

(2006) 11 KAR CK 0125
In the Karnataka High Court
Case No : Criminal A. No. 889 of 2000

State	Vs	APPELLANT
Govindaraju @ Govinda and Goverdhan @ Gunda		RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Citation : (2006) 11 KAR CK 0125

Hon'ble Judges : Manjula Chellur, J;H. Billappa, J

Bench : Division Bench

Advocate : P.M. Nawaz, HCGP, for the Appellant; G. Suresh, for the Respondent

Final Decision : Allowed

Judgement

Manjula Chellur, J.—This appeal is directed against the judgment and order of acquittal passed by the trial Court wherein the respondents-accused were charged for offences punishable u/s 302 read with Section 34 I.P.C. The complainant in this case is none other than the Police Sub-Inspector of Srirampuram Police Station at the relevant point of time. According to the prosecution on 7-12-1998 at about 10-45 p.m., the complainant was proceeding towards his house after his duty hours in Srirampuram on his motorbike. As he reached 6th cross road on 7th main, he noticed one person being chased by three persons and they all came towards V.N.R. Bar. The person who was chased fell down and all the three persons who were chasing him stabbed him one after another on the chest of the victim with knife. On seeing the complainant nearing, A1 alerted others and directed Govindaraju and another to run away from the scene as police were at the spot, P.W. 1 tried to catch them by chasing them after stopping his bike, but they ran into the darkness, therefore he was unsuccessful. He comes back to the spot, saw the victim with bleeding injuries. He secured his constables and shifted the victim to K.C. General Hospital, Malleswaram, where he was declared dead by the Doctors. On searching the pockets of the deceased, they came across one identity card which disclosed the name of the deceased as Santhanam. He goes back to the Police Station and

lodges a complaint as per Ex. P1 and submits F.I.R. as per Ex. P2 to P.W. 11. P.W. 11 is the Investigating Officer in this case.

2. There are totally eleven witnesses, fifteen documents and three material objects which were relied upon by the prosecution. Among eleven witnesses unfortunately except P.W. 1 who is a Police Sub-Inspector and P.W. 11- Investigating Officer, none of the witnesses supported the case of the prosecution. Therefore, we have to proceed with the case based on the evidence of P.W. 1 and P.W. 11 only and certain admitted documents. P.W. 2 and P.W. 3 were examined to establish the seizure of blood stained clothes of A1 under Ex. P4 i.e., M.O. 3. Unfortunately these two witnesses have turned hostile. P.W. 4 and P.W. 5 were examined to establish the fact that M.O. 1-the knife was seized under Ex. P5 at the instance of A1. Unfortunately they have also turned hostile. P.W. 6 and P.W. 8 were examined to establish the contents of Ex. P6 that M.O. 2 another knife came to be seized at the instance of A.2. But these witnesses have also followed the steps of other two mahazar witnesses by not supporting the prosecution. P.W. 7-supplier at V.N.R. Bar-an eye-witness, P.W. 9-Mr. Thiruvengadam-another eye-witness, P.W. 10-Mr. Shashidhar-another eye-witness were examined to corroborate the evidence of P.W. 1. But they all turned hostile. Through P.W. 1, Ex. P1, Ex. P2 and Ex. P3-spot mahazar came to be marked. Ex. P7 is the inquest report, Ex. P9 is the Postmortem report, Ex. P13 and Ex. P14 are voluntary statements of A1 and A2 respectively and P.W. 15 is the FSL Report.

3. With this material, the trial Court proceeded to appreciate the material on record to know whether the prosecution was able to establish the charges for the offences punishable u/s 302 read with Section 34 I.P.C. The learned Judge of the trial Court considered the evidence of P.W. 1 came to the conclusion that the complainant P.W. 1 must have been in his uniform while returning from duty, therefore the assailants who were coming from the opposite direction would not have dared to commit such a heinous crime in the presence of a police as P.W. 1 was at a distance of 30" when the alleged incident took place. He also finds fault with the subsequent action of P.W. 1 in stopping motorbike and thereafter chasing the culprits instead of chasing them on the motor cycle. Therefore, the trial Court holds this action of P.W. 1 as unnatural and unacceptable. He also comes to the conclusion that in the absence of existence of motorable conservancy, the action of P.W. 1 was unbecoming of a Police Officer.

4. At para 11, he discusses the inaction of P.W. 1 to secure the help from public to nab the culprits and his further acts deputing the constable to shift the victim and registering case also suggests false implication of the assailants and also suspicion regarding the bona fides of the P.W. 1 The learned Judge holds that contrary to the material on record, P.W. 1 has stated that first he went to Police Station to register the case and comes back to the spot to shift the dead body which is very strange. Then he also opines that as the distance was only 75" between the bike and the assailants when he saw them for the first time while

chasing the victim he could have atleast caught hold of one of them. He comes to the conclusion that P.W. 1 did not make such effort at all. Therefore, he opines that evidence of P.W. 1 did not inspire confidence in the trial Court to accept his evidence as eye-witness. Then he proceeds to discuss regarding the registration of the crime and suspects the said action of P.W. 1 as no endorsement came to be seen on Ex. P1 at what time the case came to be registered. Therefore according to the learned Judge in the absence of any corroborative evidence supporting the evidence of P.W. 1, no credence could be attached to the evidence of P.W. 1. Later regarding the seizure of M.O. 1, 2 and 3 and the respective mahazars, he comes to the conclusion that even the recovery of material objects were not established as none of the witnesses supported the case of the prosecution. He refers to the evidence of P.W. 11 in detail.

