A K. RAMAKRISHNAN UNNITHAN

v.

STATE OF KERALA

MARCH 18, 1999

B [G.B. PATTANAIK AND M.B. SHAH, JJ.]

Criminal Procedure Code, 1973—Sections 378 and 386—Murder trial—Acquittal by the Trial Court—Appeal against such acquittal—Scope of jurisdiction of the High Court—Consistent evidence of three eye witnesses that C *the appellant-Accused gave a knife blow on vital part of the deceased when he come out of the house on the cries of his son-the eye-witness account was fully corroborated by medical evidence—Held, High Court was fully justified in re-appreciating the entire evidence on record and to record its own conclusions as to whether conviction was sustainable—Criminal trial—Penal* D *Code, 1860, Sections 300, 302.*

Penal Code, 1860 :

Sections 302 and 304 Part II—Absence of intention to cause death and knowledge that the death would be the inevitable result—Effect on conviction E *under Section 302—Accused giving blows by stick on deceased's son and on hearing the cries, the sister and deceased came out of the house—On being asked as to why the accused was beating his son, the deceased was given a blow on his abdomen by a knife by the accused—However the blow was only on account of the altercation and not with any animosity with accused* F *—Under such circumstances, it cannot be held that the accused gave the blow with the intention of causing murder or with the knowledge that the Deceased's death would be the inevitable result—Hence, the case was one which fell under Section 304 Part II and not under Section 302.*

Section 304 Part II—Sentence under—Case being heard in this Court G *after 13 years—Accused was on bail by the Order of this Court—Accused undergoing about 4 years in jail—In such circumstances, the sentences was limited to the period undergone in jail—Criminal Trial—Sentence.*

Relationship between the appellant and the deceased was strained H **on account of the deceased helping a person with whom appellant had**

property dispute. On the date of occurrence, the appellant and the accused passed by when PW 1 was sitting on the varandah of a shop near his house, when the appellant abused PW 1 and PW 1 also in turn abused him. On this score, there was some scuffle, but due to the intervention of the wife of appellant, appellant left the place. Appellant, however, came back with his son (the acquitted accused) and the second accused gave a stick blow on the head of PW 1 and caught hold of him and then the appellant stabbed him with a knife. On hearing the noises, the sister of PW 1 rushed to the scene and the father of PW 1 (the deceased) also reached the scene. It is at this stage that the appellant stabbed the deceased on his abdomen of which he ultimately died. On the statement of PW 1, FIR was registered by the police. During the trial, the eye witness account of the three eye witnesses was that when PW 1 cried out, his sister and deceased (father of PW 1), came out of the house and asked as to why his son was being beaten up and then the appellant stabbed the deceased with a knife. The post-mortem report of the deceased indicated existence of a sutured incised wound of inverted 'L' shape on the left side of the abdomen. The doctor PW 8 in his evidence stated that the deceased had an incised wound of 4 cm below the umbilicus, left to the midline of the body with a part of the intestine protruding out and that was the only injury. PW 9, the doctor who conducted the autopsy, in his evidence stated that there were three injuries on the deceased, but injury Nos. 1 and 3 were surgical injuries and injury No. 2 was the inflicted injury. On these facts, the appellant and his son stood charged for offences under Section 449, 341, 324 and 302 read with Section 34 IPC. The additional Sessions Judge acquitted the accused on the ground that the prosecution had failed to prove the case beyond reasonable doubt. On appeal, the High Court reversed the acquittal of the appellant and convicted him under Sections 302 and 324 IPC. He was awarded life imprisonment for the offence committed under Section 302 but no punishment was awarded for the offence committed under Section 324 IPC. Hence this appeal.

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It was contended by the appellant that the High Court could have interfered with the order of the Trial Court after being satisfied that the view taken by the acquitting Judge was clearly unreasonable; that the son of the appellant was falsely implicated by the eye-witnesses and on such discredited version the role ascribed to the appellant could not have been relied upon; and that even assuming that the blow was given by the appellant on the deceased, that would not constitute the offence under

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A Section 302 and at the most the offence would be one under Part II of Section 304.

