IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE K. N. PHANEENDRA

CRIMINAL APPEAL NO. 686/2014 DATED:11-10-2019

ASHOK KUMAR S/ O. CHANDRASHEKARAPPA VS. SRI. PARAMESHWARA B.T,S/ O. THIMMANNA BHAT.

JUDGMENT

This appeal is preferred by the aggrieved complainant against the judgment of acquittal recorded by the Fast Track Court-II, Bengaluru (for short referred to as, " First Appellate Court ") in Criminal Appeal No.390/2013 vide judgment dated 07.07.2014.

2. The brief factual matrix of the case is that, one Sri. Ashok Kumar, the appellant herein is the complainant, who lodged a complaint under Section 200 of Cr.PC. before the XIII Addl.Chief Metropolitan Magistrate, Bengaluru, (for short referred to as, " trial Court ") against one Parameshwara, the respondent herein (Accused) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, ` N.I. Act ').The brief allegations are that, the accused had issued a Cheque bearing No. 365473 for a sum of Rs.3,00,000/- (Rupees Three Lakhs) on 08.11.2010 towards discharge of a legally enforceable debt due to the complainant. The said cheque was presented to the banker of the complainant, and it was returned with an endorsement, ' Funds Insufficient '.After issuing a Statutory Notice within the specified time, a complaint has been filed. The said complaint was registered in C.C. No.18350/2011 and thereafter, summons was issued to the accused. Though the summons was served, the accused did not appear before the Court. However, ultimately under Non bailable Warrant, the accused was secured before the trial Court. In fact accused seriously contested the case on various grounds.

3. After appreciating the oral and documentary evidence on record, the trial Court came to the conclusion that, the complainant has proved the case beyond reasonable doubt and convicted the accused for the offence under Section 138 of the N.I. Act and imposed fine of Rs.3,05,000/-with default sentence of imprisonment for six months and also awarded Rs.3,00,000/- (Rupees Three Lakhs) as compensation to the complainant.

4. Being aggrieved by the said judgment and sentence passed by the trial Court, the appellant/accused preferred an appeal before the First Appellate Court and the same was registered in Criminal Appeal No.390/2013, wherein, the First Appellate Court has acquitted the accused solely on the ground that, the notice issued under Ex.P4 had not been served on the accused, as per the acknowledgement marked at Exs.P5 & P6.Therefore, being aggrieved by the said judgment of acquittal, the complainant has preferred the present appeal.

5. A careful perusal of the entire judgment of the First Appellate Court reveals that, the appellant had taken-up various grounds before the First Appellate Court attacking the judgment of the trial Court, and the First Appellate Court at Paragraph-11 of its judgment has also enumerated all the grounds of appeal and also the grounds on which the trial Court has convicted the accused. In spite of that, except the ground with reference to service or non-service of the statutory notice as per Section 138 of the N.I. Act, the appellate court did not go into other grounds urged by the appellant.

6. The Appellate Court has mainly concentrated on the documents marked at Exs.P5 and P6 and the complaint averments and as well as the contents of legal notice marked at Ex.P4.The Court found that, there is some discrepancy with regard to narration of the address of the accused by the complainant and therefore, it has come to the conclusion that the address mentioned in the legal notice and also in the cause-title of the complaint and as well in the acknowledgements marked at Exs.P5 and P6, and the residential address of the accused is different. Therefore, the court observed that, the service of notice cannot be assumed or presumed as deemed service, unless the notice is actually served. Therefore, it held that, the actual service of notice was not established by the complainant. Therefore, the Appellate Court has acquitted the appellant.

7. Now coming to the appreciation of the ground noted supra, the Appellate Court in fact has discussed at Para-14 about the observation made by the trial court regarding the residential address with reference to acknowledgement, which almost tallies with each other substantially and further found that, the trial Court had held that there was deemed service because, the postal cover with acknowledgement had been sent to the last known address of the accused. The admission made by the accused in his cross examination that, ' he was residing in the said address ' was also taken note of by the trial Court. Therefore, the trial Court came to the conclusion that there was deemed service of notice. It is seen that, the trial Court convicted the accused after considering the other grounds urged by the complainant and the accused, before it. Therefore, in this background, now the only question that would arise for consideration by this Court is, whether the First Appellate Court is right in acquitting the accused only on a particular and sole ground that, the ' notice has not been actually served on the accused '.

