

SUPREME COURT OF INDIA

Gurunath Donkappa Keri

Vs.

State of Karnataka

Crl.A.No.341 of 2006

(S.B. Sinha and Cyriac Joseph JJ.)

06.05.2009

JUDGEMENT

S.B. SINHA, J :

1. Appellants are before us aggrieved by and dissatisfied with a judgment dated 11th August, 2005 passed by a Division Bench of the High Court of Karnataka, Bangalore in Criminal Appeal No. 1254 of 2002 affirming the judgment passed by the Presiding Officer, Fast Track Court and Additional Sessions Judge, Belgaum in S.C. No. 97/1996 convicting accused Nos. 1 to 6, 10 and 13 for offences punishable under Sections 143, 148, 307, 302, 504 read with Section 149 of the Indian Penal Code 1 (hereinafter referred to as the 'Code') and sentencing them to undergo rigorous imprisonment for three months for the offence punishable under Section 143 read with Section 149 ; six months under Section 148 read with Section 149 of the Code ; rigorous imprisonment for life for the offence under Section 302 read with Section 149 of the Code and six months under Section 504 read with Section 149 of the Code. All the sentences were, however, directed to run concurrently.

2. The incident in question took place at about 1400 hours on 5th October, 1995 at the Bus Stand of

Village Yadawada wherein three persons, namely - Venkappa Laddi ; Vittal Laddi and Vittal Harijan were killed.

Originally the first information report in relation to the said incident was lodged by PW-11 Mohammad Haji Khajamia against 13 persons, namely, - Donkapa Venkapa Keri (A-1), Shrimant Donkappa Keri (A-2), Gurunath Donkappa Keri (A-3), Ashok Donkappa Keri (A-4), Hanamant Donkappa Keri (A-5), Govindgouda @ Goundappa (A-6), Maruti Gurusidda Dabaji (A-7), Kallapa Mayappa (A-8), Ramappa Siddagouda (A-9), Subhash Donkappa (A-10), Iqbal @ Ayub Mohamadisaq (A-11), Iswhar Shivalingappa (A-12) and Basu @ Bassapa Govindappa (A-13). Donkappa Venkappa Keri (A-1); Shrimant Donkappa Keri (A-2). Out of 2 them Ramappa Siddagouda, (A-9) died pending trial. Accused Nos. 7, 8, 11 and 12 were acquitted by the trial court. A judgment of conviction and sentence was recorded by the learned trial court against eight persons being A-1 to A-6, A-10 and A-13.

All the aforementioned accused persons preferred appeals before the High Court. A-1 died while in custody. A-2 is said to have committed suicide during the pendency of the appeal.

By reason of the impugned judgment the High Court acquitted A-5, A-6 and A-13. It may also be placed on record that A-5 was released under Article 161 of the Constitution of India. Before us are A-3, Gurunath Donkappa Keri ; A-2, Ashok Donkappa and A-10, Subhash Donkappa Keri.

3. The first information report was lodged at about 1730 hours by PW-1 Shivappa Vishni Keri. The distance between the place of occurrence and P.S. Kulgod is said to be about 16 kms. The first informant and the accused persons are cousins. Deceased No.1 and 2 were maternal uncles of PWs- 1 and 2. Deceased No.3 is said to be one of the servants of the deceased Nos. 1 and 2.

4. The deceased were residents of Neralgi Village. PWs. 1 & 2 and the accused had their ancestral properties in the said village. Although the family was separated, some boundary dispute existed in respect of their lands. Land of PWs 1 & 2 was adjacent to the land of the accused. Some trees on the boundary wall on the land of accused and PWs. 1 & 2 resulted in disputes; both parties having filed civil suits in relation thereto.

5. On 31st October, 1995 while PW-2 was plucking coconuts from the tree standing on the disputed land, some of them fell on the lands of the accused. Accused No.1., accused No.8, his wife, and accused No.5, were alleged to have taken away the said coconuts claiming the same to be belonging to them.

