IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2nd DAY OF JUNE 2003

PRESENT

THE HON'BLE MR.JUSTICE M.F. SALDANHA

AND

THE HON'BLE MR.JUSTICE M. S. RAJENDRA PRASAD

CRL.A.No.57/2003

BETWEEN:

State of Karnataka ... APPELLANT

[By Sri.H.S. Chandramouli, SPP for appellant]

AND:

Hanumantha,
S/o Yankappa Bedar,
Age: 40 years,
Occ: Agriculture,
R/o Mitt-Malkapur village,
Taluk & Post: Raichur. ... RESPONDENT/
ACCUSED

This criminal appeal is filed under Sec.378(1) and (3) Cr.P.C. praying to set aside the judgment and order of acquittal dated 21,10.2002 passed by the learned Addl. Sessions Judge, Raichur in S.C.No.80/2001, and to convict and sentence the accused-respondent for the offences with which he was charged, and etc.

The appeal coming on for admission this day, SALDANHA J., delivered the following Judgment:

JUDGMENT

1. We have heard the learned SPP at length and on merits in this appeal. In the first instance, he has seriously assailed the order of acquittal because it is his submission that the inquest Panchanama very conclusively establishes that the dead body of the deceased was found in the hut of the accused and secondly that the medical evidence conclusively indicates that the deceased had sustained head injuries as a result of which he had died. The submission canvassed is that these circumstances establish a very clear nexus between the accused and the deceased and the learned SPP has then reinforced his submission by pointing out to us that the prosecution has established that these two persons had gone together on that afternoon to the toddy shop and they had consumed toddy together and that the evidence indicates that they were last seen together. The submission canvassed is that each of the circumstances is strong and conclusive in its

own right and secondly, that the case law very clearly establishes that where the circumstances point to the guilt of the accused in the absence of the accused tendering a cogent and valid explanation before the court that the prosecution is entitled to a conviction on the basis of this material. The learned Counsel has also drawn our attention to the fact that the supportive evidence comes from the parents and the wife of the deceased who have deposed to the fact that the accused himself came and told them that the deceased was sleeping in his hut pursuant to which they went there and they have found that the deceased was dead, that he was lying in ~~the~~ a pool of blood having sustained head injuries. Learned Counsel submits that the evidence of these 3 witnesses again establishes the presence of the dead body in an injured condition in the hut of the accused and furthermore that despite the close relations and the family members having come there that the accused did not volunteer any explanation as to how the deceased had sustained

these injuries. He has also drawn our attention to the legal position whereby the Supreme Court has now laid down in a series of decisions that where incriminating circumstances have been established by the prosecution that the accused owes a duty to the court to explain those circumstances and that if there is a mere denial, it is wholly insufficient. In view of this material, it is submitted that the order of acquittal is unsustainable and that interference is necessary in the present instance.

2. We have very carefully re-assessed the evidence and we have also taken note of the fact that this is a case in which the trial court has applied its mind in ~~more~~ detail to every aspect of the evidence. There is a detailed consideration of the material on record and reasons have been adduced by the trial court for having refrained from convicting the accused. The trial court has also elaborately discussed the law on the point and has recorded the finding that being a case of circum~~sub~~stantial evidence, the material on record falls short of the legal requirements that are necessary for purposes

of sustaining a conviction. While reassessing the reasoning in the judgment of the trial court we have taken note of the two necessary factors, the first of them is as to whether the learned Trial Judge has overlooked any head or any part of the evidence or whether he has misread any of it and the answer to that question is in the negative. The second main aspect which emanates in the light of the submissions canvassed by the learned SPP is the question as to whether the approach can be legally defined as having been perverse or legally unsustainable and again, we are required to record the finding that neither of the two conclusions are warranted vis-à-vis the present judgment.

