

Anil Kumar vs Joseph

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Court : Kerala

Decided On : Jan-15-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRA(V)/904/2018

Appellant : Anil Kumar

Respondent : Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
MONDAY, THE 15TH DAY OF JANUARY 2024 / 25TH POUSHA, 1945
CRL.APPEAL (VICTIM) NO. 904 OF 2018 AGAINST THE JUDGMENT
DATED 15.11.2017 IN CRA 124/2012 AND PATHANAMTHITTA AND
THE JUDGMENT DATED 31.07.2012 IN CC (CRIME NO.603/2008 OF
PATHANAMTHITTA POLICE STATION, PATHANAMTHITTA)
APPELLANTS/DEFACTO COMPLAINANT: ANIL KUMAR, S/O
SIVARAJAN, AGED 46 YEARS, POLICE CONSTABLE,
PATHANAMTHITTA, RESIDING AT PUTHENPURAKKAL VEEDU,
KALANJOOR VILLAGE, PATHANAMTHITTA. BY ADV B.MOHANLAL
RESPONDENTS/ACCUSED 1 TO 3 & STATE:

1 JOSEPH AGED 60 YEARS, S/O KUNJUKUNJU, TALUK SUPPLY OFFICER, KOZHENCHERRY, PATHANAMTHITTA, RESIDING AT MELEKOOTTU HOUSE, NANNUVAKADU, PATHANAMTHITTA, PIN - 689695. 2 A. RAJAN, S/O.M.A.RAWTHER, AGED 63 YEARS, ADDITIONAL SUPPLY OFFICER, TALUK SUPPLY OFFICER, KOZHENCHERRY, PATHANAMTHITTA, RESIDING AT THEKKEKARA HOUSE, PATHIRIKAL MURI, PATHANAPURAM P.O., KOLLAM DISTRICT. 3 VARGHESE, S/O.ABRAHAM, AGED 54 YEARS, RATIONING INSPECTOR, TALUK SUPPLY OFFICER, KOZHENCHERRY, PATHANAMTHITTA, RESIDING AT KOCHUVEETIL, MANJANIKKARA MURI, OMALLOOR, PATHANAMTHITTA, PIN - 689647.

4 STATE OF KERALA, REPRESENTED BY THE STATION HOUSE OFFICER, PATHANAMTHITTA POLICE STATION, PATHANAMTHITTA DISTRICT, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADVS. R1 AND R2 BY S.RAJEEV R1 AND R2 BY S.DHEERENDRAKUMAR R1 AND R2 BY V.VINAY R1 AND R2 BY D.FEROZE R1 AND R2 BY K. ANAND (A 1921) R1 AND R2 BY K.K.DHEERENDRAKRISHNAN R1 AND R2 BY K.ANAND (A 1921) R3 BY T.K.BIJU (MANJINIKARA) R3 BY ANNIE M.ABRAHAM R4 BY SMT.SEENA C., PUBLIC PROSECUTOR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP FOR FINAL HEARING ON 15.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 15th day of
January, 2024

JUDGMENT

This is an appeal filed under the proviso to Section 372 of the Code of Criminal Procedure, 1973 (Code). The appellant is the de facto complainant in C.C.No.153 of 2008 on the files of the Chief Judicial Magistrate Court, Pathanamthitta. Respondent Nos.1 to 3 were the accused. They were convicted by the trial court for the offence punishable under Sections 341 and 332 of the Indian Penal Code, 1860 (IPC). In appeal, they were acquitted by the I Additional Sessions Judge, Pathanamthitta as per the judgment dated 15.11.2017, which is challenged in this appeal.

2. Heard the learned counsel for the appellant, the learned counsel for respondent Nos.1 and 2, the learned counsel for the 3rd respondent and also the learned Public Prosecutor.

3. PW1, the appellant herein, is a Civil Police Officer

attached to the Vigilance & Anti-Corruption Bureau. He was deputed for surveillance duty in the Taluk Supply Office, Kozhencherry on 02.08.2008. From 11.30 a.m. to 1.30 p.m., he was on duty there. At about 1.30 p.m. while he was, as part of his duty, entered the chamber of the 1st respondent, who was the Taluk Supply Officer, respondent Nos.1 to 3 in furtherance of their common intention wrongfully confined and assaulted him. The 1st respondent slapped at his left cheek, the 2nd respondent fisted at his right shoulder and the 3rd respondent aided others. PW1 sustained injury and his duty was deterred. Thereby, respondent Nos.1 to 3 are said to have committed the aforementioned offences.

4. Before the trial court, the prosecution has

examined PWs.1 to 11 and marked Exts.P1 to P10. On the close of the prosecution evidence, respondent Nos.1 to 3 were examined under Section 313 of the Code. They claimed to be innocent and set forth a defence that on suspicion, PW1 was assaulted by the ration dealers and others present in the office. DWs.1 to 6 were examined and Exts.D1 to D6 were marked on their side.