A quarrel ensued. With a view to get the said dispute settled, PW-1 is said to have called his maternal uncles, deceased Nos. 1 and 2 and requested them to resolve the same. The prosecution case proceeded on the basis that on 4th October, 1995 deceased Nos. 1 and 2 accompanied by their servant deceased No.3 and PW-3, a relation of both, came to the village Yadewade in the morning. They approached the village elders - Ishwar Mahadevappa Katti (PW-20) and Shivappa Bailappa Chikkanavar (PW-21) for settlement of the dispute. Accused Nos. 1 to 5 were summoned. Accused No.1 and PW-1 were present in the talks for settlement. A suggestion was mooted with regard to settlement of dispute between the parties. To that Accused No.1 expressed his intention to consult his children viz. Accused Nos. 2 to 5 and 10. He left the place for the said purpose. When he did not return back within a reasonable time, having regard to the time gap, PW1 and PW-2, deceased and his people went to a tea shop belonging to Shankarappa Ramanna Chippalakatti (PW-9) to have tea. While they were taking tea, the accused persons consisting of as many as 13 people arrived at the spot by a tempo trax, holding out that the persons who wanted to settle the matter should not be allowed to do so and attacked on them. Deceased Nos. 1 and 2 were attacked first while the third deceased who had come to help the others was also assaulted. When the village people started arriving all the accused ran away. The three deceased and one Siddappa Basappa Nagalagi were taken to Primary Health Centre of the Village. Dr. Siddramappa (PW- 25), of the said Primary Health Centre noticed the injuries on the deceased and referred them to Civil Hospital, Belgaum. The deceased thereafter were taken to Belgaum Hospital. At the said hospital they were declared dead.

6. In the meantime a report was scribed by PW-2. PW-1 took the same to the police station and a first information report was recorded bearing No. 90 of 1995 under Sections 143, 148, 307, 302, 504 read with Section 149 IPC.

7. Before the learned trial Judge forty witnesses were examined on behalf of prosecution. Concededly except PWs. 1, 2 & 3 all other witnesses including PWs 4 to 14, 17-20, who were eye witnesses and PW32 who was a panch witness were declared hostile. Indisputably a judgment of conviction and sentence as against the appellants were recorded by the learned trial Judge as also the High Court only on the basis of the evidence of PWs. 1 to 3.

8. Appellants before us do not deny or dispute the occurrence of the incident. Death of three persons also stands admitted.

9. Mr. K.V. Viswanathan, learned counsel appearing on behalf of the appellants in support of this appeal would raise the following contentions :- I) PWs 1, 2 & 3 being closely related and they, being inimically disposed of towards the appellants and, thus, being interested witnesses should not have been relied upon by the courts below.

II) There being a large number of contradictions in their depositions, the evidence of PWs 1-3 does

not inspire confidence.

III) PW-3 having not been named in the first information report, no reliance could be placed upon his evidence. Even the doctor in his register and other documents did not record the names of the said prosecution witness.

IV) The weapon of offence allegedly carried by the appellants being axe; their deposition in court that assault took place with sticks, clearly demonstrates that they were not the eye witnesses to the occurrence..

V) Exhibits P-29 and P-33 being medical certificates having not contained names of any of the four persons, including PW-3, who allegedly shifted the deceased and the injured to Primary Health Centre, the prosecution must be held to have failed to prove its case.

VI) In the hospital register, the nature of the weapon used or the names of the culprits do not find place, which creates a suspicion in regard to participation of the appellants in the commission of the crime.

VII) If PW-3 was an eye witness his name should have been mentioned in all those medical certificates.

VIII) For want of mentioning the mode of transport which is said to be a tractor and the name of PW-3 in Ext.P-1 and Exts. P-29 to P-33, it is difficult to believe that he was an eye witness.

IX) The clothes which were being worn by PWs. 1 and 2 said to be stained with blood having not been seized, the same, gives rise to a suspicion they in fact shifted the deceased to the Primary Health Centre.

X) In view of the contradictory statements with regard to the question whether PW-1 or PW-2 had in fact gone to Village Primary Health Centre, the prosecution story becomes doubtful.

XI) The presence of accused No.1 with PW-1 having not been supported by the Panch witnesses, it is doubtful as to whether accused No.1 came to his house to consult his sons and after sometime

went back with other accused to assault on the three deceased and the party.

XII) The depositions of PWs. 1 and 2 on their plain reading would be found to be having parrot like statements, no reliance can be placed thereupon.

