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Court : Karnataka

Decided On : Feb-28-1961

Reported in : AIR1962Kant124; AIR1962Mys124; ILR1961KAR586

Judge : K.S. Hegde and ;Ahmed Ali Khan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 423; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 3

Appeal No. : Criminal Appeal Nos. 207 and 318 of 1959

Appellant : The State of Mysore

Respondent : Dyavegowda and anr.

Advocate for Def. : E.S. Venkataramiah, Adv.

Advocate for Pet/Ap. : B.S. Keshava Iyengar, High Court Government Pleader

Judgement :

Hegde, J.

(1) These are appeals under Section 417 of the Criminal Procedure Code. They relate to one incident. It is alleged that the respondents delayed one Ningappa on the night of 13-12-1958 to Cholenahalli village and there they murdered and robbed him. The charge of murder was tried by the learned Additional Sessions

Judge, Mysore, Camp Hassan, in Hassan Sessions Case No. 4 of 1959, and the respondents were acquitted as per the judgment dated 15-4-1959. Cr. A. No. 207/59 is directed against the said decision.

After the acquittal of the respondents in H. S. C. No. 4/59, the respondents were tried for the offence under section 392 I. P.C. by the learned Principal Sessions Judge, Mysore, Camp: Hassan, with the aid of Jury in Hassan Sessions Case No. 5 of 1959. In that case the Jury returned a verdict of 'not guilty' . The learned Sessions Judge accepted the verdict of the Jury and acquitted the respondents. In Criminal Appeal No. 318/59, the legality as well as the correctness of the order in H. S. C. No. 5/59 is assailed.

(2) We shall first take up Cr. A. No. 207/59. (After briefly stating the prosecution case, the judgment proceeded:)

(3) The evidence against the respondents is entirely circumstantial. Therefore it is necessary to analyse the several circumstances and find out how far each one of the circumstances allied is fully established and whether the proceed circumstances conclusively bring home the offence against the respondents. In doing so, we have to bear in mind the limitations attached to an appeal against acquittal.

It is now well settled that in an appeal against an order of acquittal (not against the verdict of a Jury), the power of this Court to review the evidence afresh is an extensive its power in an appeal against a conviction. It is equally well settled that if two responsible views on the evidence adduced are possible, the view that had commended itself to the trial court should been accepted as the trial court had the benefit of seeing the witness in the box; further, the presumption of innocence of the accused gets strengthened by an order of acquittal passed in his favour and hence there must be good reasons for disturbing that finding.

But if the trial court has misdirected itself either on questions of law or in appreciating the evidence before it and thus arrived at conclusions which are wholly unreasonable and unsupportable, then it is the duty of this court to interfere with the verdict under appeal. Now we shall proceed to consider the evidence

bearing in mind these well-settled principles relating to appeals against acquittals. (His Lordship then discussed the prosecution evidence including that relating to the recovery of blood stained clothes from the person of R. 1 in the rest of this Para (Para 3) and Paras 4-14 and observed in Para 15).

The real question for decision is whether we have any good reasons to disbelieve the evidence of P. Ws. 24, 26 and 30. If their evidence has to be rejected solely on the ground of improbability then the improbability should be lit large on the fact of their evidence. To attempt to isolate a particular fact from the surrounding circumstances and to discuss the logical inference may be useful mental exercise. But it is wholly out of place in any judicial decision. Judge's experience of life is undoubtedly an important factor in evaluating the evidence placed before him. But he must judge the actions and reactions of the accused and witnesses before him from their standard.

(16) In our judgment the evidence of P. Ws. 24, 26 and 30 relating to the recovery of M. Os. 7, 10 to 12 and 13 has been rejected by the trial court on wholly insufficient grounds.

(17) The evidence of P. Ws. 24, 26 and 30 shows that when R-2 was produced before P. W. 30 on the afternoon of the 16th, he (Rs.-2) made a statement before them and thereafter led them to his father-in-law house and from there produced the clothes, M. Os. 14 and 15, which were found to be stained with human blood. This evidence was disbelieved by the trial Court with the following observations:

'Now assuming that accused No. 2 made such a statement, and the police and the panchayatdars went to his father-in-law house to recover those clothes, one would expect them to go inside the house and see things for themselves. It is, certainly odd to find that the Police and the panchayatdars summoned for the purpose, should have been waiting outside the house, while accused No.2 went inside the brought the clothes out. This raises a reasonable doubt as to whether the offending articles were really in the possession of accused No. 2'.

