
(1979) 07 KAR CK 0002
In the Karnataka High Court

Mutteppa Dhareppa Chigadolli and Others	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 504
Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (1980) CriLJ 1065

Hon'ble Judges : M.S. Nesargi, J;D.R. Vithal Rao, J

Bench : Division Bench

Judgement

M.S. Nesargi, J.—The appellants have challenged the convictions and sentences passed on them for having committed the offences punishable under Sections 148 and 302 read with 149 of the Indian Penal Code, by the Principal Sessions Judge, Belgaum, in Sessions Case No. 38 of 1978. Each one of them has been sentenced to undergo rigorous imprisonment for one year on the first count and imprisonment for life on the second count. He has ordered that the substantive sentences should run concurrently.

2. The undisputed facts are that the deceased Shiddappa Menagenappa Goudappanavar alias Gavisiddappa, is the father of P.W. 2 Krishnappa and brother of P. W. 3 Gangawwa. One Laxmappa is the brother of the deceased and one Kallawwa is one of the wives of the deceased. All these persons were residing in Kalarkoppa village, about 11 Kms. away from Gokak, situated by the side of Gokak Melavanki road.

2-A. A-2 and A-3 are the sons of A-I, A-4 to A-6 are alleged to be the partymen of A-I.

3.-4. The prosecution case is that P. W 8 Shiddagowda, who is both a revenue patil and police patil of Hadiginal village, was also the secretary of the Agricultural Co-operative Society of Hadiginal (hereinafter referred to as the Society). A-I had taken loan from the Society and was unable to repay it. He had also taken Takavi loan and had not been able to repay it. As he wanted to

discharge these loans, he sold two acres of his "Karl Hola" land in favour of the sons of the deceased for Rs. 8,000/- and received Rs. 5,000/- in advance and handed over possession of the said two acres to the deceased. Crops had been raised by the deceased. Some dispute, for one reason or the other, arose between the deceased and A-1 and A-1 attempted to harvest the crops raised by the deceased. that gave rise to complaints and counter-complaints, and the same were compromised in the presence of P. W. 8, P. W. 16 Abdul Sattar, Sub-Inspector of Police, Kolgod, and others, Even thereafter, ill-will between the two continued. While effecting the compromise, the deceased had been made to pay to A-1 an additional sum of Rs. 2,000/- and the sale deed had been registered in favour of the sons of the deceased as at Ex. P-2.

5. The incident in question is said to have taken place by about 12 noon on 23-3-1978 at a distance of 1 K. M. on Gokak Melavanki road towards Melavanki side. About 8 months prior to that date there had been a quarrel between the younger son of A-1 and the deceased on the point of the deceased having yet to pay Rs, 20/- as he had consumed Arrack in the shop of A-1 at Hadaginal. About 4 months prior to the incident there had been a dispute between the deceased and A-5 in regard to the waterway in between their lands and one Adiveppa P. W 7 intervened and separated them, while they were scuffling. A-6 worked as an agricultural labourer of the deceased on daily wages of Rs, 3/- for a period of two years and had taken Rs. 200/- or so, on one occasion, as advance but had not repaid it, but on the other hand, had given up working for the deceased and as such there had been quarrels between them.

6. In the morning of 23-3-1978, a Thursday, the deceased told P. W. 2 to take butter to Gokak Shandy for sale. P. W. 2 took a kilogram of butter, in an earthen pot and put it in a satchel. He took his breakfast and then left his house by about 10 A. M. on foot and proceeded towards Gokak. When he was in the outskirts of the village Kalarkop, P. W. 3. Gangawwa, who was residing separately, joined him. She was carrying about 12 Kilograms of cotton grown in her land for sale in Gokak. They went together talking with each other. At Adibatti cross, which is about 1/2 a mile from Gokak, P. W 6 Ittappa C. W. 6 Fakirappa and another had set up their scales and were purchasing cotton. P. Ws. 2 and 3 reached that spot round about 11-30 p. m. or so. P. W. 3 sold her cotton to P. W. 6 and received money from him. Thereafter, they proceeded on foot towards Gokak. After they had covered a distance of about a few paces from the cross, the deceased overtook them on his bicycle which is said to be M. O. 1. He got down and told P. W. 2 to hurry up as it was about to be midday and that he would be waiting for him in Gokak, He then proceeded further on his bicycle. When he had gone about 25 to 30 paces towards Gokak, these six accused emerged suddenly from a hut in a land situated on the right side of the road. A-1 had a stick in his hand while A-5 had a sickle and the remaining had axes in their hands. They are said to be M. Os. 14, 15, and 10 to 13 respectively. A-1 pulled the bicycle of the deceased by holding the carrier. A-3 cut on the right thigh of the deceased when the deceased was about to get down from the bicycle. All the accused dragged the