5. The trial court, after considering the evidence on

record, found that the prosecution succeeded in proving the allegations against respondent Nos.1 to 3 to the extent that they wrongfully restrained PW1 and caused hurt to him. PW1 was on duty at that time. On the basis of the said proved facts, respondent Nos.1 to 3 were convicted for the offence under Section 341 and 332 read with Section 34 of the IPC and sentenced.

6. The Appellate Court, after re-appreciating the

evidence, found that the evidence of PW1, who is a Police Constable, is not creditworthy and the evidence tendered by the prosecution through PW.3 to prove the occurrence also lacks credibility. As regards the occurrence and hurt to PW1, the findings of the trial court were confirmed by the Appellate Court. Similarly, the finding that PW1 was on duty at the time of occurrence was also confirmed. On the basis of the

conclusion that the evidence of PW1 was not supported by

any other item of evidence, it was held that the defence case was more probable. The case of respondent Nos.1 to 3, as stated, is that it was the service seekers, who reached the Taluk Supply Office, questioned his presence there and assaulted PW1 following an altercation.

7. The learned counsel for the appellant would

vehemently contend that the oral testimony of PW1 is free of blemishes and the Appellate Court went totally wrong in discarding his evidence. The reason that he is a police personnel capable of deposing the facts parrot type is palpably wrong. Similarly, it is submitted that the evidence of PW3 should not have been discarded and the reason thereof that Sri.Pradeep, whom he reached there to meet was not working in that office, is wrong. It is further submitted by the learned counsel that immediately after the incident, PW1 went to PW7, the Doctor, to whom he gave the cause of his injuries as an assault by the Supply Officer, Assistant Supply Officer and Clerk and that corroborated the evidence of PW1. He immediately reported the matter to PW8, his senior officer,

who deposed that fact in court. Accordingly, the learned counsel for the appellant would canvass that the findings of the Appellate Court insofar as it disbelieved PWs.1 and 3 is wrong and therefore the judgment of conviction by the trial court is liable to be restored.

8. The learned counsel for respondent Nos.1 and 2

would submit that PW3 is a pure and simple chance witness. Going by his version itself he reached the Taluk Supply Office to meet one Pradeep, but that fact stood falsified by the evidence brought on record through DW1 and Ext.D1, and hence he became a totally unreliable witness. In that regard, the learned counsel places reliance on *Ravi Mandal v. State of Uttarakhand* [AIR 2023 SC 2554].

9. The learned counsel further would submit that

discarding the evidence of PW3, what is available is the lone evidence of PW1 and in the light of the inherent infirmities, his evidence cannot be trusted to reach a conviction. It is further contended that this being an appeal against acquittal, this Court is not expected to reverse the findings of the court below unless it is so perverse and totally against the evidence on record. In that regard, the learned counsel places reliance on *Ravi Sharma v. State (Government of NCT of Delhi)* and another [(2022) 8 SCC 536].

10. The learned counsel for the 3rd respondent would

submit that even admitting that such an incident had occurred, the evidence tendered by the prosecution does not prove involvement of the 3rd respondent. It is contended that the name of the 3rd respondent was not mentioned in Ext.P1 F.I.statement and during the investigation, he was not identified by PW1 or by other witnesses. Thus, the complicity of the 3rd respondent to the offence has not been proved at all. That apart, the learned counsel endorses the submissions of the learned counsel for respondent Nos.1 and 2.

11. The learned Public Prosecutor would submit that

the allegations concerning reliability of PW3 are quite incorrect and untenable. It is submitted that PW3 did not state that Sri.Pradeep is a member of the staff in Taluk supply Office. Therefore, proof that Sri.Pradeep was not working in that office cannot be a reason to disbelieve PW3. It is further submitted that evidence of PW1 is quite in terms of the prosecution case and his evidence is corroborated by the evidence of PW3, the medical evidence and Ext.P1 F.I.statement. The Appellate Court ought not to have, in such circumstances, reversed the findings of the trial court.

12. PW1 deposed in detail regarding the incident. His definite version is that while he entered the room of the 1 st respondent, who was the Taluk Supply Officer, and even after

disclosing that he was police personnel deputed for surveillance duty, he was assaulted by respondent Nos.1 to 3. He duly identified respondent Nos.1 to 3 in court as the assailants also. PW3 claimed that when he reached the Taluk Supply Office happened to see a commotion inside the room of the Taluk Supply Officer and that invited his attention to the incident. It is his version that he heard PW1 saying that he was police personnel attached to the Vigilance & Anti-

Corruption Bureau and deputed for surveillance duty. Following that, he was assaulted by respondent Nos.1 to 3. The Appellate Court in paragraphs No.15 and 16 of the

judgment gave reasons why the evidence of PW3 could not be

believed and in the absence of any evidence to corroborate PW1 cannot also be believed.

