
(2009) 04 SC CK 0234

In the Supreme Court Of India

Case No : Criminal Appeal No. 223 of 2002

Razak Jinnesab Karajagi and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Enlargement of Criminal Appellate Jurisdiction Act, 1970 — Section 2(1)
Penal Code, 1860 (IPC) — Section 201, 302, 34, 506

Citation : (2009) 2 ACR 1223 : (2009) 4 JT 667 : (2009) 4 KarLJ 1 : (2010) 1 KCCR 10 : (2009) 5 SCALE 116 : (2009) 13 SCC 522 : (2009) 5 SCR 422

Hon'ble Judges : Lokeshwar Singh Pant, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Rajesh Mahale, Shivender Dwivedi and Harish Hebbar, for the Appellant; Sanjay R. Hedge, A. Rohen Singh, Vikrant Yadav, Amit Kr. Chawla and Nishant Mishra, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—Razak Jinnesab Karajagi [A-1], Jinnesab Rajesab Karajagi [A-2], Babulal Jinnesab Karajagi [A-3], Nabilal Jinnesab Karajagi [A-4] - appellants herein, have preferred this appeal u/s 2[1][a] of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the final judgment and order dated 03.09.2001 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 359 of 1996. By the impugned judgment, the High Court has set aside the order of acquittal dated 03.01.1996 of the appellants passed by the learned 1st Additional Sessions Judge, Bijapur, in Sessions Case No. 109 of 1994 u/s 302 read with Section 34 of the Indian Penal Code (for short the "IPC") under Sections 201 read with Section 34 of the IPC and Section 506 of the IPC of A-2 and as a result thereof, A-1, A-2, A-3 and A-4 have been convicted for the aforesaid offences and sentenced to imprisonment for life u/s 302 read with Section 34 of the IPC and Section 201 read with Section 34 of the IPC. However, no separate sentence has been awarded so far, the

offences u/s 201 read with Section 34 of the IPC are concerned and u/s 506 of the IPC, for which A-2 was separately convicted.

2. The prosecution case as unfolded before the trial court was that Allisab Rajesab Karajagi was a resident of Bairawadagi and A-2 is his first cousin. A-1, A-3 and A-4 are the sons of A-2. The daughter of Kashimabi - complainant [PW-1] was married to Allisab Karajagi and out of the wedlock they have got five daughters and two sons. Allisab Karajagi's parents had died. His only sister was married and living in the State of Maharashtra. Allisab Karajagi was the owner of 4 acres of dry land and one small hut at village Bairawadagi. Allisab Karajagi alongwith his wife and children had gone to Maharashtra with wishful hope of earning more income for the maintenance of the family. He had frequently been going to village Bairawadagi for looking after the agricultural pursuits and harvesting the crops.

3. Bismilla [PW-2] is the daughter of Allisab Karajagi. It was the case of the prosecution that Allisab Karajagi and A-1 to A-4 had some litigation over the pathway leading to their respective lands. It was alleged that in and around 1992, Allisab Karajagi had assaulted A-2 and on account of that incident, the accused persons had entertained enmity with Allisab. During harvesting season of February, 1994, Allisab alongwith his daughter Bismilla [PW-2] went to attend their lands. Kashimabi [PW-1] mother-in-law of Allisab, and her relatives are the residents of village Devarahippargi, which is situated at a distance of about 10 kms. from the land of Allisab. The land of Allisab is situated near to village Satyal within the limits of village Bairawadagi. Allisab, has constructed a small hut on the land where he used to stay during his visits.

