IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7TH DAY OF MARCH 2005

PRESENT

THE HON'BLE MR.JUSTICE B. PADMARAJ

AND

THE HON'BLE MR.JUSTICE V. JAGANNATHAN

CRIMINAL APPEAL No.858/2004(A)

BETWEEN:

State of Karnataka
By Kamasamudram Police. **: APPELLANT**

(By Sri. H.S. Chandramouli, SPP)

AND:

Rajappa,
S/o. Dasappa,
Aged about 23 years,
R/at Beemaganahalli Village,
Bangar Pet Taluk,
Kolar District. **: RESPONDENT**

(By Sri. C. Pattabhiraman & Sri. P. Raghavan, Advs.)

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This Criminal Appeal is filed under Section 378(1) & (3) of Cr.P.C by the State P.P for the State praying that this Hon'ble Court may be pleased to grant leave

to file an appeal against the judgment dated 28.11.2003 passed by the Addl. S.J. Fast Track Court -I, Kolar in S.C.No.223/99, acquitting the respondent/accused of the offence punishable under Section 302 of IPC.

This Criminal Appeal coming on for admission, this day, PADMARAJ J., delivered the following:

JUDGMENT

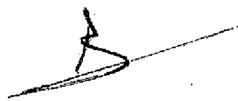
The appellant-State has sought for leave to appeal against the judgment and order of acquittal passed by the trial Court acquitting the respondent of the offence punishable under Section 302 of IPC.

2. The respondent herein is the husband of the deceased Smt. Byramma. On 17.3.1998 at about 8.30 p.m in the night both the accused and the deceased were found quarreling when they came to Bheemaganahalli bus stand and even after boarding the bus wherein they were travelling, they were found quarrelling with each other. It is the case of the

prosecution that when the bus was moving ahead, the accused pushed the deceased outside the bus as a result of which the deceased was caught under the rear wheels of the bus and died. In respect of this incident a crime was registered on the basis of a complaint given by PW.1 by the concerned police and after completion of the investigation, a charge sheet was laid against the accused for the offence punishable under Section 302 of IPC for having committed the murder of his wife deceased Smt. Byramma. The accused was put on trial for the offence under Section 302 of IPC and in the course of the trial, the prosecution had examined on its behalf PWs.1 to 12 and got marked in evidence Exs.P-1 to P-9. The defence of the accused is one of a total denial. At the conclusion of the trial, the trial Court on consideration of the material placed on record and after hearing the submissions on both sides has acquitted the accused of the offence under Section 302 IPC.

Aggrieved, the State has preferred this appeal along with a prayer for grant of leave to appeal.

3. We have heard the arguments of the learned SPP and carefully perused the impugned judgment and order of acquittal passed by the trial Court as well as the relevant case papers which were made available to us by the learned SPP. Learned SPP for the appellant-State has vehemently contended that the evidence of the eye witnesses PWs.1 and 2 as well as the driver and conductor of the bus namely PWs.10 and 11 has been totally disbelieved by the trial Court which on the face of it appears to be incorrect and improper. He contended that if the evidence of these witnesses is to be scanned carefully, it would certainly connect the accused with the crime. He also contended that even according to the trial Court the offence committed by the accused may not attract the ingredients of the offence under Section 302 IPC and if that be so, the trial Court could have



convicted him for the lesser offence. He therefore contended that this is a fit case which warrants interference in the appeal by this Court.

4. Having heard the learned SPP for the appellant-State and having carefully perused the relevant case papers, the question for consideration is ***whether the order of acquittal passed by the trial Court warrants any interference?***

5. It is not in dispute that the deceased Smt. Byramma was the wife of the accused. On the fateful day they were both found quarrelling with each other at the bus stand and on the arrival of the bus at the bus stop, both of them boarded the bus and were found still quarrelling with each other even while travelling in the bus. It is the case of the prosecution that in the course of such quarrel, the accused pushed the deceased Smt. Byramma outside the bus, as a result of which the

deceased came under the rear wheels of the bus and died. The prosecution sought to substantiate its case by relying upon the evidence of the eyewitnesses who were examined at the trial. Although the said prosecution witnesses sought to support the case for the prosecution in their chief examination, their version to a certain extent got diluted in the cross-examination. PW.1 has stated that the deceased had boarded the bus while it was moving. The evidence of PWs.2 and 11 would show that it was in the nature of hearsay evidence. Even the evidence of the driver and the conductor of the bus namely PWs.10 and 11 were found to be not consistent with regard to the incident in question. Though the driver of the bus PW.10 has stated that the accused had pushed the deceased outside the bus, but in the cross-examination he has clearly stated that he did not see the accused pushing the deceased outside the bus. It is no doubt true that the evidence of PW.11 to a certain extent is better than

the evidence of the other witnesses, but on careful scrutiny of his evidence it would show that he could not have actually witnessed the accused pushing the deceased. Admittedly he was in the process of issuing the tickets to the passengers. Though in the examination-in-chief he has stated that the accused was telling the deceased not to follow him but in the cross-examination he has stated that he did not hear the accused saying so to the deceased. Thus the evidence of the prosecution witnesses with regard to the accused pushing the deceased from the bus was found to be not consistent. Under the circumstances, the trial Court found it highly unsafe to place reliance upon such infirm evidence to convict the accused for a serious offence of murder. The prosecution evidence to the extent that they were both found quarreling with each other was only found to be consistent but that by itself was not sufficient to draw an inference that the accused had committed the murder of the deceased by

pushing her outside the running bus. The trial Court on consideration of the entire evidence found that there is no credible evidence on record to show that the accused had actually pushed the deceased outside the bus with intent to kill her. It may be that the accused was only trying to prevent the deceased from following him while travelling in the bus but that by itself is not sufficient to show that the accused intended to commit any crime much less the offence of murder. Under the circumstances, the trial Court found that the prosecution has failed to establish the offence of murder against the accused. The said view taken by the trial Court in the circumstances of the case cannot be said to be either perverse or unreasonable. It is well settled that if on the basis of the same evidence, two views are reasonably possible and the trial Court takes the view in favour of the accused, the appellate Court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that

the view taken by the trial Court was wholly unreasonable or perverse and it was not possible to take the view in favour of the accused on the basis of the evidence on record. In the instant case, the prosecution evidence with regard to the pushing of the deceased by the accused from the moving bus was found to be not acceptable. It was found to be not consistent and reliable and hence the trial Court was right in hesitating to place implicit reliance on such infirm evidence. There was a doubt as to the manner and circumstances under which the deceased Smt. Byramma had fallen outside the running bus. It is quite likely that in the course of quarrel, the deceased might have lost balance and fell outside the running bus, which possibility cannot be totally eliminated on the facts and circumstances of this case. In the state of evidence on record, we find that the view taken by the trial Court is also a possible reasonable view of the evidence on record. The evidence adduced by the prosecution is rather inconsistent and creates a serious doubt about the truthfulness of the prosecution case. Even if it may be

possible to take a different view, we cannot say that the view taken by the trial Court is not a reasonable view of the evidence on record. Therefore on careful perusal of the impugned judgment and order of acquittal passed by the trial Court, we find that the trial Court has not committed any serious illegality so as to warrant interference in appeal.

6. We are therefore of the view that having regard to the evidence available on record, no case for interference is made out in the appeal against an order of acquittal and accordingly we decline to grant leave to appeal.

7. In the result, the appeal stands dismissed.

Sd/-
Judge

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Sd/-
Judge

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