XIII) As on the same set of evidence A-7, A-8, A-11 and A-12 were acquitted by the trial court and A-5, A-6 and A-13 by the High Court, it would not be safe to convict and sentence the appellants on the basis of the contradictory version of the prosecution witnesses..

XIV) The first information report was lodged after a long time and as such the prosecution story should not be accepted.

XV) The motive alleged by the prosecution arising out of a dispute on a trivial issue ordinarily would not give rise to an occasion of murder of the three persons.

10. Mr. Sanjay R. Hedge, learned counsel appearing for the State, on the other hand would, contend :- I) PWs 1 to 3, although are related to each other, they being natural witnesses and their testimonies having not been shaken in essential details, the court below could not be said to have committed any error in passing the impugned judgments particularly when they being closely related to the accused, would not unnecessarily implicate them.

II) Although PWs. 1 and 3 in their evidence have stated the weapons of offence as sticks whereas in the first information report, they were mentioned as axe, their evidence cannot be disbelieved, more so when some incised wounds were found on the persons of the deceased.

III) The motive for killing of the three persons is evident as it has been brought out on record from the deposition of PW-19 that the accused party had clearly stated that as PWs. 1 and 2 had brought their maternal uncles for the purpose of resolution of dispute, they would not let them go and finish them.

IV) Non-mentioning of the names of the witnesses who had brought the deceased to the Primary Health Centre and later to the Civil Hospital, Belgaum is not material as the doctors must be busy in attending the patients immediately and naturally they would not pay any attention to the persons who brought them or record their statements or names.

V) Non-mentioning of the mode of transport and name of PW-3 must be held to be an omission of a minor nature as ordinarily such details are not necessarily to be recorded in contemporaneous documents.

VI) Non seizure of the blood stained clothes worn by PW-1 and PW-2 must also be viewed as a minor error on the part of the Investigating Officer.

VII) On a proper reading of the evidence of PW-2, it would appear that before the Village elders not only A-1 but also PW-1 was present and from the shop/residence of Shivappa Bailappa Chikkanavar (PW-21) they went to a tea shop.

VIII) Even the witnesses who had turned hostile in their deposition before the Court conceded that the incident had taken place near the tea shop, goes to show that they supported a part of the prosecution case with regard to the place of occurrence.

IX) The first information report having been lodged within 2 = hours at Kulgod Police Sation, which is at a distance of 16 kms.

the truthfulness of the prosecution case cannot be doubted.

X) In the first information report the name of PW-1 could not have mentioned as regards the death of the three deceased as they were sent to Civil Hospital, Belgaum in injured conditions and the factum of the death of all the three persons was not known.

XI) It is not correct to contend that the dispute was on a trivial issue, namely collection of few coconuts by A-1, A-8 and A-5 accused No.1, but it was a longstanding boundary dispute.

11. A holistic approach, in our opinion, is required to be taken in a case of this nature.

The first information report, having regard to the distance between the place of occurrence and the police station cannot be said to have been lodged after a long delay. The incident took place at about 2 O' clock in the afternoon. It must have continued for sometime. The mental condition of the prosecution witnesses can be well imagined. They had to arrange a transport to take three persons

who were severely injured to the hospital particularly when one of them had suffered grievous injuries. They were taken to the Primary Health Centre of the village.

12. Dr. Siddramappa, PW-25, noticed the following injuries on the deceased :- DECEASED VITTAL TIMMAPP LADDI "1. Laceration injury in left side of parietal region, 3" x 2".

2. Abrasion in on left side of forehead and left temporal region.

3. Lacerated wound in occipital region 3 in number 1 =" x 1" x =" ; 1" x <" x <" ; =" x =" x =".

4. Abrasion on left side of knee."

DECEASED VENKAPPA TIMMAPP LADDI

1. Two vertical 8" x1" contusions on right posterior axillary line 1" apart from each other.

2. Two parallel vertical 6" x 1" reddish contusion left part of axillary line on body.

3. Contusion injury in the back on left scapular region roundish.

4. Laceration injury in the frontal region 3" x 2" x 1".

5. Laceration injury in the left side of temporal region 4" x 2" x 1".

6. Laceration injury in the occipital region 2" x 1" x 1" =". "

DECEASED VITTAL YALLAVVA HARIJANA 1. Bruise cum laceration in the occipital region 2" x 1" x 2".