It is difficult to follow this criticism. It is well known that many criminals particularly these that are not hardened, are likely to be in a state of abject surrender when

they are caught. At that state they are likely to be in a mood to give out the truth. It is only as time passes, their feelings get stabilised and they true to fight for their lives or liberty as the case may be. This is the experience of criminologists. P. W. 30, an experienced offer, was likely to have been well aware of the fact that at that moment Rs.-2 had completely surrendered himself to this fate and there was no likelihood of his playing a double game. Further, there is no material from which we could conclude that there was any possibility for Rs.-2 to escape from the hands of the Police. We do not think that there is any merit in the above noticed criticism of the learned Sessions, Judge.

(18) The prosecution evidence further shows that in pursuance of his statement, R-2 took the Investigating officer and the panch witnesses to P. W. 11 (Ganesha Chari) a Goldsmith at Channarayapatna from whom M. O. 17, a pair of ear-rings were sold to him by R-2 on the Sunday preceding the Thursday on which they were seized from him, which means that it was sold to him on 14-12-1958. R-2 admits this transaction but claims that M. O. 17 belongs to him. To prove that fact he examined his mother Dw. 3 (Ningamma). The Court below disbelieved the case of R-2 on this point. M. O. 17 has been identified by P. Ws 7 and 9 as the ear-rings, the deceased was usually wearing and which were on his person on the Friday preceding the occurrence when he left the house . P. W. 10 (Kalahari) says that he made those ear-rings for the deceased.

(19) To summarise, it is fully established that R-1 and the deceased were together at Channarayapatna shandy on Saturday the 12th; they were seen by P. Ws. 13 and 14 going together on bicycles towards the scene of occurrence; the injuries on the person of the deceased showed that they must have been caused by a sharp cutting instrument like a sickle; on the information given by R-1, a sickle was found buried in a dried up nalla; R-1's clothes were bloodstained at the time of his arrest; no explanation is forthcoming for those bloodstains; R-1 produced M. O. 7 the ring belonging to the deceased and which was on his person at the time of his murder. All these circumstances, when cumulatively taken and sufficient to hold R-1 (Dyavegowda) guilty of murdering the deceased, See Wasim Khan v. State of Uttar Pradesh, (S) : 1956 CriLJ790 .

(20) R-2 is proved to have taken the deceased on Friday the 12th December 1958 from his house for the purpose of purchasing coconuts; he was found in the company of the deceased at Channarayapatna on Saturday the 13th; he was seen by P. Ws. 13 and 14 going along with the deceased and R-1 towards the scene of occurrence on the night of the 13th; on the information given by him (R-2) M. Os. 14 and 15, two clothes stained with human blood were recovered; M. O. 17 the ear-rings belonging to the deceased were recovered from P. W. 11 on the information given by R-2; M. O. 17 had been sold by R-2 to P. W. 11 on Sunday the 14th. Further R-2 is proved to have paid to P. W. 22 a sum Rs. 100/- on Sunday following the Saturday on which day the deceased was likely to have been murdered.

From the prosecution evidence it is seen that the deceased must have had Rs. 100/- at the time of the occurrence. These circumstances in our view conclusively establish that R-2 was one of the murderers of the deceased. From the proved circumstances, the only reasonable inference to that R-1 (Dyavegowda) and R-2 (Gowdaiah alias Gowdappa alias Ningappa) acted in concert. Hence both of them are liable to be convicted under Section 302 read with Section 34 I. P. C.

(21) In our opinion several of the conclusions arrived at by the lower court border on perversity.

(22) But before closing this case, it is necessary to consider some new contentions advanced in his court by Sri E. S. Venkataramiah, the learned counsel for the respondents.

