**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.551 OF 2011

Muralidhar @ Gidda & Anr. … Appellants

Versus

State of Karnataka … Respondent

**WITH**

CRIMINAL APPEAL NO.791 OF 2011

**AND**

CRIMINAL APPEAL NO.1081 OF 2011



**JUDGMENT**

**R.M. LODHA, J.**

These three criminal appeals arise from the common judgment and, therefore, they were heard together and are being disposed of by the common judgment.

2. The statement (Ex.P-22) recorded by the police on 17.08.2002 between 9.55 P.M. and 10.20 P.M. at K.R. Hospital, Mandya triggered the prosecution of the appellants and one Swamy. Ex.P-22 is in Kannada, which in English translation reads:

> "The statement of Pradeep son of Swamygowda, 28 years, Vakkaligaru by community, agriculturist residing at Majigepura village, Srirangapatna Taluk. Today at about 8.30 p.m. night, I was sitting in front of shaving shop by the side of shop of Javaregowda on K.R.S. – Majigepura Road along with Vyramudi, Prakash and Umesh. At that time Naga, S/o Ammayamma, Jagga S/o Sentu Kumar's sister, Gunda, Gidda, S/o Fishari Nanjaiah, Swamy, Manju and Hotte Ashoka and others who were having old enmity assaulted me by means of chopper, long on my hand, head, neck and on other parts of the body with an intention to kill me and they have assaulted Umesh who was with me. Vyramudi said do not kill us and went away. Prakash ran away. Please take action against those who have attempted to kill me."

3. After registration of the First Information Report (Exhibit P-5) on the basis of the above statement made by Pradeep which has become dying declaration in view of his death, the investigation commenced. In the course of investigation, 37 witnesses were examined. The investigating officer, on completion of investigation, submitted challan against Naga @

Bagaraju (A-1), Jaga @ Santhosh Kumar (A-2), S. Sathish @ Gunda (A-3), Muralidhar @ Gidda (A-4), Swamy @ Koshi (A-5) and Manju (A-6).

4. The concerned Magistrate then committed the accused to the court of Sessions for trial. The Court of Sessions Judge, Fast Track Court–I, Mandya conducted the trial against A-1 to A-6 for the offences punishable under Sections 302, 307, 144, 148 read with Section 149 of the Indian Penal Code, 1860 (for short, "IPC"). The prosecution examined 37 witnesses of which PW-4 (Umesha), PW-5 (Prakash) and PW-15 (Vyramudi) were produced as eye-witnesses. Exhibit P-22 is recorded by PW-30 (Rajashekar) on the oration of PW-36 (Kodandaram, PSI) in the presence of PW-25 (Dr. Balakrishna).

5. The three eye-witnesses PW-4, PW-5 and PW-15 have turned hostile to the case of prosecution and have not supported the prosecution version at all. In the circumstances, the only evidence that has become significant is the dying declaration (Ex.P-22). The trial court by its judgment dated 28.09.2004 on consideration of the entire oral and documentary evidence reached the conclusion that prosecution had failed to prove the offence against the accused persons and, accordingly, acquitted them.

6. The State of Karnataka preferred an appeal before the Karnataka High Court against the judgment of the Fast Track Court-I, Mandya acquitting the accused. The High Court on hearing the public prosecutor and the counsel for the accused *vide* its judgment dated 21.10.2010 maintained the acquittal of A5 (Swamy) but convicted A1 to A4 and A6 for the offences under Section 302 read with Section 149 IPC and sentenced them to undergo imprisonment for life with fine and defaulting sentence. The High Court has also convicted them for the offence under Section 148 IPC and they were sentenced to suffer rigorous imprisonment for one year. Both sentences have been ordered to run concurrently. It is from this judgment that these appeals, by special leave, have arisen.

7. The High Court has convicted the appellants on the basis of dying declaration alone, as in its view the dying declaration is credible and genuine. In this regard, the reasoning of the High Court is broadly reflected in paragraphs 16 and 17 which reads as follows:

> "16. Having heard both sides and carefully gone through the evidence of the witnesses and on reappreciation of the evidence we find that Ex. P22 which is the dying declaration of the deceased has been recorded naturally and truthfully. PW25 – Doctor has categorically stated that the injured was in a position to speak and give statement and further he has signed Ex.P.22. Under these circumstances, it could be gathered that PW25 – the Medical Officer

was not only a person present when Ex. P.22 was recorded, but also asserted that the patient was in a position to give such statement. However, on a careful scrutiny of Ex.P.22, it is seen that the name of Swamy – Accused No.5 has been added subsequently and there is no initial of any officer by the side of the name of Swamy and the colour of the ink differs from the other handwriting. In view of the foregoing discussions we hold that the dying declaration of deceased Pradeep – Ex. P.22 is genuine and has been recorded by PW30 – Rajshekhar in the presence of PW25 – Dr. Balakrishan when the deceased was in fit condition to give statement and hence, a conviction can be based on the said dying declaration.

17. So far as the capacity of the deceased to narrate the incident regarding the cause of his injuries is concerned, on perusal of Ex. P.3 the accident register it is clear that Ex.P.3 was brought into existence at 9.30 p.m. and in Ex.P3 it is mentioned that the assault was by six persons and the names of all the six persons are mentioned therein without any over writing. The over writing pertains only to the presence of Vyramudi and it is the contention of the learned counsel for the accused that over the name of Vyramudi name of Pradeep is written. In Ex.P.23 – requisition letter it is seen that signature of Vyramudi is separately taken by the doctor as brought by him and, therefore, the presence of either Vyramudi or Pradeep in the hospital at the time when the deceased was brought to the hospital cannot be disputed at all."

8. The trial Court, however, held that it was not safe to act on the dying declaration (Ex.P-22). The trial court on consideration of Ex.P-22 and the evidence of PW-25, PW-36 and PW-30 concluded that the time of recording Ex. P-22 did not inspire confidence and the credibility of Exhibit

P-22 had not been established to the satisfaction of the court and conviction cannot be based on Exhibit P-22 and the deposition of PW-36, PW-25 and PW-30.

9. The only question that arises for our consideration in these appeals is, whether the High Court was justified in upsetting the view of the trial court on re-appreciation of the evidence of PW-25, PW-30 and PW-36 and Exhibit P-22.

10. Lord Russell in *Sheo Swarup*[1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

[1] Sheo Swarup v. King Emperor [AIR 1934 Privy Council 227]

11. As early as in 1952, this Court in *Surajpal Singh*[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, "…….the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu*[3], *Madan Mohan Singh*[4], *Atley*[5] , *Aher Raja Khima*[6], *Balbir Singh*[7], *M.G. Agarwal*[8], *Noor Khan*[9], *Khedu Mohton*[10], *Shivaji Sahabrao Bobade*[11], *Lekha Yadav*[12], *Khem Karan*[13], *Bishan Singh*[14], *Umedbhai Jadavbhai*[15], *K. Gopal Reddy*[16],

[2] Surajpal Singh v. State; [AIR 1952 SC 52]
[3] Tulsiram Kanu v. State;[AIR 1954 SC 1]
[4] Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637]
[5] Atley v. State of U.P.; [AIR 1955 SC 807]
[6] Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217]
[7] Balbir Singh v. State of Punjab; [AIR 1957 SC 216]
[8] M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200]
[9] Noor Khan v. State of Rajasthan; [AIR 1964 SC 286]
[10] Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450],
[11] Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793]
[12] Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424]
[13] Khem Karan v. State of U.P.; [(1974) 4 SCC 603]
[14] Bishan Singh v. State of Punjab; [(1974) 3 SCC 288]
[15] Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228]
[16] K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355]

*Tota Singh*[17], *Ram Kumar*[18], *Madan Lal*[19], *Sambasivan*[20], *Bhagwan Singh*[21], *Harijana Thirupala*[22], *C. Antony*[23], *K. Gopalakrishna*[24], *Sanjay Thakran*[25] and *Chandrappa*[26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not

[17] Tota Singh v. State of Punjab [(1987) 2 SCC 529]
[18] Ram Kumar v. State of Haryana; [1995 Supp (1) SCC 248]
[19] Madan Lal v. State of J&K; [(1997) 7 SCC 677]
[20] Sambasivan v. State of Kerala; [(1998) 5 SCC 412]
[21] Bhagwan Singh v. State of M.P.; [(2002) 4 SCC 85]
[22] Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [(2002) 6 SCC 470]
[23] C. Antony v. K. G. Raghavan Nair; [(2003) 1 SCC 1]
[24] State of Karnataka v. K. Gopalakrishna; [(2005) 9 SCC 291]
[25] State of Goa v. Sanjay Thakran; [(2007) 3 SCC 755]
[26] Chandrappa v. State of Karnataka; [(2007) 4 SCC 415]

justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

13. In *Ghurey Lal*[27], the Court has culled out the principles relating to the appeals from a judgment of acquittal which are in line with what we have observed above.