2. Injury seen on left lower limb at the junction of upper 2/3rd and lower 1/3rd looks like fracture of both bones.

3. Lacerated injury in the parietal region 2" x 2" x 1".

The doctor was of the opinion, keeping in view the infrastructure available at Primary Health Centre, that they could not have been properly treated. They were, thus, advised to take them to Civil Hospital at Belgaum.

The distance between the village and Belgaum is also considerable.

13. The post-mortem reports of the three deceased show the nature of injuries suffered by them. We may reproduce the same heretobelow:- DECEASED VITTAL TIMMAPPA LADDI - "1. Sutured wound left parietal area 3" in length.

2. Abrasions covering left 1/3rd of forehead and left temporal area blackish in colour.

3. 3 wounds on the occipital area as shown in the figure 1 <" x 1" ; 1" x <" and =" x <:, blood dot bone exposed.

in on left side of forehead and left temporal region.

4. Abrasion left knee 1" x 1 <". "

DECEASED VENKAPPA TIMMAPPA LADDI

1. Two parallel, vertical 8" x 1" contusion reddish in colour on right post axillary line 1" apart on back.

2. Two parallel, vertical 6* x 1" reddish contusion on left post axillary line on back.
3. Defused contusion on the back.
4. Sutured wound from frontal hair line in the centre extending upwards 2 =" - incised, bone deep wound.
5. Sutured wound in occipital region, irregular 2" x <" - lacerated wounds.
6. Parallel to injury. No.5 bone deep sutured wound 2" in length lacerated.
7. Parallel to injury No.6 bone deep sutured wound 1" - lacerated.
8. 2 = long bone deep sutured wound on left fronto parietal region. Injury Nos. 4, 5, 6, 7, 8 clotted blood present.
9. Dark brown colour contusion on a dorsum of the right hand 2" x <" Posterior lateral aspect of right arm, = x <"
10. Contusion bridge of the nose.
- 11 Multiple dark brown abrasions of forehead ranging from 4 cm to 2/ = cms.
12. Lacerated wound on mid shin lt. leg 1" x ="
13. Contusion, anterior aspect of left knee =" X <". "
14. Before coming to the police station, PW-1 got the first information report scribed by PW-2 who

is a graduate in Science. He wrote the same in English. That must have also consumed some time. It was in the aforementioned circumstances that the first information report was lodged at the Police Station within a period of 2 = hours from the time when the incident had taken place; the police station being at a distance of 16 kms from the village.

We, therefore, do not find that any delay at all was caused in lodging the same.

15. The evidence of PW-34, that only PW-1 was present at the time of recording of the first information report is of no consequence.

Admittedly PW-1 was the first informant. The Head Constable could not have remembered as to who else had come with him. He could have refreshed his memory on the basis of the first information report alone.

It is true that whereas in the first information report the overt act on the part of the appellants was said to have been caused with axe, in their depositions no prosecution witness stated that overt act was caused with bamboo sticks.

16. The deceased were seriously injured. It is, therefore, not expected of PW-25 to record in detail the names of the persons who had brought them to the Primary Health Centre or the transport in which they were brought.

Their condition was serious. Naturally the first concern was to see that the available medical aid is provided to them so that they could reach Civil Hospital, Belgaum as early as possible. The priority of the doctor would be to save the lives of the injured and not to make entries. Furthermore there was not only one injured, there were three persons who had suffered grievous injuries. The doctor was also required to notice the number of injuries suffered by them. He did so.

17. PW-25, Dr. Ashok, who conducted the postmortem examination on the dead body of deceased Venkappa Laddi opined that the death was due to head injuries. Dr. Sycheta Manohr, PW-26, who conducted the postmortem examination on the dead body of Vittal Thimappa Laddi stated the cause of death of the deceased as coma secondary to injury to the vital organ. Dr. Vijyvithal, PW-29, who conducted the postmortem examination of the dead body of Vittal Harijan opined that the death was due to coma as a result of negugin shock secondary to fracture skull, haemotoma brain and laceration of left temporal lobe of brain.

Each of the deceased also appears to have suffered one incised wound.