4. It was the prosecution case that on 24.02.1994 at about 4.00 p.m., both PW-1 and PW-2 brought cooked-food for Allisab from the house of PW-1. It was at about 8.00 p.m. when Allisab, PW Kashimabi and PW Bismilla all had taken their food in the field and thereafter went to sleep. PW Kashimabi and PW Bismilla slept near the heap of the crop, whereas Allisab slept near the hut at a distance of about 2 or 3 yards away from PW Kashimabi and PW Bismilla. In the intervening night of 24/25.02.1994 at about 0015 hours, PW-1 and PW-2 on hearing loud cries of Allisab, woke up and heard him uttering "Allah Marare". PW-1 and PW-2 saw and identified A-1 to A-4 in the moonlit night present near the place where Allisab was sleeping and they witnessed A-1 striking an axe blow on the head of Allisab. It was further alleged that A-2 asked A-3 and A-4 to drag the body of Allisab. A-1 thereafter alleged to have poured petrol on the person of Allisab and A-2 lit a match stick and set Allisab on fire. Having seen the incident, PW-1 and PW-2 rushed to the place of incident and tried to save the life of Allisab, but A-1 and A-2 held threat to their life. Because of fear to their life, PW-1 and PW-2 could not dare to save the life of Allisab from the clutches of the accused persons and they witnessed the incident as mute spectators. No sooner, the accused persons left the place of occurrence, PW-1 and PW-2 tried to extinguish the fire by throwing mud and water on the body of Allisab. Allisab was

still alive and uttered "Kya ghat karare Razaak". He later on succumbed to the injuries in the presence of PW-1 and PW-2 at the spot. PW-1 and PW-2 waited for one hour near the dead body of deceased - Allisab and thereafter they proceeded to village Satyal which is nearer to the land of the deceased and from there they boarded a truck and reached village Devarahipparagi where they narrated the entire incident to Ibrahimsab Modinsab MA Ikhed [PW-5] son of PW-1 and other family members. PW-1 alongwith her son PW-5 and some more persons went to Police Station, Basavanabagewadi, where PW-1 lodged a complaint (Ex. P-1] to Station House Officer - Siddappa Shankrapa Kumbar [PW-13], on the basis of which a Criminal Case No. 34 of 1994 came to be registered on 24.02.1994 at about 10.00 hours against the accused persons under Sections 302 read with Section 34 IPC and Section 201 read with Section 34 IPC.

5. Ramappa [PW-14], at the relevant time was working as CPI, Basavana Bageradi, received information about the crime from PW-13. PW-14 visited the Police Station at 11.00 a.m. on the same day and inspected the documents prepared by Head Constable No. 1427. He took up the investigation in his hands and visited the place of occurrence. He saw the dead body of Allisab lying in the field. The dead body of Allisab was sent to Dr. S.S. Badar [PW-4] - Medical Officer for post-mortem through constable PC No. 704 Y.R. Bhosale [PW-11]. PW-14 conducted spot panchnama marked as Ex. P-8. He seized gunny bags MO- 1 to MO-4 found lying on the spot. He recorded the statements of Bismilla [PW-2], Ibrahimsab Modinsab MA Ikhed [PW-5], Kashipati Basappa Devanagav [PW-6], Basappa Mallappa Talikoti [PW-7] and Rasulsab Lalesab Karajagi [PW-8]. The accused persons absconded from the scene of occurrence and they could not be arrested by the police. PW-14 instructed his personnel to make search for the accused persons. The Investigating Officer received the post-mortem report (Ext.- P-3] from the doctor. On 13.03.1994, HC-1427, PC-702 produced A-1 and A-2 before him at 7.00 a.m. The Investigating Officer arrested them. On interrogation, A-1 voluntarily made a disclosure statement [Ex.-P-13] in the presence of Mahammadsab Inamsab Chapparbandi [PW-3] and Ibrahimsab Modinsab MA Ikhed [PW-5] and pursuant thereto, A-1 led the police party and the witnesses to the place of recovery wherefrom one axe, one baniyan (underwear), one dhoti were recovered, which were concealed at a hollow place in the cow shed. All the blood-stained articles were taken into possession vide panchnama (Ext.-P-2]. The weapon of offence and the blood stained clothes were marked as MO-7-9. A-3 and A-4 could not be arrested because they got pre-arrest bail. On 06.04.1994, Investigating Officer recorded statement of Namdev Shanker Kadam [PW-9]. On 13.05.1994, he sent seized articles to Chemical Examiner, Bangalore for chemical analysis through HC 1342 - G.A. Sangond [PW-12]. On receipt of the C. E.'s reports Exts. P-15 and P-16 and on completion of the investigation of the case, PW-14 on 16.05.1994 prepared chargesheet against the accused and filed it in the court of JMFC, Basavan Bagewadi u/s 302 read with Section 34 IPC and Section 201 read with Section 34 IPC as well as u/s 506 IPC against A-2. The learned Judicial Magistrate, Basavan Bagewadi,

committed the case to the Sessions Judge for trial.

