause of death given by him was because of the injuries attributed to appellant no. 3. As per the prosecution case itself, appellants 1 and 2 had gone first to the scene of occurrence and after the heated exchange, they picked up the sticks from the fence on the spot and assaulted the deceased. Appellant no. 3 came later and assaulted the deceased with a crow-bar. There is absolutely nothing on record to show that appellants 1 to 3 had any pre-meditation or any intention to cause death of the deceased. It is also not shown that how appellant no. 3 was concerned with the appellants 1 and 2. Nobody speaks about the common intention of the appellants to kill the deceased. With all this, strangely, the High Court convicts the appellants for an offence under Section 302 IPC taking the aid of Section 34 IPC. This finding of the High

Court is patently unsustainable.

In the light of aforementioned reasons and discussions and to do substantial justice, the impugned judgment and order is set aside and that of the trial court is restored. The appellants be set at liberty forthwith if they are not required in any other case. The appeal is ordered accordingly.