

B.V. Veerabadrappa Vs. the State

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Court : Karnataka

Decided On : Sep-15-1997

Reported in : 1998(1)ALT(Cri)430; 1998CriLJ1171

Judge : H.N. Narayan, J.

Appeal No. : Criminal Revn. No. 775 of 1995

Appellant : B.V. Veerabadrappa

Respondent : The State

Advocate for Def. : B.H. Satish, Govt. Pleader

Advocate for Pet/Ap. : S.B. Mukkannappa, Adv.

Judgement :

ORDER

1. This revision is directed against the judgment of the learned Sessions Judge, dismissing the appeal, but modifying the sentence of imprisonment to one of fine. The petitioner is first accused before the trial Court. He along with others were charged for offences punishable under Sections 143, 147, 148, 324, 427, 509 r/w 149, IPC. The accused were tried for the said offences as they pleaded not guilty to the above charges. In proof of the same, the prosecution relied on the evidence of 11 witnesses and 10 documents. The learned Magistrate upon consideration of the evidence on record held the first accused guilty of the offence punishable

under Section 324, IPC only and sentenced him to suffer S.I. for one month and to pay a fine of Rs. 500/- with default clause. He has acquitted the other accused. There is no appeal against the order of acquittal. The first accused filed a criminal appeal before the learned Sessions Judge, Hassan. He has passed the impugned order.

2. The order is challenged on many grounds. I have perused the orders of the Courts below. A cursory glance of the impugned order clearly shows that the learned Appellate Judge, viz., the Principal Sessions Judge, Hassan has not even made a reference to the evidence let in by the prosecution in order to appreciate the contention raised on behalf of the appellant before him. This is really a serious infirmity which requires interference. The learned Judge obviously has not followed the mandates of Section 387, Cr.P.C. which provides for judgment of the subordinate appellate Courts. Section 387 reads as follows :

'The Rules contained in Chapter XXVII as to the judgment of a criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate.'

3. The powers of the First Appellate Court is provided under Section 386. So the Code of Criminal Procedure specifically provides as to how an appeal by the First Appellate Court shall have to be heard. The learned Sessions Judge sitting as the First Appellate Court has necessarily to discuss the evidence on record and find out whether there is any error of appreciation of evidence and whether the conclusion reached by the trial Judge is in conformity with law. If the first Appellate Court ignores this elementary duty of scrutinising the evidence, there is no alternative for the accused person to urge his case elsewhere. The learned Judge appears to have lost sight of this mandatory duty of writing the judgment upon consideration of evidence both on law and on facts. The learned sessions Judge has recorded a few contentions raised by the appellant's counsel. He has dismissed the appeal summarily without considering and answering those contentions urged. The judgment does not disclose the basis on which the appeal was dismissed. This is not only a serious infirmity in the judgment rendered but the mode of deciding the case itself. The matter requires reconsideration in the hands

of the Sessions Judge since there is only one forum before whom the appellant could urge all his contentions on facts and law. The revision is therefore allowed. The conviction confirmed by the Appellate Court is set aside. The matter is remitted to the Court of Principal Sessions Judge, Hassan, to decide the matter in accordance with law after due notice to both the parties.

4. Revision allowed.

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