Partly allowing the appeal, this Court

B HELD : 1.1. The plentitude of power available to the court, hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. But however the court will not interfere solely because a different plausible view may arise on the evidence. In a case of murder, if the reasons given by the trial court for discarding the testimony of the eye witnesses are not sound, then there C should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the judgment of the trial judge was absolutely perverse, legally erroneous and based on wrong testimony, it would be proper for the High Court to interfere and reverse an order of acquittal. Having examined the judgment of acquittal passed by the Sessions Judge D and the impugned Judgment of the High Court, reversing the said judgment of acquittal and on scrutinizing the evidence of the three eye witnesses, there is some substance in the grievance of the appellant that the High Court has not adverted to all the reasons given by the trial judge for according an order of acquittal, but it is difficult to come to hold that the High Court exceeded its jurisdiction and the parameters fixed for interE ference with an order of acquittal. [1229-G-H; 1230-A-B]

1.2. The approach of the Sessions Judge and the conclusion arrived at by him in recording an order of acquittal was not proper and the conclusion arrived at by the Sessions Judge on several aspects is unsusF tainable. Even though, the eye witnesses appear to have exaggerated their version and improved upon their version in giving a role to accused No. 2 for which an order of acquittal passed by the Sessions Judge has been affirmed by the High Court but to bring home the charge of murder against the appellant on the ground that he gave a stabbing blow on the deceased on a vital part by means of a knife, while the deceased came out G of his house has been consistently narrated by all the three eye witnesses. There has been no embellishment or exaggeration of these eye witnesses so far as the role ascribed to the appellant from their previous version to the Police is concerned. Thus the basic prosecution case as unfolded through the testimony of three eye witnesses is fully corroborated by the H medical evidence of the doctors and, therefore, the Sessions Judge was not

justified in discarding this part of the prosecution case and in acquitting the appellant. The High Court, therefore, was fully entitled to re-appreciate the evidence of these witnesses and records its own conclusion on the question whether the evidence of the eye witnesses that the appellant gave the stabbing blow on the deceased can at all be sustained or not. The evaluation of the evidence made by the trial court was manifestly erroneous and, therefore, it was the duty of the High Court to interfere with the order of acquittal passed by the Session Judge. [1230-C-H]

2. On examining the medical evidence on record, it is established beyond reasonable doubt that the appellant had given one blow but the blow no doubt was quite severe, as a result of which the intestines had protruded out. It is however crystal clear that the appellant had no animosity against the deceased and he was involved because of the altercation with PW 1. In the scenario in which the appellant has been stated by the eye witnesses to have given one blow on the deceased, it is difficult to hold that he gave the blow in question either with the intention of causing murder of the deceased or with the requisite knowledge that the death would otherwise be the inevitable result. In such a situation, even on accepting the prosecution case, it is held that the accused did not commit the offence under Section 302 but under Part II of Section 304. The accused is awarded the sentence of about four years already undergone. His conviction under Section 324 IPC remains unaltered but no separate sentence is being awarded. [1231-D-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 64 of 1992.

From the Judgment and Order dated 17.7.91 of the Kerala High Court in Crl.A. No. 338 of 1987.

U.R. Lalit, V. Balaji and A.T.M. Sampath for the Appellant.

G. Prakash for the Respondent.

The Judgment of the Court was delivered by

PATTANAIK, J. The appellant and his son stood charged for offences under Sections 449, 341, 324 and 302 read with Section 34 IPC for having wrongfully restrained PW1 and hurting him with a stick and for

causing murder of deceased Kesava Pillai, father of PW1 by stabbing him on his abdomen with a knife on 17.4.1985 at 11 P.M. The learned Additional Sessions Judge, on a thorough discussion of the entire prosecution evidence came to hold that the prosecution has failed to establish the charges beyond reasonable doubt and, therefore, the two accused persons are entitled to be acquitted and accordingly acquitted them of all the charges. On an appeal being carried by the State, the High Court of Kerala by the impugned Judgment affirmed the order of acquittal passed by the learned Additional Sessions Judge so far as the son is concerned but reversed the order of acquittal of the appellant herein and convicted him under Section 302 as well as under Section 324 IPC. For his conviction under Section 302 IPC, he was sentenced to imprisonment for life and no separate sentence was passed for his conviction under Section 324.