18. PW-34, P.I.S. registered the case. He recorded the statements of PWs. 1, 2, 8, 9, 10, 17, 18, 20, 21 and 24. He drew the map of the place of occurrence.

The investigation in the case was completed by C.P.I. Sangangouda Shivangouda Patil, PW-40.

19. We may notice the evidence of PWs. 1, 2 and 3 in regard to the overt acts committed on the deceased.

In the first information report it is stated :- "Subhash hit with axe twice on the head of my uncle Vittal Laddi. He fell down and in fear we started running. My uncle Venkappa was chased by two persons of Gataprabha, caught him and Gurunath assaulted Venkappa by hitting on the head with the axe twice. And Srimantha hit twice with axe on the head of Venkappa and two persons from Ghataprabha held tightly Vittal Harijana, and Ashok assaulted Vittal with axes on the head.

Then he fell down and Donkappa with his cane hit him on his left knee, and Hanumantha and Govindappa assaulted Shivappa Savalagi with hatchets on his head and other parts of the body".

PW-1 in his deposition stated :- "That had come there assaulted Vithal Harijan with a Bidaria stick on his head and then the deceased Venkappa Laddi tried to run by getting down the steps towards the Nala being afraid of the accused, and A. Nos. 2, 3 and a person from Ghp. assaulted Venkappa Laddi with stick on his head, and Venkappa Laddi fell down sustaining injuries on his head and fell down on the ground."

PW-2 in his deposition stated :- "Then myself and PW-1 went by the side of the liquor shop and when my mother's younger brother Venkappa Laddi was going towards the Nala A. Nos. 2, 3 and 2 persons of Ghp wearing Dhoti followed them and A. Nos. 2 and 3 assaulted with sticks on the head and leg of Venkappa Laddi."

PW-3 in his deposition stated :- "A. nos. 2 and 3 and 2 persons who were wearing dhoti assaulted Venkappa Laddi, who was running towards the Nala. And when he was 2 step down, he was assaulted by them with sticks on his head, and on receiving the bleeding injuries, he fell down unconscious."

20. Except contending that depositions of PWs 1 to 3 are tutored ones and they had made parrot like statements, Mr. Viswanathan has not been able to show before us that the depositions of three witnesses had been shaken in cross-examination in essential particulars. A longstanding boundary dispute between the parties is not denied or disputed. The fact that the deceased were called for by the prosecution witnesses is also not denied or disputed. Their presence in the village is accepted.

21. The possibility that some of them were carrying axe and some of them lathis cannot be ruled out. Even the blunt portion of axe can produce the same nature of injuries.

22. We are also not in a position to accept the submission of the learned counsel that motive to commit the overt act must be disbelieved. The parties were on litigating terms. They had filed suits against each other. Boundary dispute between them was an old one. It may be true that quarrel started on collection of a few coconuts which fell on the land of the accused but they were collected on the premise that some coconut trees were within their own land.

23. PW-1 in his evidence clearly stated that coconut trees were standing on their land whereas as per the testimony of PW-2 and PW-3 they were standing on the bandh. The very fact that there existed a boundary dispute must have prompted PWs. 1 and 2 to call their maternal uncles.

24. There is overwhelming evidence on record to show that the incident had taken place in the village.

Once the genesis of the occurrence is proved, it is now well-settled, contradictions which are minor in nature would not be sufficient to dispel the entire prosecution case. It is true that all the three prosecution witnesses who have been relied upon by the courts below are interested witnesses. It must, however, be borne in mind that despite existence of their animosity, keeping in view the relationship between the parties, it is unlikely that they would be falsely implicated.

25. We have noticed hereinbefore the manner in which the entire incident had taken place. Prosecution witnesses intended that the disputes between them should be settled through mediation. It is only with that intent in view they brought the deceased to their own village so that the village elders may intervene in the matter so as to end their longstanding disputes.

The reason for attack on the deceased, as revealed by PW-2, is that as they had brought their maternal uncle to resolve the dispute, they would not let them go and finish them. Almost to the same effect is the statement of PW-9.

An effort had been made even by the village elders. Various options must have been given to the accused persons. One of the options which was given to the accused was to quote from the deposition of one of the prosecution witness, was "It is true, that we the elders told both the sides to settle the matter either by giving some portion of the land, or by taking some portion of the land". Accused No. 1 being the head of the family intended to consult his children only to know their view-points so that further negotiations may take place. They had gone to a tea shop for taking a cup of tea. They never expected that they would be attacked by the accused persons. They evidently did not comprehend that the deceased would be subjected to attack in the manner in which it was done.

