THANGA PRAKASH

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1874 of 2008)

NOVEMBER 26, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Criminal Procedure, 1973: s.374(2) – Appeal from conviction – Disposed of, by High Court without considering the contradictory findings arrived at by trial court – Justification of – Held: Not justified – Matter remitted to High Court for disposal afresh – Penal Code, 1860 – s.304 (Part-II).

The trial court in one para of its judgment observed that A1 and A4 to A6 were entitled to be acquitted of offence under s.304 (Part II) IPC. However in the next para, the trial court held A1 guilty under s.304 (Part II) and convicted him though in yet another para, it held that the medical evidence did not lend corroboration to the evidence of PW1 that A1 and A4 had assaulted him on the back with a chopper. The High Court while disposing of the appeal before it, did not consider the contradictory findings arrived at by the trial court. A-1 filed the instant appeal.

Disposing of the appeal and remitting the matter to the High Court, the Court

HELD: 1.1. The confusion and contradictory findings by the trial court have not been considered by the High Court which disposed of the appeal, by practically, in one paragraph, after noticing the factual scenario indicated in

A **the trial court's judgment. Since the appeal is filed by A1, the order remitting the matter to the High Court shall be restricted only so far as he is concerned. [Paras 6 and 7] [695-G-H; 696-B]**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1874 of 2008.

From the final Judgment and Order dated 12.7.2006 of the High Court of Karnataka at Bangalore in Criminal Appeal No. C 569 of 2001 (SJ-C).

Basva Prabhu S. Patil, Shekar Devasya, B. Subrahmanya Prasad and V.N. Raghupathy for the Appellant.

Anitha Shenoy for the Respondent.

D

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard.

E 2. Leave granted.

3. Challenge in this appeal is to the judgment and order dated 12.7.2006 in Criminal Appeal No. 569 of 2001 by the Karnataka High Court. Though, various points were urged in F support of the appeal, we find that it can be disposed of by a single point. The trial Court, in the penultimate paragraph observed as follows:

"Therefore, I hold that A2, A3 and A7 are guilty of the offence punishable under Part-II of Section 304 IPC G read with Section 34 IPC. *Accused Nos. 1 and 4 to 6 are entitled for acquittal."*

(Underlined for emphasis)

H 4. But, strangely, in the next paragraph, it was observed

as follows: A

> "In the result, A1 to A7 are acquitted of the offences punishable under Sections 148 IPC, Section 323 read with Section 149 IPC, Section 307 read with Section 149 IPC and Section 302 read with Section 149 IPC, with which B they are charged. *However, A1, A2, A3 and A7 are convicted for the offence punishable under Section 304 Part II read with Section 34 of the IPC.*
>
> The bail bonds of A4 and A6 stands cancelled. A-5 C who is in judicial custody shall be released forthwith if not required in any other case."
>
> (Underlined for emphasis)

5. It has to be noted that in the judgment of the Trial Court, D it was *inter alia* observed as follows:

> *"The evidence of PW-1 that A1 and A4 also assaulted him with the chopper on his back cannot be accepted because of the reason that if both the accused* E *had assaulted there should have been more than one wound on his back, but, as per medical evidence, there is only one wound.* The medical evidence does not lend corroboration to the evidence of PW-1. PW-1 was present with A2 and A7 from the beginning and when they reached F near the scene of offence PW1 had seen A1, A4 and A6 at that place. PW1 has not stated that A1 and A4 were armed with chopper at that time."
>
> (Underlined for emphasis) G

6. The aforesaid confusion and contradictory findings by the Trial Court have not been considered by the High Court which disposed of the appeal, by practically, in one paragraph after noticing the factual scenario indicated in the trial court's H

A judgment. We, therefore, set aside the impugned order of the High Court and remit the matter to it for a fresh disposal in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case.

B 7. It is to be noted that the present appeal is filed by accused No. 1. Our order remitting the matter to the High Court shall be restricted only so far as he is concerned.

8. The appeal is, accordingly, disposed of.

C B.B.B. Appeal disposed of.