6. Before the learned 1st Additional Sessions Judge, the accused pleaded not guilty to the charges and claimed to be tried. The prosecution, in order to substantiate its case, examined as many as 14 witnesses, out of whom PW-1-Kashimabi, PW-2 - Kum. Bismilla are the eyewitnesses of the incident. In addition to oral evidence, the prosecution produced on record Exts. P-1 to P-16 and MO 1 to MO - 9.

7. The accused in the statements recorded u/s 313 of the Criminal Procedure Code (for short 'Cr.P.C') pleaded denial simpliciter. However, in defence they have not led any evidence. On examination of the oral and documentary evidence produced on record, the learned 1st Additional Sessions Judge by his order dated 03.01.1996 found the accused not guilty for the above-said charged offences, therefore, they were acquitted mainly on the ground of not accepting the evidence of PW-1 and PW-2 eyewitnesses branding them as interested witnesses.

8. Being aggrieved against the order of acquittal, the State of Karnataka preferred appeal before the High Court. The High Court allowed the appeal by the impugned judgment, holding A-1 to A-4 guilty of the charged offences and sentenced them for life u/s 302 read with Section 34 IPC. No separate sentence was imposed upon them for committing the offences u/s 201 read with Section 34 IPC and against A-2 for an offence u/s 506 IPC.

9. Feeling aggrieved thereby and dissatisfied with the judgment of the High Court, A-1 to A-4 have filed this appeal.

10. Mr. Rajesh Mahale, Advocate appearing on behalf of A-1 to A-4, vehemently contended that the judgment of the High Court reversing the order of acquittal passed by the trial court is erroneous in law being against the well-established principles with regard to interference in appeal u/s 378 of the Cr.P.C. He then contended that the trial court on appraisal of the evidence and consideration of circumstances has recorded well-reasoned order which cannot be regarded as preferably wrong or perverse; therefore, the interference by the High Court in the order of acquittal of A-1 to A-4 is wholly unwarranted and unjustified. He then contended that as the evidence of the prosecution is not satisfactory and consistent, therefore, the benefit of doubt has to be given to the accused, but in the present case the High Court has failed to appreciate this basic principle and convicted A-1 to A-4 on surmises and conjectures.

11. Mr. Sanjay R. Hegde, Advocate appearing on behalf of the State, has canvassed correctness of the views taken by the High Court in the impugned judgment. He submitted that the approach of the High Court in re-appreciating the evidence led by the prosecution cannot be found faulty. He then contended that the evidence of the eye-witnesses PW - Kashimabi and PW - Kum. Bismilla is concise, cogent and satisfactory on the point that it was A-1 who assaulted the deceased with a fatal blow of axe on his head and thereafter A-2 poured petrol

and set Allisab on fire, as a result thereof, Allisab later on succumbed to the injuries sustained by him.

12. In order to appreciate the rival contentions of the learned Counsel for the parties, we have made independent scrutiny of the evidence led by the prosecution to find out whether the High Court's order of conviction of A-1 to A-4 can be sustained or not.

13. On reappraisal of the entire evidence on record, the High Court has formulated three points for its consideration:

[1] Motive, [2] Evidence of the eyewitnesses and [3] Recovery of MO-7.

[1] MOTIVE

In support of motive, the prosecution has relied upon the evidence of PWs-1 to 5 and PWs 6, 7 and 8. Out of these witnesses, PWs - 7 and 8 have not supported the prosecution case to prove that one day before the day of incident, the witnesses noticed PW-1 and PW-2 carrying food to the field of the deceased. So far as the motive is concerned, however, they have supported PW-1 and PW-2. Admittedly, the appellants and the deceased are close relatives. It has come on the record that there was some civil litigation pending between A-1 to A-4 and the deceased over a pathway leading to their respective lands. It was also proved on record that A- 1 to A-4 on one hand and the deceased on the other hand used to quarrel over this issue. It is the evidence of PW-1, PW-2 and PW-5 the family members of the deceased which was corroborated by PW-6, PW-7 and PW-8 the independent witnesses that about two years before the day of incident, A-2 and deceased had a quarrel over the pathway leading to their respective fields. The defence has failed to impeach the evidence of the independent witnesses on this count. The evidence of the witnesses would go to show that the panchayat of the elders of the village was held, but dispute of the pathway could not be settled and solved by them which finally led the death of the deceased. The High Court relying upon the evidence of PWs - 1, 2, 5, 6, 7 and 8 has concluded that though the prosecution has proved that there was no strong motive attributed to A-1 to A-4, yet A-1 to A-4 had some motive to do away with the life of the deceased who was not residing at the place of the incident and had been cultivating his land from a far of place in the State of Maharashtra where he was living with his family members.

[2] EVIDENCE OF THE EYEWITNESSES

The case of the prosecution entirely rests upon the evidence of PW-1 and PW-2 - the witnesses of the occurrence. It is the evidence of PW-1 that on the day of the incident at about 4.30 p.m., she alongwith PW-2 - daughter of the deceased carried cooked-food for the accused from village Devarahipparagi to the fields where he had gone for harvesting the seasonal crop. They at about 8.00 or 8.30 p.m. jointly took their dinner and went to sleep. She and PW-2 had slept in front of heap of the crop stacked on the land of the deceased, whereas the deceased

slept at a short distance near a hut. In mid-night hours, PW-1 and PW-2 heard loud cries raised by Allisab uttering "Allah Marare". It is the evidence of PW-1 that on hearing cries, she and PW-2 both woke up and rushed to the nearby place where Allisab was sleeping. They saw A-1 assaulting the deceased with a blow of axe on the head. It is her evidence that when she and PW-2 tried to save the life of the deceased, A-2 threatened them if they would dare to interfere or shout for help, they would meet the same fate. A-2 openly shouted and commanded A-3 and A-4 to drag Allisab. A-3 and A-4 caught hold of the legs of Allisab and dragged him to a short distance. A-1 poured petrol from a can on injured- Allisab, whereas A-2 lit a match stick and threw the burning stick on Allisab with an intention to screen of the crime. She stated that A-1 to A-4 left the place of occurrence holding threats to them not to make any noise lest they would be finished.

PW-2 corroborated the evidence of PW-1 in its entirety. She deposed that she saw A-1 striking axe blow on her father's head. She noticed A-3 and A-4 standing by the side of A-1 and A-2, who held her father's legs and dragged him to a short distance. It is her categorical statement that A-1 poured petrol on her father, whereas A-2 lit a match stick and threw the burning stick on her father's body. She corroborated the testimony of PW-1 that A-2 threatened both of them that if they dared to raise any noise they would meet the same fate. After the accused had left the place of occurrence, they went near the deceased and tried to extinguish fire by pouring water and mud on the body of her father. According to her version, Allisab was still alive at that time and before his death he uttered "Tu kya karare Razaak", and "Tu kya karare Jinne". Razaak is no other person than A-1 and A-2 is called Jinnesab. She stated that she and PW-1 put some water into the mouth of her father but he could not swallow it because by that time he died. PW-1 and PW-2 deposed that they had seen and recognized the accused in moonlit night as they were not strangers to the witnesses. The prosecution has proved on record that during harvesting season the deceased had been going to village Bairawadagi. It was quite natural for PW-1 - the mother-in-law of the deceased, who belongs to the nearby village, to take food to her son-in-law and grand-daughter who were attending to their agricultural pursuits on the date of incident. It is the evidence of PW-5 son of PW-1 that his mother had been taking food to the deceased for the past about twenty days before the day of incident. The distance between village of PW-1 and the land of the deceased is about 10 kms and on the night of incident after taking food at about 8.00 or 8.30 p.m.; it was not possible and practicable for PW-1 to go back to her home. The High Court found PW-1 and PW-2 most natural and truthful witnesses, whose testimony was not rebutted and shattered by the defence on material aspect of the matter. The trial court rejected the evidence of the eyewitnesses merely on the ground that they are the interested witnesses and their presence on the day and at the place of the incident was held to be doubtful. The evidence of the eye-witnesses as referred to above is quite natural, satisfactory and believable to prove that after the incident due to repeated

threats given by A-2 to do away with their life if they dare to make noise, PW-1 and PW-2 for about one hour remained seated by the side of the dead body of the deceased at the place of occurrence and thereafter went to the house of the deceased at Maharashtra. They disclosed the entire incident to the family members of the deceased and other village people. It was but natural that they too have first gone to the village of the deceased and apprised the incident to his family members and the relatives. After narrating the incident to the family members and village people, PW-1 along with PW-5 and other village people immediately went to the Police Station for lodging report of the incident. The eye-witnesses, under these circumstances, could not be expected to rush to the Police Station immediately after the occurrence of the crime or could have first gone to the village of the accused for seeking help from the villagers. It may be noted that the evidence of PW-1 and PW-2 cannot be rejected on the ground that they are relations of the deceased. It is well-settled that if the eyewitness is related to the deceased, his evidence has to be accepted if found to be believable and reliable because he would inter alia be interested in ensuring that the real culprits are punished. Both the eyewitnesses have been subjected to search in cross-examination by the defence, but nothing tangible has been extracted from their evidence to create any shadow of doubt that they are not reliable and truthful witnesses. Therefore, the finding of the trial court disbelieving and discarding the evidence of PW-1 and PW-2 - eyewitnesses on the sole ground of stamping them as interested, partisan and parrot-like witnesses, in our view, is wholly unjustified and not tangible.

[3] RECOVERY OF MO - 7

It is the evidence of PW-14 that disclosure statement [Ex.-P-13] was voluntarily made by A-1 and in pursuant thereto, weapon of offence MO-7 was recovered at the instance of A-1. Gunny bag seized from the spot and the blood-stained clothes of the deceased were sent to Forensic Science Laboratory, Bangalore. The report of the FSL, Bangalore, reveals that the presence of petrol was detected from partly burnt clothes of the deceased. On our examination of the judgment of the High Court, we find that the High Court has properly and rightly re-assessed and re-appraised the entire evidence on record and there is no infirmity or perversity in the reasoning record by the learned Judges of the High Court to interfere with the well-reasoned judgment to the extent of holding A-1 and A-2 guilty of the charged offences.

14. There is not an iota of evidence placed on record by the prosecution to prove that A-3 and A-4 had participated in the commission of the crime alongwith A-1 and A-2. PW-1 and PW-2 only stated A-3 and A-4 on the asking of A-2 caught hold of the legs of the deceased and dragged him to a short distance. The allegation levelled by the prosecution against A-3 and A-4 do not attribute any overt act or part played by them in the commission of the crime. The evidence of the prosecution is wholly lacking to hold that A-3 and A-4 had shared a common intention with A-1 and A-2 to cause the murder of Allisab. Similarly for the lack

of any tangible, satisfactory or credible evidence, A-3 and A-4 cannot be held liable for causing disappearance of the evidence with intention of screening A-1 and A-2 from legal punishment u/s 201 read with Section 34, IPC. Therefore, the judgment and order of the High Court holding A-3 and A-4 guilty of the charged offences cannot be sustained.

15. No other point has been raised by the parties. We, thus, find no merit and substance in any of the submissions made on behalf of A-1 and A-2.

16. In the facts and circumstances of the case, we are satisfied and convinced that the prosecution has proved its case beyond all reasonable doubt against A-1 and A-2 and the High Court committed no error or perversity in interfering with the trial court's order of acquittal of A-1 and A-2. However, the judgment of the High Court cannot be sustained against A-3 and A-4.

17. For the reasons above-stated, this appeal is allowed in part to the extent of upholding the conviction and sentence of A-1 and A-2. The conviction of A-3 and A-4 is set aside. A-1 and A-2 are on bail and their bail bonds and surety bonds are cancelled. A-1 and A-2 are directed to surrender within four weeks from the date of this judgment and serve out the remainder of the sentence imposed upon them by the High Court. If A-1 and A-2 fail to surrender as directed, the trial court will take coercive steps against them in order to comply with this order. Bonds furnished by A-3 and A-4 shall stand cancelled.