deceased to a distance of about 12 feet. All the accused surrounded him and showered blows on him with the weapons they had in their hands. P. W. 2 attempted to go to the rescue of the deceased, but A-1 raised his stick and threatened him with dire consequences. P. Ws. 2 and 3 stood at a distance and bawled. By that time, P. W. 5 Vithal of Kyamankolla village, had reached near about the spot on his bicycle as he also had brought about 3 kilograms of cotton for sale and had sold the same at the cross. He heard the cries of P. Ws. 2 and 3 and rushed towards the spot pushing his bicycle by his side. He saw the assault by all the accused on the deceased. P. Ws. 2 and 3 sat weeping by the side of the dead body after the accused ran away, taking their weapons with them. P. W. 5 told P. W. 2 that it would serve no purpose by sitting weeping there and it was better to go to the police station at Gokak and lodge information. P. W. 2 proceeded towards Gokak by a shortcut and reached the police station by about 1.00 p. m. or so. P. W. 18 Shankar, Sub-Inspector of Police, was the officer incharge of the station house. P. W. 2 gave his information to P. W. 18 and the same was reduced to writing as per Ex. P. 3. P. W. 18 registered a case in Crime No. 39 of 1978 at 1.15 p.m. and sent F.I.R. to the Court of the J. M. F. C, Gokak, as per Ex. P. 27, by muddam through P. C. No. 380. He sent express reports to his superiors. He then telephoned to P. W. 16 Abdul Sattar, Sub-Inspector of Police of Kulgod, and informed him about the murder and alerted him regarding the accused persons as they were living within the jurisdiction of Kulgod police station. P. W. 2 went to the spot. P. W. 18 collected his staff, proceeded to the spot and reached there by 2-45 p. m. On reaching there, he arranged for watch and then held inquest proceeding over the dead body after securing panchas, including P. W. 12 Sayyadali, between 3 p. m. and 5-30 p.m. as per Ex. P. 10. During the inquest he recorded the statements of P. Ws. 2, 3, 5, 6 and 4 others. Thereafter, he recorded the scene of offence panchanama as per Ex. P. 11 and seized M. Os. 1 to 4, cycle, bloodstained yellow silk pataka, one pair of chappals and one plastic button, respectively, and bloodstained and unstained earth as per M. Os. 16 and 17 from the scene of offence. By about 6-50 p.m. P. W. 10 Basawant, C.P.I., reached the spot and took up further investigation from P. W. 18.

It is further the case of the prosecution that by about 3-00 p. m. P. W. 8 was in Shidharoodh Math of Hadaginal village, being engaged in recovering loans due to the Society and takavi loans also. P. W. 10 Dundappa had gone there to request P. W. 8 to give some more time to discharge the loan taken from the Society. At that time, A-2 and A-4 to A-6 went there wearing bloodstained shirts and clothes and fell at the feet of P. W. 8. They told P. W. 8 about the murder and requested him to save them somehow. P. W. 8 secured two Sanadies (one of them is P. W. 11 Shiddappa) and his bullock cart. He and the Sanadies took A-2 and A-4 to A-6 to Gokak police station in that bullock cart. They reached there by about 7.00 p. m. P. W. 10 was present in the police station. P. W. 8 produced A-2 and A-4 to A-6 before P. W. 10. P. W. 19 found that their clothes were stained with blood. He secured panchas including P. W. 12 and in their presence sealed and seized M.

