

State of Karnataka

Vs

Babu and others

Criminal Appeal No. 140 of 1983

(Kuldip Singh, B. P. Jeevan Reddy JJ)

13.03.1992

JUDGMENT

1. Babu, his three brothers and a cousin, were tried for the murder of one Umrao. The Trial Court convicted all of them under S. 302, IPC with the aid of 149, IPC and sentenced them to rigorous imprisonment for life. They were further convicted under S. 148 read with 149, IPC and each of them was sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 500/- with a usual default clause. On appeal the high Court set aside the conviction and sentence of the respondents and acquitted them. This is State appeal against acquittal.

2. The prosecution story is that the deceased along with his daughter PW-2 aged 15 years and son PW-3 aged 13 years had gone to his lands for eating Hurda in the morning. On their return when they were passing through the fields of accused-respondents, all the five respondents attacked Umrao and gave him as many as 15 injuries with blunt as well as sharp-edged weapons. PW-2 and PW-3 who witnessed the occurrence left the deceased on the spot and went back home to inform their mother. The mother thereafter contacted some of her relations including Balapathi and the village authorities and in the process it took her about 3/4 hours. The occurrence took place around 6 O'clock in the evening but the wife of the deceased reached the spot along with her relations at about 9-30 p.m. Primarily relying upon the testimony of PW-2 and PW-3 the Trial Court convicted the respondents.

3. We have heard learned counsel for the parties at length. The High Court came to the conclusion that the injury on the person of one of the accused was not explained there was delay in the lodging of the First information Report. Hullapa, the servant of the deceased who served roasted Hurda to the children of the deceased was not produced, Balapathi whom the matter was reported by the deceased's wife was also not produced as witness and presence of semi digested food in the stomach belied the stand of eye-witnesses that the deceased had not eaten anything. On these findings the High Court came to the conclusion that the testimony of two eye witnesses who are son and daughter of the deceased could not be relied upon.

4. We are further of the view that the conduct of the children and the wife of the deceased was unnatural. In the first instance both the children could not have left their father alone after he had been beaten mercilessly. In any case after knowing from her children about the occurrence; instinctively the wife should have rushed to the place of occurrence immediately. Thus the prosecution story sounds improbable. This is how, in spite of the eye-witness evidence of two children of the deceased, we have not been able to take the case against the respondents beyond

doubt. We are, therefore, not inclined to interfere with the verdict of acquittal rendered by the High Court.

5. The appeal is dismissed. Appeal dismissed.

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