

State of Karnataka

Vs

Maruthi & Anr.

(G.T. Nanavati, S.P.Kurdukar JJ)

16.09.1997

JUDGMENT

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S.P.KURDUKAR, J.

1. For committing the murder of Bandappa s/o Hanmanthappa the four accused persons, namely, Maruthi (A-1), Gundappa (A-2), Shankar (A-3) and Bhimanna (A-4) were put up for trial in Sessions case No. 48/1978 for an offence punishable under Section 302/34 IPC. The Additional Sessions Judge by his judgment and order dated February 7, 1980 convicted A-1 and A-4 for the said offence and sentenced them to suffer imprisonment for life but however, acquitted A-2 and A-3 of the said charge. A-1 and A-4, two convicts preferred Criminal Appeal No. 105 of 1980 to the High Court of Karnataka at Bangalore challenging their order of conviction. The State of Karnataka also filed Criminal Appeal No. 399 of 1980 challenging the order of acquittal in respect of A-2 and A-3 passed by the trial court. Both the appeals were heard together and the High Court by its common judgment and order dated March 13, 1981 allowed the Criminal Appeal filed by the two convicts and set aside the order of their conviction and sentence and acquitted them of the said charge. The Criminal Appeal filed by the State of Karnataka came to be dismissed. The net result, therefore, is that all the four accused stood acquitted. The State of Karnataka has filed these Criminal Appeals by Special Leave in this Court against this judgment and order of acquittal passed by the High Court.

2. The prosecution has unfolded its story at the trial as under:

(2) It is not disputed that Bandappa (since deceased), A-1 and A-2 owned agricultural lands adjacent to each other, A water canal passed from the katta which demarcated the lands of Bandappa and A-1 and A-2. It was alleged by the prosecution that on 30.6.1978 at about 9 a.m. Bandappa came to the field along with his daughter Narsamma (PW 16). She remained busy in grazing her cattle whereas Bandappa was uprooting the shrubs on the boundary line of his land. A-1 to A-4 were then sitting in their lands. At about 11.30 a.m. all the four accused picked up a quarrel with Bandappa and questioned him as to why he was digging the boundary line. Suddenly A-1 and A-2 advanced towards Bandappa who was then working in his land and thereafter started abusing him. A-1 was carrying an axe, whereas A-4 was having a stick in his hand. A-2 and A-3 extorted A-1 and A-4 to teach a lesson to Bandappa. It was alleged to the prosecution that thereafter A-1 caused a blow with his axe on the vital part of Bandappa causing him bleeding injuries. When Bandappa fell down A-4 assaulted him with a stick. Sensing danger to his life Bandappa told his daughter Narsamma (P.W.16) to go and call his brother Siddappa. Accordingly, she went to the

village and told about the assault to Siddappa, her mother and other relatives. All the relatives of Bandappa along with Narsamma (PW 16) came to the place of occurrence. It was further alleged by the prosecution that three cow boys, namely, Kalappa (P.W.12), Sonomma (P.W.13) and Raju (P.W.14) who were grazing their cattle in the nearby field, on hearing the quarrel between Bandappa and A-1 and A-4, came near the land of Khane Moddi and witnessed the entire assault from the karkhani where jaggery out of sugarcane was being prepared, Sidappa (P.W.11) after noticing serious bleeding injuries on the person of his brother went to the police station to lodge the FIR. The Station House Officer on duty recorded the First Information Report at about 3.30 p.m. on the same day. The Circle Inspector of Police Shri P.N.Puthlikar (P.W. 18) along with other police officers went to the place of incident and commenced the investigation. After holding the inquest on the dead body of Bandappa it was sent to the Civil Hospital at Bidar for post mortem examination. He recorded the statements of various witnesses including that of three cow boys during the early hrs. of July 1, 1978. During the investigation the accused came to be arrested and while in custody they made statements which led to the recovery of certain incriminating articles. After completing the investigation all the four accused were put up for trial for the aforesaid offence.

(3) In order to bring home the guilt of the accused persons the prosecution relied upon the evidence of three eye witnesses (cow boys) and the evidence of Narsamma (P.W.16). Sidappa (P.W.11) was the first informant. Dr. Veerabhadrayya (P.W. 21) was examined to prove the injuries on the dead body of Bandappa and the cause of his death. In addition to the above evidence the prosecution also examined formal witnesses and relied upon the recovery of certain incriminating articles.

(4) The defence of the accused was that of total denial. According to them they were falsely implicated in the present crime out of enmity. They pleaded that they being innocent, be acquitted. A-1 in support of his defence examined two witnesses, namely, Maruthi (D.W.1) and Sarswathi (D.W.2).

(5) The learned trial Judge on perusal of the evidence of eye witnesses and other materials on record held that the evidence of the three eye witnesses, although they were minors (within the age group of 10 to 12 years), was credible one and which found corroboration from that of Narsamma (P.W.16) and the First Information Report lodged by Sidappa (P.W. 11). The defence of the accused did not find favour with the learned trial judge who rejected the same being an afterthought. Consistent with these findings the learned trial judge convicted A-1 and A-4 for the offence punishable under Section 303/34 IPC and sentenced them to suffer imprisonment for life whereas A-2 and A-3 were acquitted.