The prosecution case in the nutshell is that the relationship between the accused and the deceased Kesava Pillai was strained as the deceased had helped one Velu Pillai with whom the accused had some property dispute. On 17.4.85 at 11 P.M. while PW1 was sitting on the varandah of a shop near his own house, the accused-appellant and his wife passed by that way. As it was dark, PW1 could not recognise them and enquired about their identity, whereupon the accused-appellant used some abusive language and PW1 in turn, also abused the appellant. On this score, there was a scuffle but on the dissuasion of the wife of the appellant, he left the place. Few minutes later while PW1 reached the door-step of his house, the appellant accompanied by his son (the acquitted accused) reached there and the second accused dealt a blow on the head of PW1 with a stick and then caught hold of him and then the present appellant stabbed him with a knife. On hearing Hullah, the sister of PW1 rushed to the scene. At that stage when father of PW1 reached the scene of occurrence, the appellant stabbed him on his abdomen on account of which he ultimately died in the hospital on the next day at 11.30 A.M. Statement of PW1 was recorded at 1.15 A.M., which was treated as F.I.R., on the basis of which investigation started and on completion of investigation, charge-sheet was submitted by the Police. On being committed, the two accused persons stood their trial. The prosecution examined as many as 17 witnesses and exhibited a large number of documents of whom PWs 1 to 3 are the eye witnesses to the occurrence. Of these eye witnesses, PW3 is the daughter of the deceased whereas PW2 is a neighbour. PW8 is the doctor, who had examined the

accused No. 1 and issued the wound certificate. PW9 is the doctor who conducted the autopsy on the dead body of the deceased Kesava Pillai and exhibit P15 is the post-mortem certificate. PW14 is the doctor who attended the deceased Kesava Pillai as well as PW1 in the Medical College Hospital on the night of occurrence. The defence version as reflected in the statement of the accused-appellant under Section 313 Cr.P.C. is that there was a marriage proposal emanated from the deceased but the same did not materialise and on that score there was an enmity. On the date of occurrence, while the appellant and his wife had gone for a marriage negotiation of their son, PW1 was waiting on the road. When he found that the appellant and his wife are coming, PW1 abused them but the appellant came away and while he reached near the house of PW1, deceased Kesava Pillai suddenly came on the road with a knife and attacked him. The appellant attempted to escape from such attack and caught hold of the knife and at that point of time, stones were thrown by PW1 and his father. While the appellant had caught hold of the hand of deceased Kesava Pillai who had a knife in his hand, a scuffle ensued and deceased Kesava Pillai fell down and sustained the injuries on his abdomen on that score. The further plea is that it is the acquitted accused No. 2, seeing the scuffle, informed the Police Control Room, whereupon the Mobile Police Vehicle came and picked up the injured PW1 and the deceased and removed them to the hospital and PWs 2 and 3 were never at the scene of occurrence. On the basis of the medical evidence of the doctor, who treated deceased Kesava Pillai in the hospital and the post-mortem report, the learned Sessions Judge came to the conclusion that deceased Kesava Pillai died as a result of penetrating injuries sustained on his abdomen and the death is homicidal in nature. Examining the question as to whether it is the appellant who caused the injury on the deceased by stabbing blow with the means of a knife, the learned Sessions Judge scrutinised the evidence of PWs 1-3 and also scrutinised the medical evidence with relation to the injury found on the deceased as well as the injury found on the person of PW1 and came to hold that the story of alleged cause of injury on the occipital region of PW1 as spoken to by the eye witnesses stand totally discredited and disproved by the evidence of PW14 and the injury certificate Exhibit P11. The learned Sessions Judge accordingly recorded a finding that the first part of the occurrence regarding the alleged beating on the head of PW1 by the appellant with the stick as spoken by the witnesses stands discredited by the evidence of PW14. The learned Ses-