Os. 20 and 21 from the person of A-2 under panchanama Ex. P. 13, M. Os. 18 and 19 from the person of A-4 under panchanama Ex. P. 12, M. Os. 22 and 23 from the person of A-5 under panchanama Ex. P. 14, and M. Os. 24 and 25 from the person of A-6 under panchanama Ex. P. 15. He sent away the panchas and interrogated the accused separately. A-4 voluntarily stated before him that he had hidden one sickle, four axes and a stick, in a hay stack in his village, would show the place and produce the articles. He recorded the information as per Ex. P. 31 and took the thumb impression of A-4 below it. Thereafter, he, P. W. 12, the other panch, his staff and A-4 left in a jeep towards Hadiginal village and A-4 took them to the hay stack standing nearby his village and produced M. Os. 14 and 10 to 13 from inside the hay stack. P. W. 19 sent for P. W. 8. P. W. 8 and others went there with a petromax light, as it was night. P. W. 19 sealed and seized M. Os. 14 and 10 to 13 under panchanama Ex. P.-16. P.W. 19 continued the investigation and in the course of the same arrested A-1 and A-3 on 17-4-1978 and on completing the investigation placed charge-sheet against the accused persons.

7. Total denial is the main defence of the accused. They have contended that P. Ws. 2 and 3 have stated against them falsely due to enmity; that Shiddappa was murdered not at 12 noon on 23-3-1978 but somewhere during the night between 23-3-1978 and 23-3-1978 (24-3-1978) while he was returning on his bicycle from Gokak and it was through the connivance of P. Ws. 2, 16, 18 and 19 that witnesses had been got up against them. They have challenged the evidence of P.W. 5 on the ground that he is the co-brother of the brother of the deceased and therefore, he had stated falsely against them.

8. That Shiddappa, father of P.W. 2, had been cut to death on the spot where the dead body was found by the side of Gokak Melavanki road on or about 23-3-1978, has not been disputed, and, in our opinion, cannot be disputed at all. Further that M. O. 1 bicycle was his bicycle and it was lying on the said road, thereby indicating that he had been attached while he was proceeding on his bicycle, cannot also be disputed.

9. Now it is to be seen whether P. Ws. 2, 3 and 5 had really witnessed the assault on Shiddappa, and P. W. 6 had heard such a commotion taking place by about 12.00 noon on 23-3-1978.

10. It can be stated here itself that the prosecution has relied mainly upon the evidence of P. Ws. 2, 3, 5 and 6 in regard to the occurrence. It has also relied on circumstances relating to the arrest of A-2 and A-4 to A-6 and the recovery of M. Os. 20 to 25 and M. Os. 15, 14 and 10 to 13, and lastly on the evidence pertaining to the motive.

11. So far as the dispute between the deceased and A-1 in respect of "Karl Hola" and the enmity between the deceased and A-1 in regard to that, are concerned, they are satisfactorily established by documentary evidence showing that there had been complaints and counter-complaints by these persons. that A-1 had sold

two acres of land in the names of the sons of the deceased and that a compromise had been effected between them in the presence of P. W. 16, P. W. 8 and others, is proved. We do not consider it necessary, in view of the reasons and conclusions we are recording in the succeeding paragraphs, to go into the evidence adduced by the prosecution regarding the ill-will between A-5 and the deceased and A-6 and the deceased.

12. In view of the undisputed fact that the deceased Shiddappa had purchased two acres of land from A-I, in the names of his sons and there was dispute in regard to that, the case of the prosecution that the ill-will continued between the deceased on the one hand and A-I and his people on the other, is clearly established. P. W. 2 who is the son of the deceased, must also have borne enmity against the accused. Similarly, P. W. 3 also must have had ill-will against the accused persons. These facts and circumstances make P. Ws. 2 and 3 "interested witnesses" within the meaning of what is laid down by the Supreme Court in the decision in *Mst. Dalbir Kaur and Others Vs. State of Punjab*, . The Supreme Court has held as follows:

A close relative, who is a very natural witness in the circumstances of a case, cannot be regarded as an "interested witness." The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason.

The Supreme Court has deduced this ratio on the basis of the principles laid down in the decisions in *Dalip Singh and Others Vs. State of Punjab*, , *Masalti Vs. State of U.P.*, , *Guli Chand and Others Vs. State of Rajasthan*, and *The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh*, .

13. The settled position in law in regard to the evidence of "interested witness", is that the Courts should scrutinise the same with extra care and caution as it would not be prudent to place reliance only on such evidence to base a conviction, and further that in case such evidence is found reliable on such scrutiny, the Court may act on it without looking for corroborative evidence.