8. Of course, Section 138 of the N.I. Act itself is a mandatory provision, which mandates that the complainant has to serve a notice under Section 138 of the N.I. Act with reference to bouncing of the cheque issued by the accused and calling upon the accused to pay the said amount in compliance of the legal notice. Within 15 days from the date of receipt of the notice, the accused either has to comply with the notice or to express his opinion with regard to the reasons for non compliance of the notice. Admittedly in this case, no reply has been given by the accused, as he has takenthe defense that no notice has been served on him.

9. The learned counsel for the respondent has drawn my attention to the address mentioned in the complaint as well as the contents of the notice. Of course, there is some small discrepancy in explaining the address in the complaint. The address mentioned therein is,

" Sri. B.T. Parameshwara son of/Thimmanna Bhat, Residing at No.2161, 1st Floor Out House, 8th ' A ' Main, II ' E ' Block, Rajajinagar II Stage, Bengaluru-10. "

In the notice (Ex.P4) also, the address is mentioned as,

" No.2161, 1st Floor, Out House, 8th ' A ' Main, 2nd ' E ' Block, Rajajinagar II Stage, Bengaluru ".

Even in the postal acknowledgement which is marked at Ex.P5, it is mentioned as

" Sri. B.T. Parameshwara, son of Thimmanna Bhat, Residing at No.2161, 1st Floor Out House, 8th ' A ' Main, II ' E ' Block, Rajajinagar II Stage, Bengaluru-10 ".

Therefore, looking to the above said addresses, of course there is some discrepancy in describing the Block and Stage of Rajajinagar, Bengaluru-10.But in the evidence by way of affidavit, the accused has stated that, he is presently residing at 5th Phase, Yelahanka New Town, Bengaluru. However in the course of cross examination, he has admitted that he was residing at No.2161, 8th ' A ' Main Road I-Block, Rajaninagar, Bengaluru. Even in the cross-examination, he did not explain as to when he left that particular address. He also never stated that the address mentioned in the acknowledgement (Ex.P5) is wrong and if any such address is given, the notice would not be served or would not reach the said destination. However, he has categorically admitted that, prior to the present address ie., Yelahanka at Bengaluru, he was residing at No.2161, Rajajinagar, Bengaluru, which is depicted in Ex.P5.

10. Learned counsel has strenuously contended that PW.1 has admitted that there is some overwriting in mentioning the Door Number as 2161.But, it is not explained by the accused, as to who actually did it. Even considering that there is some overwriting, when actually it has been shown, that question has to be taken into consideration. The complainant has produced these documents along with the complaint and notice copy knowing fully well that there was some remote discrepancy in the address. If really he wanted to manipulate the documents, he would have manipulated all the documents even at the time of filing the complaint itself, that is to say that he would have corrected the contents of the notice, as well as he would have mentioned the correct address in the cause title of the complaint. But, he has not done that. Therefore, it cannot be said that in anticipation of the defence that may be taken by the accused, this document has been manipulated. Perhaps, at the time of dispatching the notice at the last moment he might have come to know that, the Door Number is ' 2161 '.Therefore, he had corrected the same. So far as the other portion of the address is concerned, it is mentioned that, it is the 2nd ' E ' Block Rajajinagar, Bengaluru-10.Learned counsel contended that there is no 2nd ' E ' Block ' as such. It is the case that there is only ' E ' Block, in the II Stage. In that context, if the address is wrong, the postal cover would not have reached that particular destination.

11. In the above said circumstances, it is the burden on the accused to explain that the address mentioned in Ex.P5 is not substantially correct and if any cover is addressed to that address, that cover would not reach the

destination. More over the said cover was received by somebody perhaps an authorized person in the said address. Therefore, there was no chance of postal cover being returned to the complainant un-served.