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A sions Judge also rejected the contention of the defence that the non-explanation of the injuries on the accused is fatal to the prosecution as such injuries are superficial in nature being a linear abrasion over the left thenar and the linear abrasion on the hypothenar eminence. But on examining the evidence of the three eye witnesses as well the suspicious circumstances B appearing in the prosecution case, the Sessions Judge came to hold that the accused No. 2 was never present at the scene of occurrence and he was falsely implicated upon by the three eye witnesses. He also further found that when the witnesses have tried falsely to implicate such person and on account of the inconsistencies between their statements, doubt is created in the mind of the court as to the trustworthiness of the prosecution C witnesses and, therefore, it must be held that the prosecution failed to establish the charges against the accused persons beyond reasonable doubt. With these findings the two accused persons being acquitted, the State preferred an appeal to the High Court. The High Court by the impugned Judgment, affirmed the order of acquittal of accused No. 2 Sreenivasan. D But on re- appreciating the evidence of the eye witnesses and relying upon the same, came to hold that the prosecution has succeeded in proving beyond all reasonable doubt that the accused-appellant had inflicted stab injury on the deceased, besides inflicting injuries on PW1 and as such he is liable for being convicted under Section 302 as well as under Section E 324IPC. For such conviction he was sentenced to imprisonment for life.

Mr. U.R. Lalit, the learned Senior Counsel, appearing for the appellant contended that though the power of the High Court while sitting in judgment against an order of acquittal is the same as in appeal against a F conviction and the court can re-appreciate the entire evidence on record but in case of an appeal against an order of acquittal the court is duty bound to examine the reasons on which the order of acquittal was based and should interfere with the order after being satisfied that the view taken by the acquitting Judge was clearly unreasonable. If the impugned judgment is examined from the aforesaid stand point, it would appear that the G High Court has not adverted to the reasons given by the Sessions Judge in recording the order of acquittal and, therefore, reversal of an order of acquittal by the High Court should be interfered with. Mr. Lalit also further contended that the very fact that the son of the appellant was falsely implicated by the eye witnesses would itself discredit the witnesses and on H such discredited version, the role ascribed to the appellant could not have

been relied upon. Mr. Lalit further urged that though the learned Sessions Judge came to the positive conclusion after a thorough analysis of the evidence that the defence plea was more probable but the High Court never focussed its attention to the same and has not discussed any thing on that score, which approach vitiates the impugned judgment. Mr.Lalit also urged before us that the prosecution not having come forward with a true and correct version of the occurrence, the accused is entitled to the benefit of doubt and, therefore, the order of acquittal should not have been interfered with by the High Court. Lastly, Mr. Lalit urged that even assuming the blow given by the appellant on the deceased can be said to have been established beyond reasonable doubt but that would not constitute the offence under Section 302 and at the most the offence would be one under Part II of Section 304.

The learned counsel appearing for the respondent on the other hand submitted that it is too well settled that the High Court while sitting in an appeal against an order of acquittal can re- appreciate the entire evidence on record and having done so and having found the witnesses to be reliable, there is no infirmity with the conviction of the appellant under Section 302 IPC. According to the learned counsel for the respondent, the substratum of the prosecution story that the appellant gave a fatal blow on the vital part of the deceased on account of which the deceased ultimately succumbed is established through the cogent and consistent evidence of the three witnesses and such evidence is corroborated by the medical evidence of the doctor who treated the deceased at the hospital as well as the doctor who conducted the autopsy on the dead body and, therefore, the conclusion of the High Court that the prosecution case against the appellant has been proved beyond reasonable doubt is unassailable and cannot be interfered with.

The plentitude of power available to the court, hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. But however the court will not interfere solely because a different plausible view may arise on the evidence. In a case of murder, if the reasons given by the trial court for discarding the testimony of the eye witnesses are not sound, then there should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the Judgment of the trial judge was absolutely perverse, legally