(23) Sri E. S. Venkataramaiah, contends that the medical evidence in this case negatives the prosecution case that the deceased must have been murdered some time prior to 9 p.m. on 13-12-1958 and therefore it is unsafe to place any reliance on the testimony of that witnesses who speak to the association of the respondents with the deceased on Saturday the 13th. P. W. 2 (Dr. L. K. Rama Rao) conducted autopsy of the dead body of the deceased at about 12-30 p. m. on 16-12-1958. He says that at the time of his examination , there was slight rigor mortis present on the dead body. He opined that the death of the deceased must have occurred about 48 to 72 hours before the commencement of the post-

post-mortem examination. In the course of his cross-examination, it was elicited from him that under the condition in which the body was, rigor mortis could have continued for about 72 hours after death. Hence the medical evidence adduced in this case is in no way inconsistent with the prosecution case.

But the Doctor very richly admitted that he could not be definite as to the time of the death of the deceased. In the very nature of things his opinion on that point could only be at best approximate. But he opined that very probably the death would not have been occurred less than 48 hours before the post-mortem examination commenced. Sri E. S. Venkataramaiah, challenges the correctness of the opinion given by P. W. 2. He has cited some passages from Medical Text Books to show that the existence of rigor mortis as observed by P. W. 2 is indicative of the fact that death must have occurred within 48 hours or less before the commencement of the post mortem examination, which means that the deceased must have been murdered some time after the noon of Sunday the 14th. It would be hazardous to draw any precise inference about the time of death on the basis of the appearance or disappearance or rigor mortis in a dead body. Taylor in his Medical Jurisprudence, 10th Edition, Vol. 1, at page 190 stated:

'Speaking in general terms, rigor mortis lasts for from sixteen to twenty-four hours in sound, muscular subjects; it may last much longer, from twenty-four to thirty-six hours, and exceptionally it may continue for fourteen days or even longer'.

During winter season, especially in a frost, it is slow in disappearing. In the instant case, the death had occurred during winter season and we can take judicial notice of the fact that the place where the deceased was found murdered would be quite cold during winter. Numerous other factors contribute for the continuance of rigor mortis. P. W. 2 who had before him all the relevant materials had opined that death must have occurred between 48 to 72 hours before he commenced the post mortem examination. We see no justification for discarding his opinion. It was next urged that the stomach of the deceased contained semi-digested fried grams and therefore we must rule out the prosecution case that the deceased must have been murdered at the time mentioned by the prosecution. We see no force in this contention.

(24) Another contention advanced by Sri E. S. Venkataramaiah is that the decision in Hassan Sessions Case No. 5/59 i.e., in the 'robbery' case, so long as the same is not set aside, operates as representations judicata in respect of the evidence relating to the recover of the stolen property. Before considering this contention, it is convenient to consider Criminal Appeal Number 318 of 1959 which is directed against the verdict of the Jury in H. S. C. No. 5/59.

(25) B. S. C. No. 5/59 was taken up for trial after the respondents were acquitted in H. S. C. No. 4/59. This related to the charge of 'robbery' which had to be tried with the aid of a Jury. The learned Sessions Judge in his charge to the Jury repeatedly told the Jury to bear in mind the fact that the accused in that case had been acquitted of the murder charge. Quite likely the learned Counsel for the defence must have rubbed into the Jurymen the findings of the learned Sessions Judge in H. S. C. 4/59. In H. S. C. No. 4/59 as noticed earlier the bank of the prosecution evidence had been disbelieved. In that situation it is not surprising that the Jury returned a verdict of 'not guilty'. In view of the finding arrived at earlier, it goes without saying that we do not agree with the verdict of the Jury on merits.

But, as in our opinion, the respondents are liable to be convicted under Section 302, I.P.C. we have not thought it necessary to examine the legality of the verdict of the Jury. We think that it is wholly superfluous at this stage. It was highly indiscreet on the part of the State to have pressed the trial of the charge under Section 392 I. PUBLIC. C. In view of the acquittal of the respondents under the 'murder' charge. The learned Public Prosecutor should have prayed for the postponement of the trial till the disposal of the appeal against acquittal. In the alternative, he should have withdrawn that charge. If the respondents' acquittal under Section 302 I. P. C. was set aside then the 'robbery' charge would have become purposeless. If their acquittal under the murder charge stood then the 'robbery' charge would have become useless. In either case, there was no justification to go on with the second trial.

