Anilkumar vs Y. Thomas

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Court : Kerala

Decided On : Dec-12-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/871/2022

Appellant : Anilkumar

Respondent : Y. Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 12TH DAY OF DECEMBER 2023/21ST AGRAHAYANA, 1945 CRL.A NO. 871 OF 2022 AGAINST THE ORDER DATED 25.06.2022 IN CC 855/2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, ADOOR CRIME NO.498/2006 OF PANDALAM POLICE STATION, PATHANAMTHITTA (CRL.L.P. 250/2022 OF HIGH COURT OF KERALA) APPELLANT/COMPLAINANT: ANILKUMAR, AGED 45 YEARS, CHARUVILAMELETHIL VEEDU, KURAMPALA SOUTH MURI, KURAMPALA VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT, PIN - 689501. BY ANILKUMAR (Party-In-Person) RESPONDENTS/ACCUSED/STATE: 1 Y. THOMAS ENATHU

MURI,ENATHU VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT, PIN - 691526. 2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031. BY ADVS. R1 BY NOBEL RAJU R1 BY P.Y.AHAMMED PHYSI R2 BY SMT SEENA C., PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 30.11.2023, THE COURT ON 12.12.2023 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

--- Dated this the 12th day of December, 2023

JUDGMENT

This is an appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973 (Code).

2. The appellant filed a complaint based on which

C.C.No.855 of 2012 was instituted before the Judicial Magistrate of the First Class-I, Adoor. The 1 st respondent and one Gopinatha Pillai were the accused. The offences for which they were tried are punishable under Sections 218, 465 and 471 of the Indian Penal Code, 1860 (IPC). Pending trial, Sri.Gopinatha Pillai expired and therefore the charge against

him abated. After trial, the 1st respondent was found not guilty and acquitted as per the judgment dated 25.06.2022 under Section 255(1) of the Code. Aggrieved by the said

order of acquittal, this appeal has been filed.

3. The 1st respondent entered appearance through his learned counsel. The learned Public Prosecutor took notice for

the 2nd respondent. The appeal was filed through a learned counsel. But he has relinquished the Vakalath. The appellant appeared in person and conducted the appeal in person. He was heard. The learned counsel for the 1st respondent and the learned Public Prosecutor were also heard.

4. This case has a cherished history. All started with

an altercation between the appellant and one Chandramathy, wife of Rajan. The appellant is a mason. The altercation was with respect to engagement of the appellant by one Madanan for the construction of a shop building. As a sequel to that dispute, on 07.06.2006, when the appellant reached the construction site at about 8.00 a.m, Saji and Rajan came there in a motorcycle. Soon son of Rajan, Rajeesh Raj also came there. An altercation erupted following which Rajan and Rajeesh Raj caught hold of both hands of the appellant and while so Saji punched using a broken brick at his face. The appellant thereby lost two teeth from his upper jaw. One tooth from the lower jaw was loosened also. He had bleeding injuries on the nose. It was alleged that he was bitten on his nose as well.

5. Following the aforesaid incident, the appellant was taken to C.M.Hospital, Pandalam, where he had undergone treatment. The 1st respondent who was a Head Constable in

the Pandalam Police Station reached the hospital and recorded his statement. On the basis of that statement the 2nd accused, who was the Additional Sub Inspector in that police station, registered a case and after investigation, he filed a final report.

6. The appellant later realised that with a view to

avoid Rajeesh Raj from the array of accused and to enable the other accused to get bail, his first information statement was replaced with a forged one in which his signature was also forged. Stating such acts of forgery and submission of a manipulated first information report and a final report before the court, the appellant filed the complaint.

7. The court below did not initiate prosecution of the

appellant and the 2nd accused initially. The complaint was dismissed under Section 203 of the Code after conducting an inquiry. The appellant challenged that order before this Court and as directed by this Court, the matter was again inquired into. But the court below dismissed once again the complaint under Section 203 of the Code. When that order was challenged by filing Crl.R.P.No.3003 of 2011, this Court directed to consider the matter afresh. It was thereafter, summons was issued to the accused and the trial taken place.