A erroneous and based on wrong testimony, it would be proper for the High Court to interfere and reverse an order of acquittal. Having examined the judgment of acquittal passed by the learned Sessions Judge and the impugned Judgment of the High Court, reversing the said judgment of acquittal and on scrutinizing the evidence of the three eye witnesses, though we find some substance in the grievance of Mr. Lalit, appearing for the appellant that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, but it is difficult for us to come to hold that the High Court exceeded its jurisdiction and the parameters fixed for interference with an order of acquittal. We find the approach of the learned Sessions Judge in recording an order of acquittal was not proper and the conclusion arrived at by the Sessions Judge on several aspects is unsustainable. Even though, the eye witnesses appear to have exaggerated their version and improved upon their version in giving a role to the accused No. 2 for which an order of acquittal passed by the Sessions Judge has been affirmed by the High Court but to bring home the charge of murder against the appellant on the ground that he gave a stabbing blow on the deceased on a vital part by means of a knife, while he came out of his house has been consistently narrated by the three eye witnesses. There has been no embelishment or exaggeration of these eye witnesses so far as the role ascribed to the appellant from their previous version to the Police is concerned. Thus the basic prosecution case as unfolded through the testimony of the aforesaid three witnesses is fully corroborated by the medical evidence of the two doctors and, therefore, the learned Sessions Judge was not justified in discarding this part of the prosecution case and in acquitting the appellant and the High Court, therefore, was fully entitled to re-appreciate the evidence of these witnesses and record its own conclusion on the question whether the evidence of the eye witnesses that the appellant gave the stabbing blow on the deceased can at all be sustained or not. We have ourselves scrutinized the evidence of the three eye witnesses and we are of the considered opinion that the reasons adduced by the trial court for discarding their testimony were not at all sound. On the other hand, the evaluation of the evidence made by the trial court was manifestly erroneous and, therefore, it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge. In this view of the matter, we are unable to accept the ultimate submission of Mr. Lalit that the High Court exceeded its limit in interfering with an order or acquittal passed by the learned Sessions Judge.

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The question then remains for consideration is whether on the materials on record can it be said that the appellant gave the blow on the deceased with the intention of causing murder of the deceased so as to be convicted under Section 302 IPC. The eye witness account of the three eye witnesses is to the fact that when PW1 cried aloud, his sister rushed there and at that point of time his father, the deceased came out, opening the door and asked as to why his son is being beaten up and then the appellant stabbed the deceased on his abdomen with the knife. The post- mortem report of the deceased indicates existence of a sutured incised wound inverted "L" shaped on the left side of the abdomen, the vertical limb was parallel to the midline, 4 cms. in length and the horizontal limb from its upper and measured 3 cms. and was placed 1.3 cms. to the left of midline and the junction of the two limbs were at the level 25 of umbilicus. The wound entered the abdominal cavity. The doctor PW14, who was working as tutor in surgery, Medical College, Trivandrum and was in the casualty on 17.4.85, in his evidence stated that the deceased had an incised wound 4 cms. long below the umbilicus, left to the midline of the body with a part of the intestine protruding out and that is the only injury. The doctor who conducted the autopsy, PW9 in his evidence also stated that though there are three injuries on the deceased as per the post-mortem report, but injury Nos. 1 and 3 are surgical injuries and injury No. 2 is the inflicted injury. Thus it is established beyond reasonable doubt that the appellant had given one blow but the blow no-doubt was quite severe, as a result of which the intestines had protruded out . It is however crystal clear that the appellant had no animosity against the deceased and he was involved because of the altercations with PW1. The scenario in which the appellant has been stated by the eye witnesses to have given one blow on the deceased, it is difficult for us to hold that he gave the blow in question either with the intention of causing murder of the deceased or he can have said to have the requisite knowledge that the death would otherwise be the inevitable result. In such a situation, even on accepting the prosecution case we hold that the accused did not commit the offence under Section 302 but under part II of Section 304 IPC. We accordingly, set aside the conviction of the appellant under Section 302 IPC and instead, convict him under Section 304 Part II. The incident is of the year 1985 and more than 13 years have elapsed. The accused is on bail pursuant to the orders of this court dated 6th February, 1992. Mr. Lalit, appearing for the accused-appellant stated that he has already undergone sentence of about four years. In such circumstan-

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A ces, for his conviction under Section 304 Part II IPC , we sentence him to the period already undergone. His conviction under Section 324 IPC remains unaltered but no separate sentence is being awarded. This Criminal Appeal is disposed of accordingly. The bail bond furnished by the appellant stands discharged.

R.K.S. Appeal disposed of.