SUPREME COURT OF INDIA

B.Virupakshaiah

Vs.

State of Karnataka & Ors.

Crl.A.No.640 of 2012

(Pinaki Chandra Ghose and R.K.Agrawal,JJ.)

12.02.02016

JUDGMENT

Pinaki Chandra Ghose, J.

1. These appeals, by special leave, have been directed against the judgment and order dated 19.01.2011, passed by the High Court of Karnataka, Circuit Bench at Dharwad, in Criminal Appeal No. 2664 of 2010 whereby the High Court allowed the appeal of all the twelve accused and acquitted them of all charges. The present appeals are filed against the said acquittal order passed by the High Court; Criminal Appeal No.640 of 2012 is by the complainant, who is son of the deceased, and Criminal Appeal No.641 of 2012 is by the State.

2. The facts of the case, as disclosed by the prosecution, are that an FIR was lodged on 22.11.2005, at Toranagallu Police Station by Sheikh Hussain Sab (PW3), stating that he and his colleague Basavana Gouda (PW2) were working as Security Guards in Aqua Minerals Factory and when they were on duty on 22.11.2005, at about 1:30 PM, while taking food they heard a bang sound from outside and immediately they went out and saw that a Bolero Jeep had dashed against Tata Indica Car on N.H. 63 in front of Acqua Minerals. They saw four unknown persons pulled out two inmates of Indica Car and assaulted on their head, face and hand with sharp edged weapons, causing heavy bleeding injuries. The four people then drove away towards Bellary. One of the deceased named Bhimaneni Kondaiah died on the spot whereas the other deceased Pavadappa died on way to the hospital.

3. After investigation, charge-sheet was filed against twelve accused. After considering the material on record and hearing the counsel for the accused persons, they were charged for offences punishable under Sections 143, 147, 148, 341, 109, 120-B, 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The charges were read over and explained to them. All the accused persons pleaded not guilty and claimed for trial.

4. The Trial Court by its judgment and order dated 8.04.2010, convicted all the accused for hatching a conspiracy and therefore, in furtherance of the conspiracy, for killing the deceased

and his driver and sentenced them to life imprisonment. Various other shorter sentences for other offences were also imposed by the Trial Court. The conviction was based on the testimonies of the six eye witnesses, corroborated by the recovery evidences and the testimonies of other witnesses who proved the existence of a conspiracy planned between the twelve accused. The motive believed by the Trial Court was to avenge the death of four relatives of the accused, six months ago which was believed to be committed by the deceased Bheemaneni Kondaiah and his men. Aggrieved by the Trial Court judgment and order, the convicted respondents filed appeal before the High Court, which was allowed on the ground that there is absence of proof of wrongness on the part of the accused and also certainty of the guilt of the accused and as such, they were entitled to the benefit of doubt. Accordingly, the High Court by the impugned judgment set aside the judgment and order dated 8.04.2010 passed by the Trial Court and acquitted the accused of all the charges.

5. Mr. Manan Kumar Mishra, learned senior counsel appearing on behalf of the complainant, has made various submissions on the basis of the Trial Court judgment. His main contention is that the testimonies of the eye-witnesses, wherein PW1, PW4, PW5 and PW6 have specifically stated the number of persons present as well as the individual act committed by each of the accused/ respondents in the incident, are clinching evidence and cannot be brushed aside. Further, the recovery of the weapon used and the Indica Car involved in the incident cannot be overlooked. Over and above this, the learned senior counsel contended that the evidence of existence of conspiracy has been established by individual witnesses.

6. Mr. Pradip Kumar Ghosh, learned senior counsel appearing on behalf of the accused/ respondents made various submissions countering the arguments put forward by the appellant. The material alterations between the testimonies of the eye-witnesses were pointed out to prove that PW1, PW4, PW5 and PW6 were not material eye-witnesses and that they have either not seen the incident or they came to the spot after the incident had occurred. The conduct of the eye-witnesses was argued to be unnatural and their silence in not making any statement to the police officers at the earliest, casts doubt in their testimonies. Many of the witnesses to recovery, produced by the prosecution, turned hostile and even the Investigating Officer could not identify the recovered articles. Finally, the learned senior counsel appearing on behalf of the accused/ respondents contended that there is no iota of evidence to prove that there existed any conspiracy at any point of time and the evidence to prove the alleged conspiracy are not cogent.