(6) The High Court while dealing with the two sets of appeals. One filed by A-1 and A-4 and the other filed by the State of Karnataka, on reappraisal of the evidence of the prosecution witnesses and the other materials on record found that the evidence of three eye witnesses, namely, Kallappa (P.W. 12), Somanna (P.W. 13) and Raju (P.W. 14) was not reliable since the said evidence suffered from many contradictions and omissions. The High Court also opined that having regard to the ages of these three witnesses it would not be safe to base the conviction on their evidence. The High Court further held that since the evidence of the eye witnesses was discarded in

respect of A-2 and A-3 there was no justification to accept the said evidence being truthful against A-1 and A-4, while summarising the evidence of the eye witnesses the High Court observed that the sum and substance of the evidence of P.Ws. 12 to 14, as regards the assault on the deceased was concerned, that A-1 dealt three blows from the side of sharp edge of the axe on the head and one blow on the right elbow, while A-4 beat on the chest, stomach and other parts of the body by means of a stick; A-2 and A-3 instigated A-1 and A-4 to finish off Bandappa. The High Court then observed that P.Ws. 13 and 14 had made improvements in their evidence in line with the version of P.W.12 by stating that out of four axe blows dealt by A-1 on Bandappa three blows were by means of blunt side of the axe. P.W.15 in his evidence stated that A-1 had given four blows on Bandappa - three on the head and one on the right elbow - by means of an axe. The High Court then observed that all these alleged eye witnesses had stated that the incident took place at about 12.00 noon, P.W. 16 also stated that it was about 12.00 noon when she saw all the accused persons were quarrelling with her father near katta in survey No. 94. Dr. Veerabhadrayya (P.W. 21) found, as is clear from the post mortem notes (Ex. P.14) that the abdomen of the deceased was full of digested food and water and the small intestines contained digested food. The large intestine was full of gases and faecal matter. Sundaramma (P.W.7) the wife of the deceased testified that the deceased had not taken any breakfast in the morning of 30.6.1978 and while going to the land, he told her that he would return for food. In view of this positive evidence of P.W. 7, it was certain that the digested food, as observed by P.W. 21 in the stomach and small intestines of the deceased, he must have had taken his food during the previous day evening. It was because of this inconsistency in medical evidence and that of Sundramma (P.W.7) the High Court entertained a doubt that the incident might not have taken place at about 11.30 or 12.00 noon as deposed to by the eye witnesses.

(7) We heard the learned counsel for the parties and perused the evidence of three eye witnesses, Sundaramma (P.W. 7), Narsamma (P.W. 16) and the medical evidence of Dr. Veerabhadrayya (P.W.21) very carefully. Upon such consideration, we are of the considered view that the High Court had failed to appreciate the evidence of the eye witnesses and the other materials on record in proper perspective. The High Court for no sustainable reasons had entertained the doubt as regards the presence of the three eye witnesses and Narsamma (P.W. 16) at the time of incident in the nearby agricultural fields. We have gone through the evidence of Kallappa (P.W.12), Somana (P.W.13) and Raju (P.W. 14), the eye witnesses and whose evidence in our opinion does not suffer from any material contradiction or omission. It must be borne in mind that these three eye witnesses were of tender age between 10 to 12 years and they stood satisfactorily to the searching cross examination done by the defence counsel. The minor omissions relied upon by the High Court were of very trivial nature and they do not affect the substratum of the prosecution case. There is nothing on record to doubt the presence of Narsamma (P.W. 16) in the nearby field at the time incident. Narsamma (PW. 16) in her evidence had asserted that she was grazing the cattle and her father was doing some work near the boundary line. When she heard the quarrel she came near the place of occurrence when Bandappa told her to go and call his brother Sidappa (P.W. 11). It is because of this Narsamma (P.W.16) went to the village and told about the incident to her mother Sundramma (P.W. 7) and thereafter Siddappa, Narsamma and others came to the place of incident immediately. What is

more important is that Siddappa (P.W.11) immediately rushed to the police station at Bidar and lodged the First Information Report at about 3.00 p.m. In fact the police reached at the place of occurrence at about 3.30 p.m. The names of the accused were disclosed by the three eye witnesses and Narsamma at the earliest opportunity to the investigating officer including the role played by them. The evidence of these witnesses is very cogent because they never attributed any role to A-2 and A-3 except stating that they were exorting A-1 and A-4 to assault Bandappa and they never took any part in the assault. There is neither any contradiction nor omission or improvement in their evidence in court and this must lend assurance to the court to accept the evidence of these witnesses as credible one. We are, therefore, unable to subscribe to the view taken by the High Court while rejecting the evidence of three eye witnesses. Another ground of acquittal recorded by the High Court is that there is inconsistency between the medical evidence and the evidence of Sundramma (P.W. 7). We do not see any inconsistency whatsoever in the said evidence. This ground on which the acquittal order is based is again unsustainable.

(8) We have also gone through the evidence of the defence witnesses and we find that the same is unreliable and the trial court was right for the reasons recorded in its judgment in rejecting their evidence. The impugned order of acquittal passed by the High Court in respect of A-1 and A-4 is, therefore, unsustainable. Coming to the appeal filed by the State against the acquittal of A-2 and A-3, we find that the view taken by the trial court cannot be said to be unreasonable. The High Court had committed no error while confirming the order of acquittal in respect of A-2 and A-3. the learned counsel for the appellant could not persuade us to upset the order of acquittal of accused Nos. 2 and 3.

(9) In the result for the foregoing conclusions we allow the Criminal Appeal No. 382/83 filed by the State of Karnataka against A-1 and A-4 and set aside the order of acquittal dated 13-3-1981 passed by the High Court and restore the order dated 7-2-1980 passed by the learned Additional Sessions Judge. The Criminal Appeal No. 383/83 filed by the State of Karnataka against the order of acquittal in respect of accused Nos. 2 and 3 does not call for any interference and the same is accordingly dismissed. A-1 and A-4 are directed to surrender to their bailbonds to serve out the remainder of their sentences. Bail bonds of A-2 and A-3 to stand cancelled.