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2023 Scej 451 , SupremeCourtOnline 462604 , (2023-4)212 PLR 162 (SC) (SN)

SUPREME COURT OF INDIA

Before : Justice Abhay S. Oka and Justice Sanjay Karol.

MANJUNATH & Ors. – Appellants

Versus

STATE OF KARNATAKA – Respondent

Criminal Appeal No. 866 of 2011. D/d. 06.11.2023.

I. Criminal Procedure Code, 1973, Section 378 - Criminal Appeal - Court of Appeal should be circumspect in overturning its judgment of acquittal, is not a principle that requires reiteration - It has been held time and again that an acquittal will only be overturned in the presence of very compelling reasons - Further, right from the Privy Council onwards, it is been held that the presumption of innocence in favour of the accused is bolstered if the trial court hands down an acquittal - Perfunctory reasons stand recorded to restore the convictions of the Appellants herein - The observations of the trial court along with the principle of a bolstered principle of innocence, were summarily cast aside - The same cannot be said to be in accordance with the law. [Para 32]

II. Evidence Act, 1872, Section 32 - Dying declaration - Examination of the person who reduced into writing, the dying declaration, is essential - Particularly, in the absence of any explanation forthcoming for the production of evidence [Para 11.10]

III. Evidence Act, 1872, Section 32 - Dying declaration - In order to rely on such a statement, it must fully satisfy the confidence of the court, since the person who made such a statement is no longer available for cross-examination or clarification or for any such like activity - However, a note of caution has also been sounded. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence. [Para 11.5, 11.5.3]

IV. Evidence Act, 1872, Section 32 - Dying declaration - Principles - The basic premise is “*nemo moriturus praesumitur mentire*” i.e. man will not meet his maker with a lie in his mouth. [Para 11.1]

V. Evidence Act, 1872, Section 32 - Dying declaration - The presence of a

Magistrate in recording of a dying declaration, is not a necessity but only a rule of Prudence. [Para 11.8]

VI. Evidence Act, 1872, Section 32 - Dying declaration - Dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as the person who took down such declaration was not examined, nor did the police officer endorse the said document with details of who took down the declaration - It is also not clear as to in front of which of the relatives of deceased was the same taken down - The circumstantial evidence present on record does not point to the hypothesis of the guilt of the accused persons, for the reasons discussed above - Indian Penal Code, 1860, Sections 143, 144, 146, 147, 148, 447, 324, 326, 504 and 506 . [Paras 29.1 and 29.2]

Cases Referred :-

1. *Amol Singh v. State of M.P.* (2008) 5 SCC 468.
2. *Ganesan v. State* (2020) 10 SCC 573.
3. *Gargi v. State of Haryana* (2019) 9 SCC 738.
4. *Ghurey Lal v. State of U.P.* (2008) 10 SCC 450.
5. *Govind Narain v. State of Rajasthan* 1993 Supp (3) SCC 343.
6. *Indrajit Das v. State of Tripura* 2023 SCC OnLine SC 201.
7. *Irfan@Naka v. State of U.P.*, 2023 SCC Online SC 1060.
8. *Jagbir Singh v. State (NCT of Delhi)* (2019) 8 SCC 779.
9. *Jaikam Khan v. State of U.P.* (2021) 13 SCC 716.
10. *Jayamma v. State of Karnataka* (2021) 6 SCC 213.
11. *K. Ramachandra Reddy v. Public Prosecutor* (1976) 3 SCC 618.
12. *Kamal v. State (NCT of Delhi)* 2023 SCC OnLine SC 933.
13. *Kans Raj v. State of Punjab* (2000) 5 SCC 207.
14. *Khushal Rao v. State of Bombay* AIR 1958 SC 22 .
15. *Lakhan v. State of M.P.* (2010) 8 SCC 514.
16. *Laxman v. State of Maharashtra* (2002) 6 SCC 710.

17. *Madan v. State of Maharashtra* (2019) 13 SCC 464.
18. *Mohd. Inayatullah v. State of Maharashtra* (1976) 1 SCC 828.
19. *Naresh @ Nehru v. State of Haryana, Criminal Appeal No.1786 Of 2023.*
20. *Nikhil Chandra Mondal v. State of W.B.* (2023) 6 SCC 605.
21. *Pakala Narayana Swamy v. Emperor* AIR 1939 PC 47.
22. *Paniben v. State of Gujarat* (1992) 2 SCC 474.
23. *Panneerselvam v. State of T.N.* (2008) 17 SCC 190.
24. *Prakash Nishad v. State of Maharashtra* 2023 SCC OnLine SC 666.
25. *Pulukuri Kotayya v. King Emperor* 1946 SCC OnLine PC 47.
26. *Rai Sandeep @ Deepu alias Deepu v. State (NCT of Delhi)* (2012) 8 SCC 21.
27. *Rajaram v. State of Madhya Pradesh* 2022 SCC OnLine SC 1733.
28. *Ram Bihari Yadav v. State of Bihar* (1998) 4 SCC 517.
29. *Shama v. State of Haryana*, (2017) 11 SCC 535.
30. *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.
31. *Sheo Swarup v. King Emperor* AIR 1934 PC 227(2).
32. *State of Maharashtra v. Krishnamurti Laxmipati Naidu* 1980 Supp SCC 455.
33. *Sudhakar v. State of Maharashtra* (2000) 6 SCC 671.
34. *Surajdeo Ojha v. State of Bihar* 1980 Supp SCC 769.
35. *Surendra Bangali @ Surendra Singh Routele v. State of Jharkhand, Criminal Appeal No. 1078 of 2010 .*
36. *Suresh Chandra Jana v. State of West Bengal* (2017) 16 SCC 466.
37. *Tulsiram Kanu v. State* AIR 1954 SC 1.
38. *Uttam v. State of Maharashtra* (2022) 8 SCC 576.

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