7. In our considered opinion, the prosecution case revolves around the testimonies of the eye-witnesses, the existence of conspiracy and the recovery of the alleged weapons. The prosecution produced 71 witnesses in total, of which 6 were stated to be eye-witnesses. However, on perusal of the material on record, only PW2 and PW3 seem to be the chance witnesses who were in close proximity to the place of incident due to their job. In their statements to the police, they deposed that four unknown persons came out of a big jeep, dragged and assaulted the two occupants of the Indica Car. However, in their statements before the Court, both made material additions and stated that there were eight assailants, but none of the witnesses could identify the accused as PW3 claimed that he saw the assailants from a long distance; he also deposed that it was a jeep. PW2 was left blind because of an

eye-surgery one year prior to his testimony and as such could not identify the accused. However, he did state that there were eight unnamed assailants which is a material addition from his statement before the police. PW1, PW4, PW5 and PW6 are other eye-witnesses, but this Court cannot repose faith on any of them. Thus, there are material alterations in their statements from the testimonies of PW2 and PW3, and even with the deposition of PW71 i.e. the Investigating Officer. All these four witnesses kept quiet for a long time after the incident and did not state the incident to any other person or even to the police. PW1 and PW5 deposed in similar terms that there was a huge gathering of about 100-200 people and many cars had stopped due to the accident. PW4 and PW6 deposed in similar terms that about 25 people had gathered there. PW6 even stated that he did not know the assailants. There exists grave material alterations between the testimonies of these witnesses and despite the fact that they happened to be around police official soon after the incident, nothing was stated by them about the incident to the police. Even PW71 deposed that the National Highway was not blocked due to the incident and when he reached the spot, there was no jam or huge gathering of people.

8. The next evidence, which is pivotal to the prosecution case, was the recovery of weapons and other articles. The High Court has thoroughly considered these recoveries and has rightly disbelieved them. Though the Forensic Science Laboratory Report was to be filed, it will not come to the aid of the prosecution as the recovery was not established by the prosecution. Even the number of the assailants was doubtful ever since the beginning. This lacuna in the investigation goes on to hit the root of the prosecution case. PW61, PW65 and PW67, who were attesting witnesses to the recovery of articles, like weapons, clothes, etc., turned hostile.

9. The next aspect for our consideration is the alleged conspiracy. But as pointed out by the High Court, there exists no cogent and positive evidence to prove the conspiracy. Proof of conspiracy is strictly conditional upon there being reasonable grounds to believe that two or more persons had conspired together to commit an offence. In the present case, the cultivators of the respondents were examined to prove that the accused respondents had prior plans to leave their place of cultivation. Other witnesses were produced to testify the meeting in which the conspiracy was planned, but PW17 and PW23 did not state specifically as to what conspiracy was being hatched. PW 46, PW47 and PW48 did specify the existence of conspiracy, but in their cross-examination, their conduct was seriously doubted. They did not make any statement to the police to this effect and it was admitted by PW48 that the fact of conspiracy was told to him by PW46 three months prior to the incident. But PW48 kept quiet even though the deceased was his uncle. However, these evidences fail to hold any veracity as it seems unnatural and the hostility of these witnesses was specifically made out in the cross-examination.

10. Apart from the above pivotal facts, the High Court has pointed out other serious lacunae in the prosecution case. The recovery of the mobile phone was relied upon in evidence. However, no evidence was produced to link the said mobile to any of the accused. The recovery of the said mobile is already stated to be not supported by evidence. The recovery of the weapon is not established since the witness for the seizure Panchnama have turned hostile.

11. Thus, in the light of the above discussion, we find no compelling and substantial reasons to interfere with the impugned judgment passed by the High Court. The appeals are, accordingly, dismissed.

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