12. In the above facts and circumstances, the accused after appearance before the trial Court, in order to defeat the rights of the complainant, must have taken this particular defence. Even otherwise, the purpose of issuance of notice has been explained by the Hon'ble Apex Court reported in 2006 (6) SCC 456 [D. Vinod Shivappa Vs. Nanda Belliappa], the relevant portion of which reads as under (Paras 16 & 17):

" 16. As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of Section138. In Vinod Shivappa (supra), this Court observed: "One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to Section 138 provides that the Section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfill their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque.The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act. "

13. Therefore, it is clear that, in the notice sent by the complainant though there is some discrepancy in explaining the ' Stage ' and ' Block ', but nevertheless, the substantial address is the same and in defence the

accused has admitted that, he was residing in the said address. It is the fundamental basic principle that, whenever a person changes his address, it is his duty to intimate the same to the jurisdictional Post Office to see that, any communication pertaining to him goes to that particular residence, it should be re transmitted to his fresh address or he should authorize somebody, who resides in the said address, to receive such communications. In this case, the accused has actually taken such steps for receipt of such postal articles. In the absence of such stand by the Accused, the Court has to draw a presumption that, the notice addressed to the said destination of the accused had been reached. Even otherwise, as rightly contended by the learned counsel for the respondent, the summons issued to the accused has not been served, because, the summons was ordered to be issued to the address mentioned in the complaint, which admittedly the accused had changed without intimation to postal authorities. When specifically the Non-bailable Warrant was issued, the police personnel searched the new address and secured the accused and produced him before the Court. This particular aspect clearly establishes that, the accused as far as possible tried to evade the service of summons.

14. Apart from the above, as noted in the above decision of the Hon'ble Apex Court in the case of Vinod Shivappa, immediately after appearance before the Court, the compliance of notice would have been made if really he had got no grievance so far as other parts of the complaint are concerned. But, here the accused has not only denied the service of notice, but altogether denied the entire transaction between himself and the complainant. He never denied the issuance of the alleged cheque; signature on the cheque; presentation of the cheque and dishonour of the cheque, as mentioned in the complaint. Therefore, it is the burden on the accused to establish that, there was no transaction at all between himself and the complainant, and there was absolutely no payment by the complainant and if it is so, why the said cheque was issued. Therefore, as I have already observed, these grounds are also taken by the respondent/accused before the First Appellate Court but those grounds of appeal have not been touched upon by the appellate Court. But, the accused has not challenged the judgment of the First Appellate Court, on any ground that, the First Appellate Court has not touched upon the other grounds raised by him.

15. Therefore, looking to the above said facts and circumstances, a clandestine attitude of the respondent/accused should not be encouraged by the Courts. In this case, when admittedly the Appellate Court's Order has not been challenged, it goes without saying that the respondent/accused is satisfied with the judgment of the Appellate Court and he was happy so far as other aspects are concerned, because he was acquitted by the First Appellate Court only on the sole ground of non service of notice. Therefore, he has to blame himself for not having challenged the judgment of the First Appellate Court, on other grounds.

16. Therefore, I do not find any strong reason to interfere with the judgment passed by the trial Court and on the other hand, as rightly contended by the learned counsel for the appellant, the First Appellate Court has not properly appreciated the oral and documentary evidence on record with reference to service of notice. Therefore, for the said reasons, I am of the opinion that the First Appellate Court has committed serious error

in holding that, the notice has not been served on the accused. Hence, the judgment passed by the First Appellate Court deserves to be set aside.

17. Before parting with this judgment, I feel it just and necessary to direct all the jurisdictional First Appellate Courts that they should always step into the shoes of the trial Court while dealing with First appeals. Whenever various grounds are urged before the First Appellate Court, it is the duty of the First Appellate Court to examine all the grounds urged in the appeal with reference to the findings given by the trial Court and thereafter, should always venture upon to examine each and every ground raised by the appellant before First Appellate Court to arrive at a conclusion as to whether any defect or error is committed by the trial Court. Otherwise, a casual practice of dealing with the appeal would prejudice or defeat the rights of the appellant. When a provision of appeal is provided, as a matter of right the appellant can challenge the judgment of the trial Court, on any number of grounds which are legally permissible.

18. As the First Appellate Court has not bestowed its attention to the legal aspects ie., as to how the Appellate Court has to deal with the judgment of the trial Court and also the powers and jurisdiction of the Appellate Court, I feel it just and necessary to remind the Appellate Courts with reference to their responsibility and jurisdiction. In this context, let me start with the provision under Section 354 of Cr.PC., which reads as under:

"354. Language and contents of judgment.