8. PW1 is the complainant. PW2 is the Zonal Head of

Idea Cellular Ltd., Pathanamthitta. He was examined to bring in evidence the call details of the mobile phone of the appellant. But due to passage of time, that document was not available for being produced. PW3 is the wife of PW1. PW4 is the handwriting expert from Forensic Science Laboratory, Thiruvananthapuram, who submitted Ext.P11 report about the genuineness of signature in the disputed F.I.statement, which is Ext.P1. Altogether 11 documents were produced on the side of the prosecution. The 1st respondent was examined as DW1. Exts.D1 to D5 were marked on his side.

9. The court below after considering the said evidence

found that the evidence was insufficient to find the 1 st respondent guilty. The view taken by the court below is that when DW4 could not positively report whether or not the signature in Ext.P1 was ascribed by the appellant and the version of PW1 was that the manipulation was taken place after registration of the crime, the evidence was insufficient to prove beyond doubt that the 1 st respondent has committed any of the alleged offences. The court below found that by handing over the F.I. statement recorded from PW1 to the 2 nd

accused, who registered the crime and conducted the investigation, the role of the 1 st respondent was over and even if any forgery occurred, it was thereafter for which the 1 st respondent cannot be held responsible. In that regard the court below followed the principle laid down by the Apex Court in Sheila Sebastian v. R.Jawaharaj and another [AIR 2018 SC 2434] that unless and until ingredients of Section 463 was satisfied, one cannot be convicted under Section 465 of the IPC.

10. The appellant vehemently contended that without

the connivance of the 1st respondent, the 2nd accused could not replace the F.I.statement and forge his signature in it. In the further investigation offence under Section 326 of the IPC, which was deleted while the final report was filed, was added. That established the manipulation done by the

accused together. It is further submitted that in the examination by PW4, it was revealed that the signature in Ext.P1 was not of the appellant. The further contention is that in the voice recording contained in Ext.P5 CD, the 1 st respondent had admitted his replacing the F.I.statement and forging the signature of the appellant in it and that is enough to prove his role in the commission of the offence. It is also submitted that the motive of creating such a forged

document was established while the final report was submitted on the third day without conducting any investigation and by excluding Rajeesh Raj from the list of accused and without recording the statements of the eye witnesses including his wife.

11. The learned counsel for the 1st respondent would

submit that the evidence tendered by the prosecution was totally insufficient to implicate the 1 st respondent to any of the alleged offences. It is pointed out that PW1 admitted that the allegations he stated to the 1st respondent are contained in F.I.statement, Ext.P1 and the offence under Section 326 of the IPC was included in Ext.P2 FIR. When his allegation is that the offence under Section 326 of the IPC was deleted with a view to enable the accused to get bail, Exts.P1 and P2 stand testimony to the fact that the 1 st respondent did not commit

any manipulation. In the view of the learned counsel, if

anything wrong was done, it was in the process of investigation and in the final report. Such acts were done by the 2nd accused in the capacity of investigating officer and the 1st respondent being a subordinate, did not have any role in the investigation and therefore no accusation could be possible against the 1st respondent. The learned counsel further would submit that the challenge being against an

order of acquittal, a possible another view is not enough to

interfere with the findings of the court below. Accordingly, it is contended that the appeal is devoid of any merits.

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, reappreciate 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. As held by the Apex Court, re-appreciation of

evidence in this appeal is to ascertain whether the findings rendered by the court below is the plausible one and also whether the findings are vitiated by misreading of any relevant evidence. Essentially, two reasons are stated by the appellant to hold that his F.I.statement was forged; the allegations constituting an offence under Section 326 of the IPC were omitted and the complicity of Rajeesh Raj was excluded. But on going through Ext.P1 F.I.statement and Ext.P2 F.I.R. allegations constituting an offence under Section 326 of the IPC, namely, the appellant was hit at his face using a broken brick are stated. In the F.I.R. an offence under Section 326 is mentioned as well.

