Supreme Court of India
Bharamappa Gogi vs Praveen Murthy & Ors. Etc on 9 February, 2016
Author: A Roy
Bench: S.A. Bobde, Amitava Roy

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 2216-2217 OF 2010

BHARAMAPPA GOGI …APPELLANT

VERSUS

PRAVEEN MURTHY & ORS. ETC. …RESPONDENTS

J U D G M E N T

AMITAVA ROY, J.

These appeals register a challenge to the judgment and order dated 4.12.2009 rendered in Criminal Appeal Nos. 1126 of 2006 and 1167 of 2006 preferred by the respondent Nos. 1 and 2 in Criminal Appeal No. 2216 of 2010 and respondent No. 1 in Criminal Appeal No. 2217 of 2010 respectively.

2. The appellant-complainant is aggrieved by the interference with the conviction of the respondents-accused recorded by the trial court. Whereas respondent Nos. 1 and 2 in Criminal Appeal No. 2216 of 2010 were convicted under Sections 390/392/457 read with Section 34 IPC, they were acquitted of the charge under Section 302 IPC. The respondent No. 1 in Criminal Appeal No. 2217 of 2010, however, had been additionally convicted under Section 302 IPC. All the three accused were sentenced accordingly. Though the respondents-accused preferred appeals against their conviction, as above, the State refrained from doing so, more particularly against the acquittal of respondent Nos. 1 and 2 of the charge under Section 302 IPC.

3. We have heard learned counsel for the parties.

4. The prosecution case relates back to the night of 18.4.2005. The deceased Nemiraj Gogi was in his house, while his wife and son were out of station. It is alleged that the respondents-accused visited his house in the said night, committed robbery of the valuable household items including gold and silver articles and in the process, also committed the murder of Nemiraj Gogi. According to the prosecution, the housemaid in the morning, having found the deceased body, informed the brother of the deceased, who lodged the FIR on 19.4.2005 at 8 A.M. and the investigation was thus set in motion. The report mentioned that some unknown persons had committed the offence.

5. In course of the investigation, recoveries of the valuable articles, claimed to be at the instance of the respondents-accused, were made. According to the prosecution, recovery of the weapon of assault i.e. the knife and seizure, amongst them, of the blood stained clothes of the deceased were also effected. The respondents-accused were arrested and on the completion of the inquisition, charge-sheet under Sections 120B/302/380/394 and 397 read with Section 34 IPC was laid against them. The case of the prosecution is based on circumstantial evidence.

6. The trial court framed charges against the respondents-accused under Sections 120B/302/390/392/457 read with Section 34 IPC and on the basis of the evidence adduced by the prosecution and on a consideration of the other materials on record, convicted and sentenced the respondents-accused as above.

7. The High Court, as the impugned judgment and order would reveal, not only did find fault with the trial court in omitting to frame charge under Section 397 IPC against the respondents-accused, but also recorded its disapproval of the analysis and the appreciation of the evidence on record. The High Court was, inter alia, of the view that the trial court was not justified in acquitting the respondent Nos. 1 and 2 in Criminal Appeal No. 1126 of 2006 of the charge under Section 302 IPC. Referring to Sections 386 and 401 Cr.P.C. and invoking its suo motu power of revision, the High Court interfered with the conviction of the respondents-accused and remitted the matter to the trial court to frame charge under Section 397 IPC against the respondents-accused and to undertake a fresh consideration of the materials on record. Liberty was also granted to the trial court to record additional evidence, if construed necessary.

8. The learned counsel for the appellant-informant has urged that having regard to the conspectus of facts on which the case of the prosecution is founded, the trial court did not commit any error in not framing a charge under Section 397 IPC against the respondents-accused. He maintained that the High Court in this premise, ought not to have interfered with their conviction, but ought to have heard their appeals on merit after affording due opportunity to the prosecution to demonstrate that all of them were liable to be convicted on the charges framed and proved against them.

9. In reply, learned counsel for the respondents-accused has submitted that he would not join issue with the appellant, if the matter is remanded to the High Court by maintaining the charges as framed by the trial court for a decision on the appeals on merits.

10. We have extended our thoughtful consideration to the debate involved. A plain reading of the decision impugned in the instant appeals, to start with, reveals that the High Court though the final court of facts, did not adequately address itself to the evidence on record as required, and instead laid more emphasis on the perceived omission on the part of the trial court in not framing charge under Section 397 IPC against the respondents-accused. We would refrain presently from offering any observation on the merits of the case, for obvious reasons.

11. As adverted to hereinabove, the trial court had framed charge against the respondents-accused under Sections 120B/302/390/392/457 read with Section 34 IPC. For ready reference, the texts of the above legal provisions are set-out hereunder:

> "120B :Punishment of criminal conspiracy.— (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
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> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.] 302 - Punishment for murder—Whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.
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> 390- Robbery—In all robbery there is either theft or extortion.
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> 392-Punishment for robbery—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.
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> 457-Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

34- Acts done by several persons in furtherance of common intention—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." Section 397 IPC reads thus:

> "Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

12. Having regard to the number of persons allegedly involved in the offences, as disclosed by the prosecution, the crimes committed are of murder in the course of robbery together with lurking house trespass and house breaking by night in order to commit offence punishable with imprisonment with common intention. Though Section 397 IPC deals with robbery or dacoity with attempt to cause death or grievous hurt and prescribes punishment by way of imprisonment of not less than seven years, in our view, the High Court ought to have decided the appeals on merit without remanding the case to the trial court for fresh adjudication after framing charge under

Section 397 IPC and recording additional evidence, if deemed necessary.

13. The purpose of framing a charge against an accused person is to acquaint him with the incriminating facts and circumstances proposed to be proved against him in the trial to follow. The principal objective is to afford him an opportunity of preparing his defence against the charge. The possibility of prejudice to the accused arises, if he is not made conversant with the entire gamut of facts constituting the accusations leveled against him, as has been consistently propounded by this Court, amongst others, in V.C. Shukla vs. State through CBI (1980) Supp. SCC 92. Though Section 397 IPC, having regard to the case of the prosecution, may not be wholly irrelevant, the charges framed against the respondents-accused by the trial court, do adequately encompass all essential facts building up the offences imputed against them.

14. In view of the inclusion of Section 34 IPC in the array of offences, for which the respondents-accused had been charged by the trial court, as well as the facts and the evidence sought to be relied upon by the prosecution, in our estimate, the order of remand was not called for and the appeals should have been decided on merits, on the basis of the charges already framed and the materials on record. The deduction of the High Court that the omission to frame charge under Section 397 IPC has resulted in miscarriage of justice is unconvincing in the facts of this case. That meanwhile more than a decade has passed since the date of the incident, cannot also be readily over-looked.

15. On an overall consideration of the above aspects, we are not inclined to sustain the impugned decision. It is, thus, set-aside. The criminal Appeal Nos. 1126 of 2006 and 1167 of 2006 filed by the respondents-accused before the High Court are restored to their original numbers, for disposal afresh in accordance with law on the basis of the charges already framed and the evidence on record. We make it clear that we have not offered any observation on the merits of the case.

16. The appeals are disposed of in the above terms.

.....J.

(S.A. BOBDE) .....J.

(AMITAVA ROY) NEW DELHI;

FEBRUARY 9, 2016.