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860), and it is doubtful under which of two sections, or under which Of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision. "

19. On meticulous analysis of the above said provision, the judgment shall contain,

i) The points for determination;

ii) The decision thereon, which should be by way of recording finding on all the grounds urged before the Appellate Court or the finding should be recorded on all the charges framed by the trial Court;

iii) The reasons for finding and the decision;

Therefore, the judgment must clearly indicate that, the evidence on the legal aspects and also the points urged are considered by the Court while passing the judgment. Compliance with the above said requirement should not be merely a formality, but substantial in nature.When the grounds are not properly formulated and findings are not given followed by reasons, such judgments will not stand for judicial scrutiny.The reasons for conclusion reached by the Courts should be enlightening on the basis of the materials available on record.Therefore, it goes without saying that, a mere conclusion reiteration of the statement of the witnesses is not enough, but careful analysis and appraisement of the legal and factual aspects based on evidence, is absolutely essential.

20. In the above said background, Section 387 also reminds me with reference to the jurisdiction of the Appellate Court, which reads as under:

"387. Judgments of subordinate Appellate Court-.The rules contained in Chapter XXVII as to the judgment of criminal Court of original jurisdiction shall apply, so far as may be practiceable, to the judgment in appeal of a Court of Session of Chief Judicial Magistrate:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered. "

21. The above said provision indicates that, the rules contained in Chapter-XXVII with reference to the judgment of the Criminal Court of Original Jurisdiction, and the same procedure regarding the contents of the judgment should be followed by the Appellate Courts also, as if the Appellate Court has got original jurisdiction. Therefore, it goes without saying that the Appellate Court virtually should step into the shoes of the original Court and write the judgment bearing in mind the requirement under Section 354 of Cr.PC.

22. Before discussing as to ' how Appellate Court judgment should be ', let me have a brief look at the powers of the Appellate Courts as contemplated under Section 386 of Cr.PC., which reads as under:

"386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal ".

23. On plain understanding of the above said provision, the Appellate Courts have got very vast powers. The Appellate Courts even without calling for records can dismiss the appeal summarily, if there are no sufficient grounds for interference with the judgment of the trial Court. It has got full power either to reverse the order or direct further enquiry to be made or the accused may be re-tried, as the case may be. In the appeal from conviction, the Court has got vast power to reverse the finding and even acquit or discharge the accused or order him to be re-tried. It can also alter the finding maintaining sentence or even without altering the finding, alter the nature or the extent of the sentence etc ..If it is an appeal for enhancement of sentence, then also the court has got ample power to reverse the finding and sentence, and even acquit or discharge the accused or the accused may be ordered to be re-tried or enhance the sentence as provided under Section 386 (C) of Cr.PC. However, the rider is that, the court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence, by the Trial Court.

24. When such a vast power is vested with the Appellate Courts, the responsibility of the Appellate Courts is more than the responsibility of the original Courts. The Appellate Court, therefore, must apply its mind afresh to the legal and also factual aspects based on the evidence on record, in order to reach its own conclusion by giving reasons after formulating the points for determination and by giving firm findings. Therefore, in a judgment where there is no discussion and formulating of points for consideration and giving finding on all the points or the grounds urged in the appeals, without proper and logical reasons, such judgment does not constitute a proper judgment. The appeal provision is the safeguard given to the appellant, who files appeal as a matter of right. Therefore, the Appellate Courts should be on guard to avoid any suspicion in the mind of the appellant that his case was not properly considered. Therefore, it is still more necessary that, the Appellate Courts should have the views of the trial Court and as well as the entire materials on record. It can be easily said that all points have been considered. But merely saying by using those words is not enough and compliance of legal requirement, but on the other hand, the various grounds urged before the Appellate Courts should be narrated and considered and the findings have to be given, which are to be followed by reasons.

25. In order to confirm the judgment also, the Appellate Courts should not simply adopt the reasons of the trial court or it should not simply state that there is no reason to interfere with the impugned order/judgment. Such judgments also do not comply the requirement of law as contemplated under Sections 354 and 387 of Cr.PC. To say merely that, " I have carefully gone through the whole evidence and I find that I cannot agree with the judgment of the trial Court ", without assigning any reason, is not a judgment in the eye of law.