3. That leaves us with the question as to whether in the light of the submissions canvassed by the learned SPP this is a case which requires to be admitted. One of the submissions canvassed by the learned Counsel was that where the State has made out an arguable case in appeal, that the court must admit the appeal, review the material on record since there is a possibility of the order of

acquittal being reversed. The reason why in the present instance we are not persuading ourselves to follow this approach is because the law with regard to the entertainment of a criminal appeal against acquittal is now very well crystallised. The Supreme Court has laid down in no uncertain terms that where the trial court records an order of acquittal, that the presumption of innocence flowing from the order of acquittal, gets reinforced to the extent almost of reaching a situation of total presumption of innocence. Before this can be disturbed or interfered with, it is necessary that the appeal court has to be satisfied that the material on record is so very strong, so very reliable and so very convincing that the order of acquittal will undoubtedly have to be replaced through an order of conviction. In our considered view, before the appeal court subjects an accused to the trauma of a second innings in a criminal proceeding, the accused having already faced a trial and having been acquitted, there obtains a certain amount of duty and responsibility on the Appeal court to do a very careful analysis of the

evidence and to satisfy itself that there are good and valid grounds for the order of acquittal to be set-aside before admitting the appeal.

4. It is for this reason that the learned SPP has argued the appeal on merits, on facts and in law and we have very carefully heard him in detail. What we need to lay emphasis on is the fact that admittedly this is a case of ~~sub~~circum stantial evidence and the law on the point may be reiterated or summarised by us to the limited extent of recording that it is necessary in such situations for the prosecution to prove that the entire chain of circumstances has been established and that the chain or web of circumstances points to one and only one conclusion viz., the guilt of the accused. We need to further elaborate to the extent of pointing out that the Supreme Court has very clearly postulated that the chain of circumstances presupposes a set of circumstances and not only one or two links. It is the set of circumstances that are required to be complete in themselves and the Apex Court has been very quick to lay down that in

such circumstances one link or two links do not constitute a chain. We refer[illegible] to the law and to the facts to the limited extent because the learned SPP was very vehement with regard to the circumstance no.1 viz., the finding of the body in the hut of the accused which is established by the inquest Panchanama as per the prosecution. We have reminded ourselves that the law further requires that each circumstance has to be individually established in its own right and to this extent, we have pointed out to the learned Counsel that there is a clear admission on record that the body was found in the hut of one Earappa. This is accepted by the prosecution, and not offset in reexamination, and in this background that though the learned Counsel submitted that this case was not put either to the I.O or any of the witnesses, we need to hold that some level of ambiguity is established. Secondly, the learned Counsel had submitted that the injuries on the dead body clearly incriminate the accused in so far as nobody

else could have inflicted them. Unfortunately, we have on record admissions to the effect that the deceased was in the habit of excessive consumption of alcohol and he used to behave in boisterous manner in the village and there is an expression used by the witnesses to the effect that he was given to "rowdy" behaviour. This being the position, in the background of the record of toddy consumption we cannot rule out the possibility of his either having sustained a fall or having been beaten up by some of the other villagers.

5. The other aspect of the case which raises considerable doubt is the fact that the prosecution itself contends that it was the accused who went and called the family members of the deceased. On the question of probability, we find it almost impossible to accept the position that if the deceased who was a friend of the accused had for any reason assaulted him and killed him, he would never ever have then proceeded to call the relations and confront them with the evidence of his assault. This again is a circumstance which the

prosecution ought to have explained because as the record stands it is totally inconsistent with the prosecution case.

6. In the light of the aforesaid record, we are left with the position whereby the learned SPP may be fully justified in his submission that some of the circumstances that have been alleged against the accused have resulted in suspicion or grave suspicion. For a conviction, and that too a conviction on the basis of circumstantial evidence, the law requires a higher degree of proof because it is well settled that no level of suspicion can substitute for a hard evidence and conclusive proof. Having applied the law to the record very carefully and having assessed it and having applied our minds also to the detailed submissions on facts and law adduced by the learned SPP, we find that on the present record it would never be possible to sustain a conviction. That being the position, admitting the appeal would be an infructuous exercise and it is for this reason that we refrain from entertaining the appeal. We

make it clear however that we have reassessed all the evidence on record and we have carefully applied our minds to the facts and law in the present instance.

7. The appeal accordingly fails on merits and stands dismissed.

Sd/-
Judge

Sd/-
Judge

Sub.