

Rajan vs S.Rajendran

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Court : Kerala

Decided On : Feb-14-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/660/2007

Appellant : RAJAN

Respondent : S.Rajendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
WEDNESDAY, THE 14TH DAY OF FEBRUARY 2024 / 25TH MAGHA,
CRL.A NO. 660 OF 2007 AGAINST JUDGMENT DATED 25TH APRIL,
2006 PASSED BY THE JUDICIAL 1ST CLASS MAGISTRATE COURT,
KATTAKADA IN

C.C.NO.291 OF 1998 AGAINST WHICH SPECIAL LEAVE TO APPEAL
WAS GRANTED BY THIS HON'BLE COURT ON 26.02.2007 AS PER
THE ORER IN CrI.L.P. 639 OF 2006 APPELLANT/COMPLAINANT:
RAJAN S/O.SATHYANESAN VAIDYAN, CHITHRA BHAVAN,
UNDAPPARA, KONNIYOOR MURI, PERUMKUAM VILLAGE. BY ADV.

SRI.ABRAHAM MATHEW (VETTOOR) RESPONDENT/ACCUSED: 1
S.RAJENDRAN SUB INSPECTOR OF POLICE, KATTAKADA. 2 STATE
OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA BY ADV. DILIP J. AKKARA SMT.SEENA C.- PUBLIC
PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR
ADMISSION ON 14.02.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- CrI.A.No.660 of 2007
----- Dated this the 14th day of
February, 2024

JUDGMENT

This is an appeal against acquittal under the provisions of Section 378(4) of the Code of Criminal Procedure, 1973. The respondent was tried on a charge for the offences under Section 341, 323, 325 and 427 of the Indian Penal Code, 1860 (IPC). As per the impugned judgment he was found guilty and acquitted.

2. The prosecution was initiated on a complaint

instituted by the appellant. Summons was issued to the 1 st respondent to answer accusation amounting the offence under Section 341, 323, 325 and 427 of the IPC. After inquiry under Section 244 of the Code, a charge as aforesaid was framed. PWs 1 to 5 were examined and Exts.P1 to P4 were marked on the side of the prosecution. During 313

examination, the 1st respondent denied incriminating circumstances in evidence. He further stated that on the date of alleged occurrence, he seized 20 ltrs of arrack at 12

noon and arrested one Joy at a place, Undapara. In that regard a criminal case was charged by him which is pending consideration of the court. He did not go to the places of occurrence as alleged. A case was registered against the appellant

and his brother for the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 while he was the Sub Inspector in Kattakada Police Station. This case was foisted against him by creating evidence. Exts.D1 and D2 were produced by the 1st respondent.

3. The trial court after considering the evidence

found that the evidence was insufficient to prove the guilt of the accused beyond reasonable doubt. Although the plea of alibi set forth by the 1st respondent was discarded, the trial court took the view that the inconsistencies appeared in the evidence of PWs 1 to 3 are irreconcilable. The delay in launching the prosecution was not properly explained. After analysing the evidence, the trial court held that the evidence tendered by the prosecution could not be believed in order to enter a conviction of the 1st respondent.

4. Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and the learned Public Prosecutor.

5. The 1st respondent was the Sub Inspector of

Police, Kattakada Police Station during the relevant period. The allegations are that at 10.30 a.m on 20.04.1998, he along with two police men came in an Ambassador car and took the appellant forcibly in their custody. His auto rickshaw parked on the road was damaged by smashing its front glass. The appellant was abused and manhandled in front of the public. He was pushed into the car and taken to the 'Seventh Day Church' at Kottakuzhy. After pulling out of the car, the appellant was beaten up by the 1 st respondent by asking him to show the place where he concealed illicit liquor.

6. PW1, the complainant deposed in detail regarding

the aforesaid incidents, and also his detention in the police station. He had to undertake not to lodge any complaint against the 1st respondent in order to get released from the custody. He further deposed that for two days, he was treated by his father who is a Vydyan and as his condition deteriorated, he went to Taluk Headquarters hospital, Neyyatinkara, where he was examined and admitted by

PW4. He testified that he was under treatment for 22 days in that hospital under PW5.

7. PW2 deposed regarding the incident occurred

near the market at Alummoodu. His version is that, PW1 was beaten up by the 1st respondent holding his collar and dragged into the car. PW3 stated regarding the incident that had occurred near the 'Seventh Day Church'. PW4 had proved Ext.P2 wound certificate and deposed in court substantiating its contents. PW5, another doctor in the Taluk Headquarters Hospital, Nettyatinkara deposed that PW1 was under his treatment for 22 days regarding which he issued Ext.P3. Ext.P4 is the discharge card which shows that the

appellant was under treatment in that hospital from 22.04.1998 till 14.05.1998.

8. The learned counsel for the appellant would submit that the evidence of PW1 is corroborated on material particulars by the evidence of PWs 2 and 3. When medical

evidence brought in through PWs 4 and 5 confirmed that PW1 sustained bodily injuries, the trial court ought to have accepted the said evidence and found the 1st respondent guilty. The learned counsel has taken me through the entire evidence. It is his submission that the delay is sufficiently explained. Initial treatment was taken from his father and

his medical condition worsened requiring him to get treatment from the hospital. When he was under treatment for 22 days, and was in a position not to move about even, there was no possibility for him to lodge a complaint. Therefore the delay cannot be a reason to discard the evidence of the prosecution.

9. The learned counsel for the 1st respondent, on the

other hand, would submit that there is no evidence except his oral testimony of PW1 to show that for the initial two days he was under the treatment of his father and that the 10 days between his discharge from the hospital and lodging of the complaint has not been explained at all. As such, the case of the prosecution

becomes doubtful. Further it is submitted that the oral testimonies of PW1 on the one

hand and PWs 2 and 3 on the other are contradictory. It is also pointed out that PW1 changed his version regarding the assaults meted out by the 1st respondent during cross examination. The version of PW3 regarding the time also does not tally with the version of PW1. It was in the light of the said inconsistencies and contradictions, the trial court disbelieved the evidence of the prosecution.

10. The appellant did not bring forth any evidence to

show that till 22.04.1998, he had taken treatment from his father. Oral evidence of PW1 in that regard, which is unsupported by any other evidence, cannot be acted upon since the very contention of the 1st respondent is that the case is a foisted one. At the time when PW1 was examined by PW4, the infirmity noticed was pain and tenderness. Whether the tenderness appeared fresh or not is not noted. The two days' delay becomes crucial in the light of the aforesaid nature of the evidence.

11. Going by the assertions of PW1, he was repeatedly slapped, and hit by the 1st respondent. The statement of PW1 in that regard is not fully corroborated by the testimonies of PW2 and 3. It has come out that PW2 is a relative of PW1. Because of that alone PW2 need not be

disbelieved. There are inconsistencies between their evidence. The trial court having taken the view that the said evidence is unreliable on account of such inconsistencies, it is not possible for this Court to hold that the said view is so perverse. I am of the view that the delay of 2 days before PW1 going to the hospital and 10 days for lodging the complaint after his discharge from the hospital become vital. Version of PW1 is that he lodged a complaint before the DGP, but he explained that, that was after filing a complaint before the court. So, that cannot be an explanation for the delay. The unexplained delay creates serious doubts about the prosecution case.

12. The Apex Court in Chandrappa and others v. State of Karnataka [(2007) 4 SCC 415] enunciated the following general principles regarding powers of the Appellate Court while dealing with an appeal against an

order of acquittal;

1. An appellate Court has full power to review, reappraise 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 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.

13. In *Shyam Babu v. State of U.P.* [(2012) 8

SCC 651] the Apex Court held that it would not be possible for the appellate Court to interfere with the order of acquittal passed by the trial Court without rendering a specific finding, namely, that the decision of the trial Court is perverse or unreasonable resulting in miscarriage of justice. At the same time, it cannot be denied that the appellate Court, while entertaining an appeal against the judgment of acquittal by the trial Court, is entitled to re-appreciate the evidence and come to an independent conclusion. While doing so, the appellate Court should consider every material on record and the reasons given by the trial Court in support of its order of acquittal and should interfere only on being satisfied that the view taken by the trial Court is perverse and unreasonable resulting in miscarriage of justice. It was further held that if

two views are possible on a set of evidence, then the Appellate Court need not substitute its own view in preference to the view of the trial Court which has recorded an order of acquittal.

14. What the Apex Court held in *Central Bureau of*

Investigation v. Shyam Bihari and others [(2023) 8 SCC 197] is that in an appeal against acquittal, the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper

appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record.

15. Viewed in the light of the law laid down in the

aforesaid decisions, it cannot be said that the findings entered into by the trial court in regard to the reliability of evidence tendered by PWs 1 to 3 cannot be said to be perverse. A more probable view is not possible in the nature of the said evidence. This Court is not expected to substitute an alternative possible view for the view taken by the trial court also. In such circumstances, this appeal can only fail and it is accordingly dismissed. Sd/- P.G. AJITHKUMAR JUDGE PV

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