Therefore, the Appellate Court's judgment which fails to comply with the requirement of the above said provisions, vitiates such judgment.

26. Though it is not relevant here to discuss with reference to Appeal powers for remanding the matter or ordering the trial Court to re-try the accused, I feel it just and necessary to cover that point also here itself.

27. On perusal of the above provisions, though vast powers are vested with the Appellate Courts, normally the Appellate Courts should not venture upon to order for re-trial of the accused. Therefore, in rarest of rare cases, the powers ordering remand or for re-trial should be sparingly exercised after assigning proper, adequate and sufficient reasons, which are in the interest of justice only. It is mainly confined to the cases where want of jurisdiction of the Courts is pleaded. The Court has to evaluate the materials on record and to give its reasons as to unfairness of the judgment impropriety, irregularity or illegality of the proceedings before the trial Court. In such circumstances only re-trial if absolutely warranted may be ordered. Suppose when the accused is mislead in his evidence, for want of framing of proper charges and no evidence has been led on the charges framed, mis joinder of charges or mis-joinder of parties, then the Court has to very carefully examine, whether the remand order or for re-trial is necessary. Normally, no re-trial should be ordered in order to give another chance to the prosecution or the accused for producing further and better evidence in order to fill-up the gaps in the evidence. Therefore, re-trial should not be ordered unless there is some legal infirmity rendering denovo trial. It goes without saying that the order for re-trial has to be made in exceptional cases, unless the Appellate Court is satisfied that there are illegalities, or irregularities, which amounts to illegality or there is total mis-conception of the proceedings and unless re trial is ordered, the Appellate Court cannot adjudicate the rights of the parties in its proper perspective and great prejudice would be caused to the accused. It should also be borne-in-mind that normally re-trial wipes-out the earlier proceedings. Therefore, the Appellate Court, if comes to the conclusion that re-trial is necessary, it should make it clear, whether the accused has to be re-tried from the inception ie., from the first stage of the commencement of the trial or from any later stage. The Court, if it feels that it is just and necessary, then it can specifically state from which stage the further trial has to be commenced by the trial Court.

28. Having discussed the powers and jurisdiction of the Appellate Courts and in view of the above said powers of the Appellate Courts, it is crystal clear that the Court either for acquitting or convicting the accused or dealing with the judgment of conviction or acquittal, the trial Court and the Appellate Courts have a great duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in its entirety has to be scrutinized with great care and caution .It is the duty of the Judges to see that, ` the justice is properly administered ', which is the paramount consideration of a Judge. The responsibility bestowed cannot be in any manner abdicated or abandoned, even remotely or solely for any reason. The Courts are also required to weigh the materials legally and factually and ascribe concrete reasons logically flowing from the requisite analysis of the materials on record. The approach cannot be cryptic or perverse. Therefore, the duty of the Judge is to consider the entire materials on record objectively and dispassionately.

The reasons are to be well-depleted that they have to be in detail expressed and the refractive attitude of the Judge must be demonstrable from the judgment itself.

29. Coming back to the present case, as I have already referred to, though the grounds urged by the appellant have been in detail narrated in the body of the judgment, but all the grounds were not considered by the Appellate Court and the findings and reasons have not been given so far as those grounds are concerned. As I have already expressed, the accused has not preferred to challenge the said judgment of the Appellate Court and for such an act on his part, he has to blame himself. Therefore, the judgment of the Appellate Court to the extent of the ground considered by it, is liable to be set aside. It goes without saying that, when the Appellate Court has not touched upon the other grounds urged, the judgment of the trial Court remains unaltered so far as the findings given by the trial Court.

30. In the above said facts and circumstances, I am of the opinion that the judgment of the First Appellate Court in toto is liable to be set aside. Accordingly, I proceed to pass the following,

ORDER

The appeal is allowed. Consequently, the judgment of acquittal dated 07.07.2014 passed by the First Appellate Court viz., Fast Track Court-IV, Bengaluru City, in Criminal Appeal No.390/2013, is hereby set aside and the judgment and sentence passed by the trial Court viz., XIII Additional CMM Court, Bengaluru, in CC No.18350/2011, dated 08.07.2013 is hereby confirmed.