

(1993) 12 SC CK 0007

In the Supreme Court Of India

Case No : Criminal Appeal No. 690 of 1980

Sanganabasappa Bheemappa Kaligonnar and others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-12-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 379

Penal Code, 1860 (IPC) — Section 147, 148, 302

Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2

Citation : AIR 1994 SC 848 : (1994) CriLJ 606 : (1994) 1 Crimes 33 : (1993) 6 JT 615 : (1993) 4 SCALE 576 : (1994) 1 SCC 583 Supp : (1994) 1 UJ 278

Hon'ble Judges : K. Jayachandra Reddy, J;G.N. Ray, J

Bench : Division Bench

Advocate : Ranjit Kumar and M. Veerappa, for the Appellant;

Final Decision : Dismissed

Judgement

K. Jayachandra Reddy, J.—Six appellants (original accused Nos. 1 to 6) have filed this appeal u/s 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr.P.C. They were tried by the Sessions Judge, Dharwad for offences punishable under Sections 147, 148 and 302/149 I.P.C. and they were acquitted. The State preferred an appeal and the High Court set aside the order of acquittal and convicted all of them under Sections 148 and 302/149 I.P.C. and sentenced each of them to undergo R.I. for two years and imprisonment for life respectively.

2. The prosecution case is as follows:

The accused, the deceased Hanamantappa and the material witnesses belong to Village Mallapur District Dharwad. The deceased Hanamantappa and his younger brothers P.W.1 Giryappa and P.W.17 Yallappa got divided and P.W.18 Basavantappa, the eldest son of the deceased was living with him. The deceased was doing both business and agriculture. P.W.18 used to attend to agriculture. A-1 took a loan of Rs. 5,000/- in advance from the deceased assuring that he will

bring his cotton to the ginning factory of the deceased. But as assured, A-1 did not take his cotton to the ginning factory nor did he pay back the amount. The deceased about 7 or 8 days prior to the incident, detained A-1 in the ginning factory from morning till evening. But P.W.11 Parappa and C.W.12 Shivarudrappa got A-1 freed from the detention in the evening on A-1 assuring that he will make arrangements for the payment of Rs. 5,000/-. Consequently A-1 had a grudge against the deceased and was waiting for an opportunity to wreak vengeance on the deceased. The deceased as usual was in the ginning factory on 11.6.78. His brother P.W.1 also went to the factory at about 7 or 7.30 P.M. to discuss about the arrangements of the marriage of his grand-daughter Basavanneewa with Shivanappa which was fixed on the next day i.e. 12.6.78. Since the elders arrived at the house of P.W.1 in connection with the holding of the ceremony prior to the marriage, P.W.17 left the house of his brother P.W.1 at about 7.30 P.M. in order to fetch the deceased and also the other brother P.W.1 in that connection. On his arrival, both the deceased and P.W.1 got up and P.W.17 was asked to remain in the factory which was working. The deceased locked the office and proceeded towards the Village in order to reach the house of P.W.1. P.W.1 felt like easing himself when both of them were near the society building and accordingly P.W. 1 sat down to pass urine and the deceased proceeded ahead. When P.W.1 was about to get up, he heard the cry not to beat and that he would die from the side of the house of Kariyannavar. Recognising the voice of the deceased, P.W.1 immediately rushed in that direction and found the accused having waylaid the deceased and taking him near the electric pole where the bulb was burning. A-4 and A-6 caught hold of the hands of the deceased. A-1 stood in front of the deceased and instigated all to finish the deceased. A-3 and A-5 who were armed with Jambyas and A-2 who was armed with a Kudugol, inflicted injuries on the deceased. P.W. 1 who witnessed the attack rushed in that direction. P.W.2 Basavantappa who had been called to the ginning factory by the deceased on that very day in the evening was on the way to the factory and he witnessed the attack. Another witness P.W. 3 Durgappa was the watchman in the factory. He was also on the way to the factory to resume his duty when he witnessed the occurrence. Though P.Ws. 1 to 3 intervened, A-1 to A-6 did not heed to their advice but threatened them and after the deceased fell down, A-1 to A-6 ran away towards the house of A-1. P.W.4 Basavantappa Shirol and P.W.5 Shivabasappa Danreddy who happened to be proceeding towards the Village Mallapur from the railway station also witnessed the occurrence. After the deceased fell down, P.Ws. 1 to 5 went near him and the deceased told in low voice that A-1 committed fraud and got him murdered. After so saying he breathed his last and died. Hearing the cries of P.W.1 people in the locality also gathered. P.W.17 who was asked to be in the factory also came to know about the occurrence. P.W. 18, the son of the deceased also came to know about the same. Both P.Ws. 17 and 18 and other family members collected at the spot and later went back home. P.W.1 made attempt to inform the Ron Police by sending Shivanappa Arahunshi to the house of Shivappa Danreddy who had a phone but it was found to be out of order. P.W. 1 wanted to go by himself to Ron but he was