Things have been allowed to go on in a vicious circle. Acquittal under the murder charge was pressed into service to persuade the Jury to return a verdict of 'not guilty' under the 'robbery' charge. Now the verdict of the Jury is flourished before

us in support of the contention that bulk of the evidence in the 'murder' case is hit by rule of representations judicata. In this connection reliance is placed on the decision of the Supreme Court in *Pritam Singh v. State of Punjab*, (S) : 1956 CriLJ805 , wherein their Lordships held that:

'The effect of a verdict of acquittal pronounced by a competent Court on a Lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim '*res j dicata*' provision veritate acceptor is no less applicable to criminal than to civil proceedings. Thus an acquittal of an accused in a trial under Section 19(f), Arms Act, is tantamount to a finding that the prosecution had failed to establish the possession of certain revolver by the accused as alleged. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence under S. 19(f). That fact was found against the prosecution and could not be proved against the accused in the subsequent proceedings between the Crown and him, under charge of murder. The evidence against him in the latter proceedings would have to be considered regardless of the evidence of recovery of the revolver from him'. (As summarised in the head note (d)).

His Lordship Bhagwati, J, who spoke for the Court followed the dictum laid down by Lord MacDermott in *Sambasivam v. Public Prosecutor, Federation of Malaysia*, 1950 AC 458. We do not think that the rule laid down in *Pritam Singh's* case, (S) : 1956 CriLJ805 , has application to the facts of the present case. In Cr. A. No. 207/59 we are considering the correctness of the decision in H. S. No. 4/59. When that decision was rendered, the robbery charge had not been tried. The verdict of the jury was rendered long after that decision. To the extent we know of , neither the principle nor authority supports the contention of Sri Venkataramiah that any decision rendered during the pendency of an appeal against acquittal could bar the consideration of the appeal on merits. In applying the principle of representations judicata to civil cases, the relevant point of time is the date of decision of the trial court and the same rule, in our view, must apply to criminal cases.

What we are considering in effect is whether the decision of the learned Sessions Judge, Mysore, in H. S. C. No. 4/59 was correct on the date it was given. In so doing we have to ordinarily take into consideration the state of affairs as they stood on the date the decision was given. Subsequent events some time may have to be taken into consideration. But they bring in different principles with the principles of representations judicata conversed before us. Further in the instant case on merits we have come to the conclusion that the verdict of the Jury is incorrect. If we do not disturb the finding of the Jury, as we have decided not to, it is because in the first place it is unnecessary to do so in view of our decision in Cr. A. No. 207/59; secondly because the legal requirements in considering the verdict of a Jury materially differ from those that are apposite when we consider a decision of a Judge.

We would like to make it clear that we should not be understood to say that having come to the conclusion that the decision of the learned trial Judge in the 'murder' case is wholly erroneous, which decision, in our opinion, has greatly influenced the verdict of the Jury, it is not competent for us to set aside the verdict of the Jury solely on that ground. Suffice it to say that we have not gone into that aspect.

(26) In the result, we allow Criminal Appeal No. 207 of 1959 and convict both the respondents under Section 302 I. P. C. We dismiss Criminal Appeal No. 318 of 1959.

(27) This leaves us with the question of sentence to be imposed on the respondents. The question of sentence in this case has given us a great deal of trouble. The crime for which the respondents are convicted is a very heinous one and ordinarily we should not have hesitated to inflict on them, the extreme penalty of the law. But we cannot ignore the fact that the learned Sessions Judge had acquitted them on the charge of 'murder' and that was followed up by the verdict of 'not guilty' by the Jury; the respondents were at large ever since the date of the decision in H. S. C. No. 5/59. We ordered their arrest during the hearing of this appeal. Both of them are youngmen. R-2 appears to be only child of his mother having a young wife and a young child.

We are conscious of the fact that none of these circumstances individually taken can be considered as sufficient to impose the lesser sentence but cumulatively they leave a different impression in our mind. We have come to the conclusion but not without hesitation. That the ends of justice will be met if each of the respondents is sentenced to suffer imprisonment for life. We order accordingly.

(28) AF/V.B.B.

(29) Acquittal set aside.

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