14. Now, we shall examine whether or not the impugned judgment whereby the High Court interfered with the judgment of acquittal is justified.

15. Of the 37 witnesses examined by the prosecution, PW-4, PW-5 and PW-15 are the eye-witnesses but they have turned hostile to the case of prosecution. The first medical examination of the deceased Pradeep and so also the injured Umesha was done by PW1 (Dr. Latha) at about 9.30 P.M. on 17.08.2002. She has not certified that Pradeep was in

[27] Ghurey Lal v. State of U.P.; [(2008) 10 SCC 450]

fit state to make any statement. PW-25 (Dr. Balakrishna) at the relevant time was Assistant Professor of Surgery at K.R. Hospital where deceased Pradeep was taken immediately after the incident. At about 9.40 p.m. on 17.08.2002, PW-36 (Kodandaram, PSI) gave a memo to PW-25 stating that one patient (Pradeep) was admitted in the hospital and requested him to verify as to whether the patient was in a position to give statement. In his cross-examination, PW-25 has stated that at 9.35 P.M., he saw the patient (Pradeep) when he was kept in operation theatre of casualty for emergency treatment. He has also deposed that a group of doctors was providing treatment to him. His deposition does not establish that Pradeep was under his treatment. The recording of Pradeep's statement by a constable (PW-30) as dictated by PW-36 (PSI) in this situation raises many questions. The trial court found this absurd. It is the prosecution version that PW-30 has recorded Ex.P-22 as dictated by PW-36 (PSI). Thus, Ex.P-22 is not in actual words of the maker. The trial court in this background carefully considered the evidence of PW-25, PW-30 and PW-36 along with Ex.P-22. The trial court has noted that PW-25 failed to confirm in his testimony that he was treating deceased Pradeep when he was brought to the hospital. Moreover, PW-25 admitted over-writing with regard to the time written on Ex.P-22. The trial court also observed that

though there was lot of bleeding injuries found on the person of Pradeep, PW-25 did not say anything about the quantity of loss of blood.

16. Dealing with the testimony of PW-30, the trial court has observed that in his cross-examination, he has admitted that he did not record the statement in the words of the maker (Pradeep) but wrote the statement as dictated by PW-36. Moreover, PW-30 in his cross-examination had admitted that at the time Pradeep was attended to by the doctors, he was not inside.

17. Then, in respect of Ex.P-22, the trial court observed that the names of accused Gunda (A-3) and Swamy (A-5) appear to have been inserted in different ink later on.

18. On a very elaborate consideration of the entire evidence, the trial court was of the view that Ex.P-22 did not inspire confidence and the credibility of Ex.P-22 has not been established to the satisfaction of the court. Accordingly, the trial court held that conviction of the accused persons cannot be based on Ex.P-22 and the deposition of PW-36, PW-25 and PW-30.

19. The sanctity is attached to a dying declaration because it comes from the mouth of a dying person. If the dying declaration is recorded not directly from the actual words of the maker but as dictated by

somebody else, in our opinion, this by itself creates a lot of suspicion about credibility of such statement and the prosecution has to clear the same to the satisfaction of the court. The trial court on over-all consideration of the evidence of PW-25, PW-30 and PW-36 coupled with the fact that there was over-writing about the time at which the statement was recorded and also insertion of two names by different ink did not consider it safe to rely upon the dying declaration and acquitted the accused for want of any other evidence. In the circumstances, in our view, it cannot be said that the view taken by the trial court on the basis of evidence on record was not a possible view. The accused were entitled to the benefit of doubt which was rightly given to them by the trial court.

20. The High Court on consideration of the same evidence took a different view and interfered with the judgment of acquittal without properly keeping in mind that the presumption of innocence in favour of the accused has been strengthened by their acquittal from the trial court and the view taken by the trial court as to the credibility of Ex.P-22 and the evidence of PW-25, PW-30 and PW-36 was a possible view. The High Court while upsetting the judgment of acquittal has not kept in view the well established principles in hearing the appeal from the judgment of acquittal.

21. Accordingly, the appeals are allowed. The impugned judgment is set aside. The judgment of the court of Sessions Judge, Fast Track Court–I at Mandya dated 28.09.2004 is restored. The appellants shall be set at liberty forthwith, if not required in any other case.

…..……J.
(R.M. Lodha)

…..……J.
(Shiva Kirti Singh)

New Delhi,
April 09, 2014.