persuaded not go to out of the house during the night since there was a danger to his life. On the next day i.e. 12.6.78 at about 7.30 A.M. P.W.1 got into a tractor and reached the Police Station at Ron which was seven miles away. P.W.12, a Head Constable was present in the Police Station. P.W.1 orally complained about the occurrence and P.W. 12 got it recorded as Ex.P.I and he registered the offence and issued an F.I.R. Ex. P.13 and sent a copy to the C.J.M.Dharwad since the J.M.F.C., Ron was on leave. He also sent express reports to his superiOrs. P.W. 12 proceeded to Village Mallapur and reached there at about 8.45 A.M. and found the dead body of the deceased lying on the road. He secured P.W.18 and one Ramappa for holding the inquest. By then P.W.22 the Circle Inspector having learnt about the murder reached Village Mallapur and took over the investigation from P.W.12. He held the inquest in the presence of P.W. 18. and Ramappa and seized certain articles. He sent the dead body for post-mortem. He also recorded me statements of the material witnesses. He searched for the accused and found them to be absconding. He also examined the residents in the locality but they stated that they have not witnessed the incident as such.

3. P.W.6, Dr. Gargi who conducted the post-mortem found as many as 10 injuries on the body of the deceased. Injury No. 1 was an incised wound on the left sub-scapular region penetrating in nature passing into the internal tissues. Injury No. 1 was an incised injury on the back of the chest. Injury No. 3 was on the posterior aspect of right shoulder penetrating upto the underlying scapular bone. Two incised injuries were on the right region and Ors. incised injury was on the right side of the chest and the ribs and intestinal coils were seen through the injury. The sixth injury was on the epigastric region. Another incised injury was on the epigastria cum situated 1-1/2" above the umbilicus and the momentum was exposed through this injury. Another incised injury was on the right wrist and one more incised injury was on the upper part of left fore-arm and also an incised injury on the left wrist. On internal examination, he found ventricles of the heart injured, haematoma, thoracic vertebra damaged, muscles in the scapular region damaged, injury to the right lobe of the liver, and injuries to the abdomen etc. He opined that the injuries must have been caused by sharp-edged weapons and injuries Nos. 1,4,5 and 7 were individually sufficient to cause death in the ordinary course of nature and the deceased could have survived for few minutes after receipt of the injuries and that generally it is not possible for the victim to talk.

4. The accused were arrested subsequently and at their instance some weapons (M.Os. 1 to 3) were recovered. The prosecution examined P.W.1 to 5 as eye-witnesses. When examined u/s 313 Cr.P.C. the accused denied the offence and pleaded that there was enmity between the accused and the deceased and P.W.5. They also specifically stated that P.Ws. 4 and 5 were inimical towards them. They also examined D.Ws. 1 and 2 to show that at the time of occurrence there was no supply of electricity in the Village and therefore the witnesses could not have seen the occurrence and also to prove that some telephonic calls were made to

the Police Station and therefore the Police had information already.

5. The learned Sessions Judge rejected the evidence of the eye-witnesses and acquitted the accused mainly on the grounds that there has been inordinate delay in giving the information to the police by P.W.1 or any one concerned and that the conduct of the witnesses as well as that of the family members in none of them being near the dead body throughout the night is unnatural and that evidence of D.W. 1, Junior Accounts Officer, Divisional Telegraph Office probalised that the information has been communicated to the police on that day and that the police must have arrived in the Village during the night itself and that Ex. P.1 was brought into existence after due deliberations and consultations and that the fact that a walker had been kept near the dead body throughout the night would show that the police must have directed him to keep watch over the dead body and mat the medical evidence would show that the injuries on the deceased might have been caused by various types of weapons and that the evidence of P.Ws. 4 and 5 whose names did not figure in Ex. P. 1 and who are distantly related to the deceased, can not be relied upon. The High Court having re-appreciated the entire evidence held that the reasons given by the trial Judge for acquitting the accused are wholly unsound and untenable. The High Court also held that the evidence of D.Ws. 1 and 2 is not clinching.