14. One of the main principles of appreciation of evidence in a criminal trial is that the evidence of a witness who is not shown to be "interested" should be scrutinised carefully and if it is found that it is not artificial, not unnatural, not improbable and does not suffer from intrinsic infirmities, then it can be relied upon. If it suffers from any of these undesirable factors, the evidence, though given by an independent and disinterested witness ought not to be relied upon.

15. Now we proceed to scrutinise the evidence of P. Ws. 2 and 3, who as we have already found are "interested witnesses", to find out whether their evidence suffers also from any infirmities narrated above.

16. The prosecution has examined P. W. 6 Ittappa to establish that he had purchased cotton from P. W. 3 Gangawwa and had heard the commotion caused

by the attack and had learnt that these accused had cut and killed the deceased at a spot about a furlong or a half away towards Gokak, from the spot where he was purchasing cotton. He has unequivocally stated that it was at about 8.30 A. M. or 9.00 A. M. that P. W. 3 sold cotton to him at Adibatti cross on that day. He has not referred to the presence of P. W. 2 with P. W. 3 at that time. In cross-examination, he has stated equally unequivocally that at about four-hours after sunrise on that day, he saw P. W. 2, P. W. 3, Laxmappa, Kallawwa and others going towards Gokak in a bullock cart belonging to the deceased. This is consistent with what he has stated in examination-in-chief. But at the same time it is to be noticed that according to P. Ws. 2 and 3 they were together and P. W. 3 sold cotton to P. W. 16 at 11-30 A.M. or so and when it was about 12 noon they were about 11/2 furlongs away from P. W. 6 and it was at that time that the incident took place. Therefore, the evidence of P. W. 6 introduces a serious infirmity in the evidence of P. W. 3 in regard to the element of time viz., the time at which P. W. 3 sold cotton to P. W. 6 and that infirmity permeates, quite naturally, under the facts and circumstances of this case, into the evidence of P. W. 2.

17. The learned State Public Prosecutor, argued that there is the evidence of P. W. 5, an independent and disinterested witness, to the effect that he had also sold three kilograms of cotton to one person at the very cross by about mid-day and when he was proceeding towards Gokak he heard the bawling by P. Ws. 2 and 3, therefore, rushed in that direction and saw the incident. We will now proceed to analyse the evidence of P. W. 5 to find out whether reliance can be placed on his evidence.

18. According to P. W. 5, he had sold cotton to one Fakirappa. Ex. D-2 which is the portion of the statement made by P. W. 6 to P. W. 18 during the investigation, has been put to P. W. 6 in his cross-examination. that portion reads to show that he had stated in his earliest version that P. W. 5 had sold cotton to himself. These facts bring out how P. W. 6 had modified his version in regard to selling of cotton by P. W. 5 to make his evidence corroborate the evidence of P. W. 5 even by contradicting himself as per Ex. D-2. Ex. D-2 has been satisfactorily proved in the cross-examination of P. W. 18. According to P. W. 5 he had sold cotton to one Fakirappa, C. W. 6 at about mid-day. that Fakirappa has been given up by the prosecution on the ground that he had been won over by the accused. The concerned Memo is on record and it is dated 25-7-1978. Therefore, it is clear to our mind that P. W. 5 is contradicted by P. W. 6 and P. W. 6 contradicts P. Ws. 2 and 3 in regard to the time of the occurrence. If the evidence of P. W. 6 to the effect that P. W. 3 had sold cotton to him at about 8-30 a.m. or 9 a.m. is accepted, then the say of P. Ws. 2, 3 and 5 that the deceased was attacked at that spot by 12.00 noon, becomes unacceptable. We are certain in our minds that P. Ws. 2 and 3 could not have taken nearly four hours or so, to cover a distance of about 11/2 furlongs viz., the distance between the cross where P. W. 6 and C. W. 6 were purchasing cotton and the scene of offence. There is no other evidence made available by the prosecution to establish to the satisfaction of the

