SUPREME COURT OF INDIA

Jai Singh

Vs.

The State of Karnataka

(B.P. Singh and Harjit Singh Bedi JJ.)

12.04.2007

JUDGMENT

HARJIT SINGH BEDI, J

The facts leading to this appeal by special leave are as under :

On 13.1.1997 at about 6 a.m. Bhairu Dadu Misale, resident of village Veeravade was on his way to Sholapur taking food for his son, who was in jail at that time. A short distance away from village Veeravade on the Pakani- Veeravade road he met PW 30 Kishore and PW 33 Dhanaji Tukaram Mane, both residents of the same village and got into a conversation with them. Bhairu Dadu thereafter left on his way to Sholapur, but a minute or two later the two P.Ws heard a noise and on looking in that direction observed that Bhairu Dadu had been surrounded by the six accused and while accused No.1 Jaisingh Shivaji Awatade and accused No.2 Shanu Awatade had caught hold of him, accused No.5 Haridas had closed his mouth, whereas the other two accused were strangulating him with a rope. Bhairu Dadu soon died on which his dead body was removed from the spot in Jeep bearing No. MH-13/A-3125 and deposited in the land of one Shanker (after it had been burned beyond recognition) from where it was subsequently recovered. It appears that Guranna PW1 who was not an eye witness received information about the dead body lying in the field belonging to Shanker. This witness reached the Police Station and lodged the FIR at about 10.30 p.m. on 13.1.1997. The investigation was thereafter set in motion and on completion thereof the accused were charged for offences punishable under Sections 302/149, 201 and 147 of the IPC. It transpired from the evidence that the accused and the deceased belonged to two different political parties and relations between the two were strained on that account. From the evidence of PW1, the observations recorded in the inquest report, and the medical evidence it was revealed that the dead body was of an individual about 25-30 years of age whereas the Bhairu Dadu in fact was about 50-55 years old at the time of his murder. A very large number of PW's resiled during the course of the trial though the two eye witnesses supported the prosecution.

The Trial Court in its judgment dated 17.5.1999 held that the evidence of PWs 30 and 33 did not inspire confidence as their conduct appeared to be unnatural which indicated that they had in fact not been present when the murder had been committed. It also observed that in the light of this fact, the other evidence which was largely circumstantial in nature was of little use in securing a conviction. The Trial Court accordingly acquitted all the accused. The State thereupon filed an application under Section 378 of the Cr. P.C. and after leave was granted the matter was heard by a Division Bench of the High Court which in its judgment dated 17.8.2005 reversed the judgment of the trial court, convicted the accused and sentenced them to various terms of imprisonment. The present appeal has been filed as a consequence thereof.

It has been argued by Mr. Sushil Kumar, the learned counsel for the accused-appellants that the trial court had acquitted the accused on a minute appreciation of the evidence and arrived at conclusions clearly possible on that evidence and in this circumstance the High Court was not justified in reversing the acquittal. He has submitted that though the jurisdiction of the High Court in an appeal against acquittal was as wide and unfettered as in the case of a conviction appeal yet the presumption that an accused was innocent until proved guilty was further strengthened when the trial court made an order of acquittal and in this view of the matter extra care and caution was required if the acquittal was to be reversed. He has in this connection placed reliance Karnataka 2007 (3) SCALE 90. The learned counsel has also urged that the entire matter would hinge on the testimony of PWs 30 and 33, and the veracity of their evidence would have to be evaluated under the principles laid down in the afore cited case. He has highlighted that the two were chance witnesses and their conduct was so unnatural that their presence had to be ruled out ab-initio. It has finally been pleaded that in this situation the evidence of motive or recovery of incriminating articles did not connect the accused with the crime and could not by themselves and in isolation form the basis of a conviction.

Mr. Hegde the learned Government Advocate has however supported the judgment of the High Court and at the very outset pointed out that the trial court's judgment though laboured and lengthy did not deal with the evidence in a systematic manner and the entire discussion on the evidence had been confined to the last four pages whereas the judgment of the High Court had been rendered after a minute re- evaluation of the matter and for very good reasons. He has urged that the matter would have to be examined in the background that the murder appeared to have been committed in the State of Maharashtra and the body recovered in the State of Karnataka and the resulting confusion which would have ensued in such a situation. He has pointed out that the relations between the parties were undoubtedly strained as they represented different political groups and as such the motive for the murder stood proved. It has finally been urged that the circumstantial evidence inasmuch as the recovery of the bicycle, the identification of the tiffin carrier, the jeep etc.

supported the prosecution's story.

We have considered the arguments advanced by the learned counsel. From a perusal of the judgment in Chandrappa's case (supra) we observe that though the powers of the High Court in an acquittal appeal are not circumscribed and are clearly unfettered, the situation under which they should be resorted to have been spelt out. The broad principle is that the presumption of innocence is strengthened if an accused is acquitted by the trial court and that a reversal of the trial court's judgment should be made in cases where the view taken was not possible on the evidence or perverse with the broad understanding that if two views were possible, the one taken by the Trial Court in favour of the accused should be retained.

As already observed above, the entire prosecution story hinges on the evidence of PWs 30 and 33. A bare reading of their evidence however shows that it cannot be relied upon.

Clearly the two were chance witnesses and have not been able to explain the circumstances which brought them to the place of incident at 6.30 a.m. PW 30 Kishore deposed that he had seen the incident alongwith PW 33 Dhanaji Tukaram Mane from a distance of about 50 feet while he was one kilometer away from village Veeravade on the Pakani Veeravade road.

Concededly all the accused, the deceased and the two eye witnesses belonged to village Veeravade and were thus co- villagers known to each other. The conduct of this witness is truly amazing. As

per his evidence he reached Veeravada about half an hour after the incident but he did not inform anybody as to what had transpired till the 18th or 19th January 1997 when his statement under Section 161 of the Cr.P.C. was recorded by the Police. He further stated in his cross examination that he had gone to the police voluntarily and had not been summoned. The statement of PW 33 is even more unreliable. He admitted that he was the first cousin of the deceased and that after witnessing the murder had gone on to village Akola to meet his sister and had returned to Veeravade after several days. He also admitted in his cross- examination that the house of the deceased was only 150 feet away from his house and that he had not informed anybody about the murder till the 19th of January 1997 on which he was confronted with his statement under Section 161 of the Cr.P.C. wherein he had stated that he had returned to village Veeravade on the day after the incident. We find it absolutely impossible to accept that this witness could have gone to village Akola after having been a witness to the brutal murder of his cousin and had not even informed anyone from the family of the deceased living only 150 feet away about the incident till 19.1.1997.

It is true, as has been contended by Mr. Hegde, that some allowance must be made for the fact that the incident had spilt over to two States or that the two witnesses had been so overtaken by fear on account of the two warring political groups in the village. We find, however that PW 30 gave no explanation as to why he had kept quiet for almost six days whereas PW 33 did, in a stray sentence, depose that he had been scared to talk to anyone about the murder. To our mind, this explanation is unacceptable as this witness had tried to hide the fact that he had returned to village Veeravade from village Akola the day after the incident, and being the first cousin of the deceased, and living only 100 feet away from the latter's house, still did not inform the family or anybody in the village about the murder for a period of six days. This bespeaks of absolutely unnatural conduct.

We have also considered Mr. Hegde's argument with regard to the quality of the judgment recorded by the trial court. We observe that the copy of the judgment put on record is apparently a translation from the Kannada version, and that the translation is truly abysmal and that it has taken us a great deal of time and effort to decipher it. We find that Mr. Hegde's argument the reasons which had weighed with the Trial Court for acquitting the accused have been confined to the last few pages is not quite accurate in as much that the last four pages are a summing up as the Court, has, while discussing individual pieces of evidence, ocular or circumstantial, given its comments and opinions as well.

We are, therefore, of the opinion that the interference by the High Court in the judgment of the trial court was not called for as the view taken by it was justified on the evidence. We thus have no option but to allow the appeal and acquit the accused.