15. The following version of PW1, the appellant is relevant in this regard:

. police station HC . Y Addl SI Gopinadhan Pilla FIR Sec.326 ..

16. From the above it is seen that the appellant has no allegation that the F.I.statement was forged before registration of the crime. The crime was registered, indisputably, by the 2nd accused. After considering the said

evidence, the court below found the evidence to be insufficient to prove the allegations of the appellant that the 1st respondent was a party to the fabrication of Ext.P1 statement. After registration of the crime for the offences under Sections 341, 323 and 326 read with Section 34 of the IPC the investigation was commenced. It is seen that during investigation the offence under Section 326 of the IPC was omitted. A final report was submitted adding Section 325 in the place of Section 326 of the IPC. Thus, going by the allegations of the appellant, not while registering the crime, but subsequently the contents of the F.I.statement were modified and manipulated. It implies that deletion of the offence under Section 326 of the IPC had taken place subsequently, during investigation. If so, the 1st respondent, who could not have a role in the matter of investigation, cannot be held responsible for such manipulation.

17. The appellant submitted that the conversation

contained in Ext.P5 compact disc would reveal that the 1 st respondent confessed having forged the signature of the appellant in Ext. P1. The 1 st respondent deposed as DW1 denying that allegation. Ext. D5 was marked subject to proof. It is an electronic document. It is not duly proved. So its contents cannot be used in evidence and lead to a conviction for forgery.

18. The learned counsel for the 1st respondent pointed

out that even after further investigation, Rajeesh Raj was not added as an accused. Therefore, the version of PW1 that the overt acts stated by him concerning the complicity of Rajeesh Raj were purposely omitted from Ext.P1 cannot be accepted

as true. PW4 reported in Ext. P11 that the signature in Ext. P1 F.I.Statement purportedly put by the appellant is unlikely of him. Admittedly the appellant signed in the F.I.statement at the hospital bed. PW4 conceded during cross-examination that if signature was put in such a circumstance, the possibility of dissimilarity as noticed in Ext. P11 between the signatures in Ext. P1 and the admitted signatures of the appellant cannot be ruled out.

19. As stated, evidence available to prove the forgery

is the evidence tendered by PWs 1 and 4. PW3 admitted that she was not present at the time when PW1 was giving his F.I.statement or his signing it. She went out from the hospital at that time to buy tea. In that context, the inconclusive nature of the report of PW4 in Ext.P11 regarding the genuineness of the signature in Ext.P1 assumes importance. PW1 stated that the signature in Ext.P1 was not put by him. From the evidence adverted to above, it is not able to find conclusively that the contents of Ext.P1 were subsequently changed. The assertion of PW1 that the signature in Ext.P1

and its contents were forged is thus unsupported by any independent evidence. The court below considered all such aspects of the evidence before reaching the conclusion that the prosecution failed to prove beyond doubt the role of the 1st respondent in the forgery or manipulation of the investigation. I am of the view that the said finding cannot be said to be so improbable in the light of the available evidence. The said finding cannot be said to be perverse either. Hence no interference with the order of acquittal is possible.

20. Two defects in the prosecution noticed are that the

offence under Section 218 of the IPC though is a warrant case, was tried as a summons case. For that reason the trial was vitiated. The second defect is that offence under Section 471 of the IPC is based on the allegation that the forged F.I.statement and F.I.R. were submitted before the court below as genuine. Such an offence is concerning the proceedings before the court and is one coming within the purview of Section 195(1)(b) of the Code. Cognizance of that offence could be taken only on a complaint by the court concerned. Therefore cognizance and trial of that offence upon the complaint filed by the appellant are illegal. That apart, as held above, there can be no interference with the

order of acquittal on merits as well. The appeal therefore fails

and it is accordingly dismissed. Sd/- P.G. AJITHKUMAR, JUDGE dkr