Court that the incident had taken place by about 12.00 noon or P. Ws. 2 and 3 had sold their cotton to P. W. 6 just prior to 12.00 noon on that day. On the other hand, whether P. W. 5 had gone there on his bicycle by about mid-day and sold his cotton to C. W. 6, is rendered doubtful. The prosecution has given up C. W. 6 alleging that he had been won over by the accused. Sri C.B.Motaiah, learned Counsel appearing on behalf of the appellants, argued vehemently that the prosecution has, by its memo dated 25-7-1978, undoubtedly given up C. W. 4 Maruthi, C. W. 6 Fakirappa and C. W. 14 Yallappa, who is stated to be related to A-5, but it has thereby deprived the defence of the opportunity of bringing on record Valuable material which would have gone in support of the defence of the accused. He placed reliance on the decision in State of U.P. and Another Vs. Jaggo alias Jagdish and Others, . The Supreme Court has held as follows:

On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness had been won over. In such a case Ramesh could have been produced for cross-examination by the accused. that would have elicited the correct facts. If Ramesh were an eye-witness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence.

18-A. In the decision in Bava Hajee Hamsa and Others Vs. State of Kerala, it is laid down as follows:

It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised.

In Masalti Vs. State of U.P., , the Supreme Court rendered this judgment on 4-5-1964. It is laid down as follows:

It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he had been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the Court can also call such witnesses in the box in the interest of justice u/s 540, Criminal P. C.

In this very decision it has been laid down in regard to appreciation of the

evidence of partisan witnesses as follows:

There is no doubt that when a Criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable; are all matters which must be taken into account. But it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses....

Further on, it is laid down that:

Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

19. In the decision in Darya Singh and Others Vs. State of Punjab, (Decision rendered on 25-4-1963) the very principles laid down in Masalti's case 1965 Cri LJ 226 SC in regard to the duty of the prosecution to examine material witnesses has been laid down.

20. What has been laid down by the Supreme Court in State of U.P. and Another Vs. Jaggo alias Jagdish and Others, in regard to the production of a witness for cross-examination by the accused is that the prosecution cannot merely allege that a witness has been won over, but it must call him as a witness so that the accused could cross-examine him whenever such witness is a material witness.

20-A, Who is a material witness has been gone into by the Supreme Court in the decisions in Habeeb Mohammad Vs. The State of Hyderabad, and in Bakhshish Singh Vs. The State of Punjab, . It is held therein that a witness whose evidence is essential for unfolding the prosecution case further, is a material witness, thereby setting it clearly that whenever there are more than one eye-witness, it is for the prosecution to choose its witnesses and decide to examine whom and decide how many and the Court cannot direct the prosecution to examine such and such a witness or such and such a number of eye-witnesses.

21. Sri Motaiah, pointed out that according to the prosecution C. W. 4 Maruti was an eye-witness and he was also a witness to the movements of the accused, prior to the incident and that C. W. 6 was also an eye-witness, who have been given up on the ground that they have been won over. The principles laid down by the Supreme Court in regard to the duty of the prosecution to examine material witnesses is in connection with the presumption to be raised as per illustration (g) to Section 114 of the Indian Evidence Act. that presumption is as to when an adverse inference has to be drawn for withholding a document or evidence in possession of a person. But when the prosecution itself gives up a witness, after having summoned him and made him appear and hence available in Court, on the ground that he has turned hostile or he has been won over by

the accused, the question of raising such a presumption does not arise. In the case on hand, a memo was filed by the Public Prosecutor at Belgaum on 25-7-1978 stating that C. Ws. 4, 6 and 14 were given up as they had been won over by the accused, because C W. 4 and C. W. 14 had been won over by the accused and C. W. 6 was not supporting the prosecution case being a relative of A-5. The Sessions Judge discharged them on that day. These facts show that the prosecution had not kept back C. Ws. 14, 4 and 6 but had called them to Court by summoning them and had kept them present in Court and gave up examining them on presenting a memo with the full awareness of the counsel for the defence. The defence did not claim or make a request to the Court that it wanted to cross-examine those witnesses. In *State of U.P. and Another Vs. Jaggo alias Jagdish and Others*, the facts show that Ramesh had not been called by the prosecution and the prosecution had made a representation to the Court that Ramesh had been won over and therefore, he had not been called. Hence, we are clear in our mind that when the witnesses were in Court having been summoned and were available for cross-examination, by the defence, and when they were given up by the prosecution, which is made in the presence of the counsel for the defence during the trial on 25-7-1978, the principles laid down by the Supreme Court reported in *State of U.P. and Another Vs. Jaggo alias Jagdish and Others*, would be inapplicable.