26. All the prosecution witnesses are natural witnesses. The essential ingredients to prove the crime against the accused have categorically been stated by them. Both the courts below have placed implicit reliance on their testimonies.

Our attention has not been drawn to any major contradiction in the deposition of the witnesses so as to disbelieve the entire prosecution case.

The very fact that they had been taking the deceased who were grievously injured at that point of time from hospital to hospital is itself a pointer to show the state of mind they were having at the relevant time. It is, therefore, too much to expect that they would not only state the details of the manner in which the occurrence had taken place but also the names of all the persons who witnessed the same.

27. It is not the requirement of law that the doctors, even before admitting the injured or during their treatment, must note down every bit of details of the incident or names of the witnesses in the registers maintained by them.

If the doctors were engaged in discharge of their primary duty, viz., attending to the patients, we are of the opinion that only because in the registers the name of PW-3, who is said to have shifted them to the hospital, had not been mentioned by itself can be a ground for not relying on his testimony in support of the prosecution case. Such details are not necessarily recorded in the contemporaneous document. In any event, the purported discrepancies in the evidence of the prosecution witnesses as to who had shifted the injured to hospital or the mode of transportation, is minor in nature. For the self-same reason, only because his name was not mentioned in the First Information Report, may not itself be sufficient to discard his evidence particularly in view of the fact that whereas PW-1 went to the police station to lodge the First Information Report, services of PW-3 and others must have been taken for the purpose of shifting the deceased and injured to the hospital.

28. Mr. Viswanathan pointed out that blood-stained clothes of the witnesses were not seized. Even if it is accepted, the same merely points out an error on the part of the investigation officer. The same, by itself, is sufficient to discard the entire prosecution case.

Statements of PWs 1 and 2 as regards the name of the person who had gone to village in question to bring the deceased cannot be said to be decisive. Attention of the witnesses was not drawn to their earlier statements in cross-examination. Furthermore, the evidence that the deceased had come to the village for the purpose of resolution of dispute being consistent, it is difficult to disbelieve it. It is absolutely consistent in nature.

29. Submission of Mr. Viswanathan that, on the one hand that PWs 1 and 2 had contradicted themselves as to who had gone to the Village Primary Health Centre and at the same time his submission that they had been making the comments that they had been tutored do not go together. It is evident from the evidence of the prosecution witnesses that for the purpose of holding negotiations PW-1, on the one side and the Accused No. 1 from the other were present. It was only after the suggestion for the purpose of resolution of the dispute had been given, they had come to the tea stall.

It is true that PW-7, the owner of the tempo trax, turned hostile. The said witnesses, however, conceded that some incident had taken place near the tea shop. Some transport must have been used for taking them to the hospital. The statement of PW-7 had also been recorded under Section 164 of the Code of Criminal Procedure. He, however, as noticed, turned hostile.

30. Having regard to the evidences brought on record by the prosecution, we are of the opinion that only because other witnesses have turned hostile, the same should not by itself be a ground for coming to a conclusion that the incident had not taken place near the shop of PW-9.

31. It is also difficult to accept the argument of Mr. Viswanathan that only because Accused Nos. 7, 8, 11 and 12 have been acquitted, the same by itself should be a ground for recording a judgment of acquittal of the appellants.

32. Submission of Mr. Viswanathan that the prosecution has failed to show as to why a First Information Report was recorded under Sections 143, 147, 148, 324, 504 read with Section 149 of the Indian Penal Code which would go to show that the deceased was alive till 1730 hrs, cannot be accepted. They were being taken to the Civil Hospital, Belgaum. When the First Information Report was being recorded, the deceased were on their way to Civil Hospital, Belgaum. The factum of their death was, thus, not known to PW-1.

33. For the reasons stated hereinbefore, we are also not in a position to agree with the submission of Mr. Viswanathan that motive alleged being a trivial one, the prosecution case should not be believed as the dispute being related to boundary of agricultural fields, the parties were on litigating terms for a long time.

34. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly.