

SUPREME COURT OF INDIA

State of Bihar & Ors.

Vs.

Sodhan Daibagans & Anr.

CrI.A.No.1611 of 2009

(Pinaki Chandra Ghose and Uday Umesh Lalit,JJ.,)

01.07.2015

JUDGMENT

Uday Umesh Lalit,J.,

1. This appeal by special leave is directed against the judgment and order dated 22.01.2009 passed by the High Court of Karnataka at Bangalore allowing Criminal Appeal No. 1696/2005 preferred by the respondents herein and setting aside their conviction as recorded by the trial court and acquitting them of all the charges leveled against them.

2. On 06.09.2000, PW15 M.N. Somashekharaih, then working as ASI in Kota Police Station, reached the Police Station at 6.55 a.m. and was informed by Head Constable-37 that PW7 Jagadamba, daughter of Shivarudraiah of Mavukere village had informed on telephone that persons of Nayaka community had smashed her father with stones and were attacking the police personnel. PW15 instructed that an ambulance be sent to Mavukere village and left along with some police personnel for Mavukere. According to PW15 when he reached the spot at about 7.15 a.m. he saw Shivarudraiah having received serious injuries on his head, hand and legs and was writhing in pain and shouting “Ayo Ayo”. He made arrangements to send said Shivarudraiah for medical attention to hospital at Tumkur. According to him, out of two constables, namely Jayaram and Rajanna, one had received injuries and PW15 made inquiries with them. His superior reached the spot at about 9.30 a.m. and therefore said PW15 left for the Police Station.

3. At about 10.00 a.m., PW1 Siddaramaiah came to the Police Station with a written complaint which was registered as First Information Report, on the basis of which Crime No.135 of 2000 came to be lodged. The relevant assertions in the written complaint were as under:

“About one month ago, there was a quarrel in our village with regard to 5 acres land in Sy. No.135/1 and 129 between the members of Naik community, Uppara community and Lingayat community. In respect of the same, on 5.8.2000 Shekhar and others belonging to Naik community quarreled with us. With regard to this

enmity has arisen between us and members of Naik community and petty quarrels were taking place from time to time. In these circumstances on 06.09.2000 morning at 6.00a.m., I was standing on his cycle towards his land and came on the road opposite the house of Shivaramaiah, s/o Nanjundaiah and at that time residents of our village viz. (1) Sateesh, s/o Siddagangaiah (2) Siddaiah, s/o Sunnarangaiah (3) Lakshmaiah, s/o Sunnarangaiah (4) Suresh, s/o Late Chikkarangaiah (5) Shekaraiah, s/o Late Chikkarangaiah (6) Nanjaiah, s/o Late Chikkarangaiah (7) Shanakariah, s/o Late Chikkarangaiah (8) Kaluvaiah, s/o Late Chikkarangaiah (9) Shankaraiah, s/o Late Chikkarangaiah (10) Nanjundaih, s/o Late Chikkarangaiah (11) Manjukumar, s/o Kaluvaiah, (12) HMT Shivanna, s/o Nanjundaiah (13) Ramesh, s/o Nanjundaiah (14) Jagadish, s/o Shivananjaiah (15) Manjunath, s/o Shivananjaiah (16) Jayaramaiah, s/o Ramakrishnaiah (17) Shrirangaiah, s/o Puttiah (18) Rangandhamaiah, s/o Lakshmirangaiah (19) Nanjaiah, s/o Nanjundaiah (20) Ishwariah, s/o Nanjundaiah, all had formed unlawful assembly and were armed with clubs in their hands passed me on the road and unlawfully obstructed Shivarudraiah who was coming on the cycle. They stopped him and Shekhar pushed the cycle down and as soon as Shivarudraiah fell on the ground, Suresh, s/o Late Chikkarangaiah said that, "one of the two has to happen today, we will finish this fellow". As soon as he uttered this, all of them made Shivarudraiah sit on the ground, held his hands and legs and made him sleep on the ground. They placed his legs on a flat stone and smashed his legs with size stones (boundary marker stones) (Talakuttu). Shivarudraiah started screaming. They did not leave him and some of them relentlessly started beating Shivarudraiah with the clubs held by them in their hands. Hearing the screaming, Shivarudraiah's wife came running and embraced her husband. They pulled parvatamma and pushed her aside. Later they repeatedly kicked him with their legs. At that time, I screamed saying that, "they are going to kill Shivarudraiah". They saw people coming from the village side and threw away the clubs which they were holding in their hands there itself and ran away. Myself, Parvatamma and Jagadamma lifted Shivarudraiah. His left leg was smashed and was bleeding. There were open wounds on the right side of the head, right hand, forearm, left knee, right feet and left leg and blood was oozing out. This incident was witnessed by Chandrashekaraiah, s/o Gurulingaiah, Nanjegowda, s/o Shivanna, Narasimhaiah, s/o Chikkappa by standing in their respective lands. All of them were afraid of the members of the Naik community and did not come forward to help."

4. Shivarudraiah was admitted to Tumkur district hospital for treatment and while undergoing treatment, he died at 10.25 a.m. on 06.09.2000. Post Mortem was conducted by PW19 Dr. K.G. Shivamurthy on the dead body of Shivarudraiah at District hospital, Tumkur. Post Mortem revealed following injuries:-

- “1. Lacerated wound of 3”x1” present over the frontal region.
2. An aberration of 1½”x1” present over the anterior middle of the nose.
3. Lacerated wound of 1½”x1” present over the back of the right elbow.

4. Lacerated wound of 3"x1" present in between right index finger and thumb extending to the palmer aspect with bone deep.
5. Contusion of 4"x3" present over the left wrist and dislocation of the proximal phalanx of the index and middle finger.
6. There is fracture of the right upper 1/3 of the tibia and fibula.
7. Contusion of 2½" x1" present over the anterior aspect of the right knee.
8. Lacerated wound of 4"x5" present over the deep of the right foot. In between 4th and 5th tow and there is dislocation of the 4th and 5th metatarsal joints.
9. There is fracture of the lower 1/3 of the left labia and fibula.
10. Lacerated wound 6"x2" present over the middle border of the left foot and bone deep.
11. Lacerated wound of 3"x2" present over the dorsum of the left foot.
12. Lacerated wound of 2½"x2" present in between the left 3rd and 4th toe.
13. Contusion of 1"x3" present over the right zygote of the acetyl region.
14. Lacerated wound of 2"x1" and skull bone deep present over the occipital region."

The cause of death was said to be hemorrhage resulting from aforesaid injuries.

5. During investigation statement of PW2 Savitha, daughter of Shivarudraiah was recorded on 07.09.2000, while that of PW13 Parwathamma wife of Shivarudraiah was recorded two days after the incident. After due investigation 19 persons were sent for trial vide S.C. No. 71/2000 before the Fast Track Court No.III at Tumkur.

6. The prosecution principally relied on the testimony of PW1 Siddaramaiah, PW2 Savitha and PW13 Parwathamma who were stated to be eye-witnesses to the incident while other daughter of Shivarudraiah, namely, PW7 Jagadamba, PW3 Nanjegouda and PW4 M.G. Chandrashekaraiah were the witnesses who had arrived at the scene of occurrence soon after the incident. PW1 Siddaramaiah accepted that names of Manjukumar and Shrirangaiah, s/o Puttiah were wrongly mentioned in the FIR. Though it was not so asserted in the FIR, PW1 in his oral testimony stated that accused Manjunath had assaulted Shivarudraiah with a sickle. PW2 Savitha stated that she was accompanying her father Shivarudraiah on the relevant day when they were proceeding from their house to go to their farm land. According to her she started screaming soon after the assault began. PW13 Parvatamma deposed that shouts and screams of her daughter attracted her attention and she came running from the

house and saw the assault. According to the witness she had tried to intervene and as a result had received simple injuries and had tried to cover her bleeding husband.