22. In the decision in *Sarwan Singh and Others Vs. State of Punjab*, the Supreme Court has on this very question held thus:

It is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the Court that the witnesses, who had been withheld, were eye-witnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than quantity of that evidence that" matters.

The Supreme Court has succinctly put the principles in para 13 of its judgment as follows:

The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The Court cannot compel the prosecution to examine one witness or the other as its witness.

22-A. Therefore, what is necessary to comply with the principles laid down in the decision in *State of U.P. and Another Vs. Jaggo alias Jagdish and Others*, , is that the prosecution must have deliberately withheld material witnesses from the

Court. But, at the same time, it should be borne in mind that it is not the duty of the prosecution to multiply witnesses after witnesses on the very point.

23. In view of the afore-stated position in law, we are not impressed by the argument of Sri Motaiah in regard to the non-examination of C. Ws. 4 and 6. In regard to C. W. 14, we have no hesitation in expressing our opinion that he is a witness on a minor point and not a witness whose evidence was essential for unfolding the prosecution narrative any further. He is not even an eye-witness. In fact the material on record is that P. W. 2 had, in his statement recorded by the police, stated that it was C. W. 14 who had advised him to go to the police station and lodge information. But he has taken the name of P. W. 5 in this connection. If C. W. 14 had been examined, the defence would have been able to show this aspect.

24. We have pointed out that the evidence of P. W. 5 is not trustworthy and the evidence of P. Ws. 2 and 3 suffers from intrinsic infirmities in view of the evidence of P. W. 6. The evidence of P. W. 6 by itself does not appeal to us so far as he having witnessed the incident is concerned, because P. W. 3- had sold cotton to him at 6-30 A.,M. or 9-00 A.M. and, therefore P. W. 2 could not have been present to witness the assault on the deceased at about 12.00 noon. P. W. 6 also is not a reliable witness in regard to the occurrence, i.e., even the little bit he claims to have seen.

25. In view of these reasons, we hold that it would be highly unsafe to place reliance on the uncorroborated testimony of P. Ws. 2 and 3.

26. The learned State Public Prosecutor argued that the Sessions Judge has unduly rejected the evidence of P. Ws. 8, 10 and a in regard to A-2 and A-4 to A-6 surrendering before P. W. 8 at about 3.00 P.M. and P.W. 8 producing them before P. W. 19 in Gokak police station at 7.00 p.m. and also the evidence pertaining to the recovery of M. Os. 20 to 25 from the persons A-2 and A-4 to A-6, and M. Os. 15, 14 and 10 to 13 at the instance of A-4. We do not consider it necessary to go into this aspect in view of our conclusion regarding the evidence of P. Ws. 2, 3, 5 and 6. Even if it is for the sake of arguments held that the prosecution has satisfactorily established these facts, the charge against the accused would not be brought home to the accused merely because of the existence of motive and because of the recovery of articles from the persons of the accused and also the recovery of articles at the instance of the accused. that is how it is laid down by the Supreme Court in the decision in *Narasinbhai Haribhai Prajapati v. Chhatrasinh* AIR 1977 SC 1753 : 1977 Cri LJ 114411 : 31 PM 9/25/2005. In that case two eye-witnesses had been examined and their evidence was found totally unacceptable. The Supreme Court held that the presence of motive and recovery of bloodstained clothes and dharias from the person of the accused were wholly insufficient for sustaining the charge of murder.

27. In the result, the appellant are entitled to succeed and hence we allow the

appeal and set aside the convictions and sentences passed on the appellants- Mutteppa Dhareppa Chigadolli (A-1), Yallappa Mutteppa Chigadolli (A-2), Mahadev Mutteppa Chigadolli (A-3), Basappa Shivappa Bhagoji (A-4), Adivappa Lakkappa Durdundi (A-5) and Bhimappa Yallappa Mannikari alias Ara-ballawar (A-6) by the Principal Sessions Judge, Belgaum, in Sessions Case No, 38 of 1978 and acquit them. We direct that they be set at liberty forthwith.