6. In this appeal, the learned Counsel appearing for the appellants submits that the trial Judge was right in holding that the police must have been informed in the night itself and that the version of P.W.1 that he could not go to the Police Station due to fear is not at all acceptable and that the family of the deceased, which was affluent had tractors which could have been used to go to the Police Station on that night itself and that the fact that the report Ex. P.1 was given only on the next day would show that it was a result of deliberations and consultations and that the fact that none of the family members including the eye-witnesses was with the dead body, would show that they must have come to know only sometime later and that the evidence of D.Ws. 1 and 2 would show that there was no electricity at the time of the occurrence and also that the police must have been informed about the occurrence in the night itself. Learned counsel further submitted that once the trial court has taken a reasonable view and acquitted the accused, the High Court ought not to have interfered.

7. Since this is a regular appeal, we have gone through the entire record. The eyewitnesses P.Ws. 1 to 5 belong to the same Village. P.W.1 Giryappa is the younger brother of the deceased and P.W. 17 Yall appa is younger to him. He deposed that all the three brothers got divided and on 11.6.78 he had gone to the ginning factory at about 7.30 P.M. which was working. He sat for some time outside the factory and he waited to discuss with the deceased about the arrangements of the marriage of Basavannewwa. Meanwhile P.W. 17 came and he asked him and the deceased to go over to the house as the elders had collected to discuss about the matter. After some time the deceased locked and office and he and P.W.1 started for home. When they reached near the society building,

P.W.1 stopped to urinate and the deceased was proceeding. P.W.1 further deposed that when he was about to get up, he heard the cry of the deceased and he rushed in that direction and saw 5 or 6 persons surrounding and assaulting the deceased near the electric pole and he identified them. According to P.W.1, A-4 and A-6 caught hold of the deceased, A-1 was standing in front of the deceased instigating all to finish the deceased and A-3 and A-5 who were armed with Jambyas and A-2 who was armed with Kudugol, inflicted injuries on the deceased. At the same time P.Ws. 2 and 3 who were present there, asked the accused as to why they were assaulting the deceased. P.W.1 who had reached the scene of occurrence, also questioned the accused as to why they were assaulting the deceased. P.W.1 proceeded ahead but he was threatened by them. After receipt of the injuries the deceased fell down saying that he was dying. A-1 and the other accused left the scene of occurrence. Thereafter P.Ws 1, 2 and 3 went near the deceased who told them that he was attacked by A-1 to A-6. The witnesses found bleeding injuries on the deceased. Many people gathered there by then. They found the deceased dead. Then all of them went home and he asked Shivanappa to go and make a phone call. P.W.1 further deposed that he wanted to go on that night to report the matter to the police but he was warned that there was danger to his life from the accused. Therefore next morning he went and gave the report Ex. P.1 to the police. This witness was cross-examined at length and some omissions have been elicited. The trial court extracted the contents of the complaint Ex.P.1 in the first instance and then proceeded to consider the evidence of P.W.1 and pointed certain omissions. With regard to the presence of P.Ws. 4 and 5 the trial court observed that P.W.1 has not mentioned about the presence of P.Ws. 4 and 5 during his deposition and that the evidence of P.Ws. 2 and 3 also did not mention the names of P.Ws 4 and 5 with reference to the incident and on that basis the learned trial Judge doubted the presence of P.Ws. 4 and 5. It is true that the names of P.Ws. 4 and 5 are not mentioned in Ex. P.1 but it is mentioned that several people gathered. In any event there is evidence of P.Ws. 1 to 3 whose names have clearly been mentioned in Ex. P.1. Much of the comment of the trial court was about delay in giving Ex. P.1. It is true that the report was given to the police next morning at about 7.45 A.M. but P.W.1 has explained it by saying that on that every night he could not go as there was an apprehension of danger to his life. The learned trial Judge also commented that in the copy that was received by the Magistrate there was no seal. But he overlooked the fact that there was an endorsement made by the C.J.M. The absence of seal does not make any difference. The learned Sessions Judge was very much carried away by the fact that the deceased family was affluent and the tractors were there and that they could have reached the police station on that night itself. We must point out at this stage assuming there was delay, that by itself will not be fatal to the prosecution case. There should be some indications in the report Ex. P.1 that it could have been result of consultations and that the delay was utilised for the same purpose. We have gone through Ex.P.1 and we are not able to find anything that would suggest that the report was not given by an eye-witness. In this context the learned trial

Judge also relied on the evidence of D.W.I and observed that the same probablised that the information would have been conveyed to the Ron Police Station at 8.30 P.M. and that the fact that a Walikar had kept watch over the dead body would also lead to an inference that the police must have reached the scene of occurrence in the night itself and kept the Walikar there to keep watch over the dead body. These observations are based on surmises. D.W. 1's evidence at the most would show that some calls had been booked at Village Mallapur from Telephone No. 30 to Telephone No. 33 at Ron Police Station. P.W.12, the Station House Officer has categorically deposed that he has not received any phone message during that night. D.W.1's evidence does not show that calls even assuming were made, the same got fructified. In the light of such a vague statement, the court can not jump to the conclusion that the members of the deceased family made telephonic calls and informed the police. These aspects have been considered by the High Court in detail and it has rightly disagreed with the opinion of the learned Sessions Judge.

8. It must also be borne in mind that if really P.W.1 had not witnessed the occurrence and brought Ex. P.1 into existence after consultations, then naturally one would expect him to implicate all the six accused as having actually attacked the deceased. But on the other hand he stated in Ex. P. 1 that A-4 and A-6 were catching hold of the hands of the deceased and A-1 was standing and instigating and only A-2, A-3 and A-5 inflicted the injuries. It must be remembered that A-1 is the principal offender and was inimical towards the family of the deceased and if P.W.1 was giving a false report without witnessing the occurrence one would expect him to give important role to A-1 and also attribute overt acts to the other accused A-4 and A-6 since there were number of injuries on the deceased, to connect them with the crime.

9. P.W.2, Basavantappa is an independent witness. He deposed that he knew A-1 to A-6 and also P.W.1 and others. He raised crops like cotton etc. and he used to take the cotton to the ginning factory of the deceased. Likewise he took the cotton on that day also. He was asked by the deceased to come to the factory in the evening as his cotton was to be ginned. Accordingly P.W. 2 left his house at about 7.45 P.M. to go the factory and when he reached Kallimath near the place of occurrence he heard the sounds and in the light he saw all the accused surrounding the deceased and he has given all the details of the attack. He also deposed that A-4 and A-6 caught hold of the hands of the deceased, A-1 instigated and A-2 and A-3 and A-5 attacked the deceased. He also deposed that when they went near the deceased, he told them that A-1 to A-6 attacked him. We do not find anything significant in the cross-examination which affects his veracity. The evidence of P.W.2 has been considered in detail by the High Court since he happened to be an independent witness. The reasons given by the learned Sessions Judge for rejecting his evidence are wholly unconvincing. The learned Sessions Judge pointed out that no records like account book maintained by the deceased from the factory has been secured to show that P.W.2 had entrusted the cotton to the deceased and the same affected his evidence. The

High Court has rightly commented that this reasoning is highly fallacious. The name of P.W.2 is mentioned in Ex. P.1. He is not a member of the family of the deceased nor he is related to the deceased and his evidence amply corroborates the evidence of P.W.1. They we have the evidence of P.W.3, Durgappa who was a Watchman in the factory. His evidence also is to the same effect The learned Sessions Judge simply rejected his evidence on the ground that he was a Watchman under the deceased and for such similar flimsy reasons. The High Court has also disagreed with the findings of the trial court regarding the evidence of P.Ws. 4 and 5. Even otherwise, in our view, the evidence of P.Ws. 1 to 3 is more than sufficient to establish the guilt of the accused and the trial court has rejected their evidence on untenable grounds.

10. Learned counsel, however, submitted that the conduct of the witnesses in not being near the dead body is highly artificial and mat shows that they could not have witnessed the occurrence. We see absolutely no force in this submission. After all the occurrence has taken place at about 8 P.M. almost in the Village. Obviously some people must have heard the cries and later atleast would have noticed the dead body lying there. The mere fact that a Walikar kept watch over the dead body does not mean that the witnesses were not even aware about the dead body and it also can not be inferred that the Walikar must have been kept there to keep watch only by the police. There is no material for any such theory. Learned counsel also submitted that the witnesses present could have intervened and the absence of any injuries on them throw some doubt about their presence. The injuries on the deceased would show that he had been severely dealt with deadly weapons and one can not expect the witnesses to risk their lives by intervening. We are satisfied that no two views are possible in this case and the view taken by the High Court is the correct one. For all these reasons, the appeal is dismissed. The appellants, who are on bail, shall surrender and serve out the sentence.