7. The trial court while accepting the case of the prosecution came to the conclusion that the case against the respondents was fully proved. However, giving benefit of doubt to original accused Nos.12 and 13, it acquitted them of all the offences alleged against them. It convicted and sentenced original accused Nos.1 to 11, 14 to 19 under Sections 148, 341, 302 read with 149 IPC sentencing them to undergo sentences including the imprisonment for life. Accused Nos. 4 to 6 were also additionally convicted and sentenced under Sections 114 read with 302 IPC while original accused No.16 was further convicted and sentenced for the offences under Section 324IPC read with 506 IPC. Thus, out of 19 persons who were tried, 17 accused stood convicted by the Trial Court vide its judgment and order dated 21.07.2005.

8. The convicted accused i.e. the respondents herein carried the matter further by filing Criminal Appeal No.1656 of 2005 in the High Court. The High Court found the conduct of PW15 unexplainable in that he had chosen not to record the statements of two police constables who were present at the site and one of them was injured and also had chosen not to ask questions to injured Shivarudraiah. The High Court further found it completely unexplainable that PW15 had not made any inquiry in the village itself. The ultimate registration of crime on the basis of a written FIR which was scribed by PW11 and brought to the Police Station by PW1 was not found to be bona fide. The High Court observed that there was unexplained delay in registering the crime and it was extremely doubtful whether PW1 was an eye witness to the occurrence. It further observed that in the original FIR, the name of PW2 Savitha was not mentioned at all, creating doubts regarding her presence. Furthermore, if PW13 had tried to cover her bleeding husband, her blood stained sari should have been produced on record. Her statement was also recorded two days after the incident, again creating a situation of doubt. With these reasons, the High Court observed that the possibility of innocents being implicated in the matter could not be ruled out. Giving benefit of doubt to the convicted accused the High Court thus acquitted all of them of the offences alleged against them. The State being aggrieved has approached this Court by filing this appeal by special leave.

9. Appearing in support of the appeal, Mr. Parikshit P. Angadi, learned Advocate submitted that three eye witnesses, namely, PWs 1, 2 and 13 were completely consistent in their assertions about the involvement of the respondents herein and that the FIR having been lodged at 10.30a.m. there was absolutely no delay in registration of crime and that the reasons which weighed with the High Court were completely incorrect. Appearing for the respondents, Mr. Rajesh Mahale, learned Advocate submitted that if PW15 was present in the village immediately after the incident, it does not stand to reason why he did not make any inquiry and register the crime. If two constables were present in the village, one of them being injured, that source was a better one to gather information and register the crime. Furthermore, the place of occurrence being surrounded by various houses in the village, none of the inmates of those houses was examined as witness. In his submission, the reasons given by the High Court while acquitting the respondents were absolutely correct and in any case was a possible view in the matter.

10. We have gone through the record carefully and considered the submissions. The testimony of PW15 reveals that a telephone call was received in the police station from PW7 Jagadamba about the incident of assault. Having reached the village by 7.15 a.m., it was logically expected of him to start making inquiries about the crime and the identity of alleged assailants. Additionally, if out of two constables present in the village, one of them was injured, this by itself was one good source of information. According to the witness, he had spoken to those two constables and yet no steps were taken to register the crime. The witness further accepted that he had seen Shivarudraiah writhing in pain. In the circumstances, it would also be expected of him either to ask him or accompany him to the hospital, he being primary source of information. The conduct in the matter exhibited by PW15 is completely unexplainable. Similarly, it also does not stand to reason why PW1 Siddaramaiah did not approach the police when they were present in the village soon after the transaction and chose to make a written complaint scribed by PW11 and thereafter lodge it in the police station 10 kms. away. He himself later accepted that in the complaint, he had added two names by mistake. Secondly, the attribution to one of the accused having given blow by a sickle was also not mentioned in the complaint. The injuries found in the post mortem also do not support such assertion about injury by a sickle. In the circumstances, the assessment made by the High Court expressing serious doubts whether the PW1. Siddaramaiah was eye witness to the occurrence, in our opinion, is definitely a possible view. The presence of PW2 Savitha as well as PW13 Parwathamma is also doubtful for the reasons mentioned by the High Court.

11. Having analyzed the facts on record, the reasons stated by the High Court while acquitting the respondent are quite possible from the evidence on record. While considering this appeal against acquittal, the view expressed by the High Court being a possible view, we do not see any reason to interfere in the matter. We, thus, affirm the judgment and order of acquittal passed by the High Court and dismiss the present appeal.