13. One of the observations is that PW1 being a police personnel it is not difficult for him to give before the court a

parrot-like version of his earlier statement. Such an observation may be an incorrect proposition, since a witness, be it a police personnel or an ordinary witness, is expected to depose only truth in court. When evidence of a witness is appreciated, the court is expected to approach it to be true. Only if there are

reasons to disbelieve, the evidence shall be discarded. As rightly pointed out by the learned counsel for the appellant, there cannot be an assumption that a police officer will manipulate evidence or will not state the truth in court.

14. The Apex Court in *Aher Raja Khima v. State of Saurashtra* [AIR 1956 SC 217] held: "The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and

it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration".

15. In *Tahir v. State (Delhi)*, (1996) 3 SCC 338, dealing with a similar question, the Apex Court stated:

"Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.

16. In *Karamjit Singh v. State (Delhi Administration)* [AIR 2003 SC 1311] the Apex Court again held,-

The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.

17. Now, the question is whether the finding of the court

below that the evidence of PW1 is unreliable is totally wrong and perverse. Of course, rejection of the evidence of PW3 terming him a witness planted by the prosecution also falls for consideration. More reasons than one are assigned by the Appellate Court to disbelieve both of them. In regard to the evidence of PW3, the view taken by the Appellate Court is that he had prior acquaintance with PW1, but that fact was not readily disclosed. Further, the reason for which he reached the Taluk Supply Office was proved to be wrong. As pointed out by the learned Public Prosecutor solely for the reason that Sri. Pradeep, whom PW3 proposed to meet, was not working in Taluk Supply Office alone, his evidence need not be discarded. But when PW3 did not disclose who the said Pradeep was; whether he was a member working in that office or a person working elsewhere, the credibility of PW3 became doubtful. As

held in Ravi Mandal (supra) he stands to the status of a chance

witness and the inconsistencies in his evidence are irreconcilable. So his evidence is not trustworthy.

18. The case of respondent Nos.1 to 3, as stated, is not

that such an incident did not occur. Their case is that the actual assailants are somebody else. They not only raised such a defence, but tried to probabilise the same by examining DWs.1 to 6. The evidence was to the effect that the ration dealers and others came to the office seeking various services, on suspicion detained and manhandled PW1. When such a story was brought in evidence by the defence anew, that cannot readily be accepted.

19. Ext.D6 is a complaint submitted by the 1st respondent

to the District Collector on the same day. It is alleged in the said complaint that PW1 was found in the premises of the Taluk Supply Office in suspicious circumstances. Now, it is proved that PW1 was manhandled at the said office. Being the head of the office, the 1st respondent certainly should have known that fact. When the defence case also is in that terms, his failure to state that aspect in Ext.D6 indicates that the 1st respondent had not stated the whole truth in it. For

that reason Ext.D6 cannot be available to the support of the case of the appellants.

20. There are two sets of evidence. One is that of PW1,

who tendered evidence almost in terms with the case of the prosecution Medical evidence and the version in Ext.P1, to a certain extent, render support to his evidence. The second is the evidence brought on record through DWs.1 to 6. Going by that evidence, the service seekers, who reached the office, assaulted PW1. The Appellate Court found that the

inconsistencies in the evidence of PW1 make him untrustworthy. The circumstance in which respondents Nos.2 and 3 joined the 1st respondent all on a sudden to assault PW1 was found unusual. Also it is pointed out that despite being there from 10.00 a.m. Onwards, PW1 did not notice anything unusual and at 1.30 p.m. he entered the room not on noticing any unfair act, but on seeing more persons thronging in the

cabin. That further creates doubts that the appellants voluntarily had assaulted PW1.

21. Of course, the aforesaid reasons assigned by the Appellate Court to disbelieve PW1 are not fully satisfactory, but such a view is a reasonable and probable one when there is no other evidence to support. The findings of the Appellate Court, in the above circumstances, cannot be said to be perverse or unreasonable.

22. 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.

23. 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.

24. What the Apex Court laid down in Ravi Sharma v.

State (Government of NCT of Delhi) and another [(2022) 8 SCC 536] and Central Bureau of Investigation v. Shyam Bihari and others [(2023) 8 SCC 197] is also the same. It was held 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.

25. In the light of the law laid down in the aforesaid

decisions, I am of the view that the findings of the court below resulting in acquittal of respondent Nos.1 to 3 cannot be said to be perverse and unreasonable. This Court sitting in appeal cannot substitute such a view although another view also is possible. In the circumstances, I find no reason to interfere with the views taken by the Appellate Court leading to the acquittal of respondent Nos.1 to 3. The appeal therefore fails and it is accordingly dismissed.

Sd/- P.G. AJITHKUMAR, JUDGE dkr

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