

State of Karnataka

Vs.

Venkatesh and others

Criminal Appeal No. 319 of 1981

(Kuldip Singh, Dr. A.S. Anand JJ)

13.01.1992

JUDGEMENT

Dr. A. S. ANAND, J.:-

1. For the murder of one Lakshmana alias Lakshmaiah, all the respondents were challaned for having formed themselves into an unlawful assembly with the common object of murdering him and thereafter with a view to screen themselves from the legal consequences, to have removed his dead-body from the place of occurrence to a wet paddy field. On committal, the respondents were tried for offences under Sections 148, 448, 302 / 149 and 201 of the Indian Penal Code by the learned Sessions Judge, Mysore, who after an appraisal of the evidence and consideration of the submissions made, vide judgment, dated 4th of December 1979, gave benefit of doubt to all the respondents and acquitted them of all the charges. The State of Karnataka thereupon filed an application before the High Court seeking leave to prefer an appeal against the judgment of acquittal. A Division Bench of the High Court, however, did not find any error to have been committed by the Sessions Judge in arriving at the conclusions and consequently refused to grant leave as prayed for, vide order dated 2-7-1980. Aggrieved, the State has come up by way of this appeal by special leave. Since, the High Court did not consider, much less discuss the evidence and the submissions raised before it, we have with the assistance of learned counsel for the parties perused the evidence and given our thoughtful consideration to the reasoning and the conclusion arrived at by the learned Sessions Judge.

2. The case of the prosecution rests mainly on the sworn testimony of P.W. 15, Cheluvamma and alleged eye-witness besides the motive, namely illicit intimacy between P.W. 23, Madadevamma, the sister of respondents 1 and 5 with the deceased prior to and after her marriage as well which was resented to by both the respondents. The prosecution also relied upon the evidence of P.W. 8, Madaian, and P.W. 14, Javariah, who deposed having seen the deceased enter into the house of P.W. 15, Cheluvamma, at about 11.00 p.m. on the fateful night. The prosecution also relied upon the evidence of P.W. 25, Chelubaraju, who had allegedly seen all the accused-respondents carrying the dead-body of the deceased from the house of P.W. 15, Cheluvamma towards the field from where it was later on recovered. With a view to seek conviction of the accused-respondents, the prosecution also pressed into aid an alleged circumstance of the absconding of all the respondents from the village from 9-11-1978 onwards till their arrest. Learned counsel for the State of Karnataka has, on the basis of this material, submitted that the order of acquittal deserves to be reversed.

3. We have perused the evidence of all the witnesses referred to above. They do not inspire any confidence at all. The denial by P.W. 23, Madadevamma, of having had any illicit intimacy with the deceased coupled with the fact that P.W. 15, Cheluvamma, the ace witness of the prosecution,

having not disclosed the information at the earliest opportunity to anyone till 10-11-1978, though the alleged murder took place on the night of 8th November 1978, has created serious doubts about the genuineness of the prosecution case. Since, the Sub-Inspector admitted that he had not even visited the house of any one of the accused-respondents on 9-11-1978 to arrest them, the failure of the accused-respondents to appear before the police cannot give rise to any inference of their guilt and therefore the alleged circumstance of absconding was not rightly used by the learned Sessions Judge against the accused-respondents. The conduct of P.W. 8, Madaiah, P.W. 14, Javariah and P.W. 25, Cheluvvaraju, is so unnatural that it would not be safe to place any reliance on their testimony. No explanation, much less a satisfactory one, has been given by the prosecution for their long silence.

4. After giving our thoughtful considerations to the evidence on record, we have not been persuaded to take a view different than the one taken by the learned Sessions Judge and the High Court in this case. The reasoning of the learned Sessions Judge and the conclusions arrived at by him in ordering acquittal of the accused-respondents has appealed to us and we, therefore, do not find any cause to interfere with the order of acquittal. The appeal, therefore, fails and is consequently dismissed. The accused-respondents are on bail, their bail bonds shall stand discharged. Appeal dismissed.

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