5. So far as postmortem report, it was marked with the consent of the defence as Ex. P9. As per the document, ten injuries were found on the deceased and the further the opines that the death was due to shock and haemorrhage as a result of other injuries on the chest is established from the external and internal injuries described at Ex. P9-postmortem report, therefore he concludes that the death of the victim Santhanam was a homicidal death. Except believing and accepting this portion of the case of the prosecution nothing else was believed. Therefore ultimately the accused were acquitted by the trial Court. Aggrieved by the Name, the present appeal is filed.

6. We have heard in detail the arguments of both the sides. We have gone through the entire evidence and also the citations referred to during the course of arguments.

7. The point that would arise for our consideration is,

Whether the judgment and order of acquittal warrants interference from this Court?

8. The contents of the complaint and also the evidence of the complainant reveals complicity of three persons in the crime. However, P.W. 11 who completed the investigation and filed the charge sheet did not find material so far as third culprit. Hence, only against A1 and A2 i.e., Govindaraju and Govardhan the charge sheet came to be filed.

9. Ex. P9 which is marked as post-mortem report, which is marked by consent, reveals the following external and internal injuries:-

(1) Horizontally placed stab wound present over front and right side of chest, situated 9 cms., to the right of mid line and lower border of right nipple measuring 3.5 cms. X 1.5 cms. x chest cavity deep. Margins are clean cut, inner end pointed outer end blunt.

(2) Obliquely placed stab wound present over front of left side chest, situated over the left nipple, it is placed 11 cms. to the left of mid-line, measuring 2.5 cms. x 1 cm. x chest cavity deep. Margins are clean cut, upper inner end

pointed, lower outer end is blunt.

(3) Horizontally placed stab wound present over front and outer aspect of left side of chest, situated 5 cms. below the level of left nipple, 17 cms. to the left of mid-line measuring 4 cms. x 1.5 cms, x 5 cms. directed upwards and to the right in the muscle plane, inner end is pointed, out end is blunt, margins are clean cut.

(4) Superficially incised wound present over front of left side chest, horizontally placed measuring 6 cms. x 1 cm,

(5) Obliquely placed stab wound present over front and right side of chest, situated 1 cm. to the right of mid-line and 4 cms. below the level of right nipple measuring 2 cms. x 1 cm. x 3 cms., directed upwards, backwards to the left in the muscle plane, margins are clean cut, upper inner end is pointed, lower outer end is blunt.

(6) Horizontally placed stab wound present over front and right side of chest, situated 8 cms. below the right nipple and 2 cms. to the right of mid-line measuring 3.5 cms. x 1.5 cms. x 5 cms. directed upwards, backwards to the left in the muscle plane, inner end is pointed, outer end is blunt.

(7) Incised wound present over the tips of palmar aspect of right index, middle and ring finger, each measuring 2 cms. x 1 cm. x muscle deep (defence wound)

(8) Incised wound present over palmar aspect of root of right thumb and dorsum of root of right thumb each measuring 2 cms. x 1 cm. x muscle deep (defence wound).

(9) Incised wound present over the right thenar eminence measuring 2 cms. x 1 cm. x muscle deep (defence wound).

(10) Incised wound present over the left thenar eminence measuring 3 cms. x 1 cm. x muscle deep (defence wound).

- On dissection of injury No. (1), it is observed that the weapon has cut the skin, muscles over the right side of chest and has then pierced the 4th inter-cartal space on the right side and has pierced the anterior surface of the middle of right lung through and through on which it measures 2 cms. x 1 cm. and 1 cm. x 0.5 cm. respectively. The injury is directed upwards, backwards to the left.

- On dissection of injury No. (2), it is observed that the weapon has cut the skin, muscles over the left side of chest and has then pierced the 5th intercostal space on the left side and has cut the pericardium and then has pierced the anterior surface of left ventricle of the heart, on which it measures 2 cms. x 0.75 cm., the injury is directed upwards backwards and to the right to a depth of 7 cms.

10. The Doctor opines, after receiving the report of FSL, that the death was due to shock and haemorrhage as a result of stab injuries found on the chest. There were totally ten external injuries and the Doctor has clearly explained the corresponding internal injuries as well. There were piercing injuries between the

intercastal space and the stab injuries damaged both the heart and the lungs. According to P.W. 1, he was not able to talk to the victim. In other words, subsequent to the stab injuries, the victim did not talk to anyone and he was declared dead in the hospital by the time he was shifted to hospital which must have been within 1/2 hour to 45 minutes after the incident. The death being the resultant of external and internal injuries found on the chest of the victim due to stab would reveal that it is a homicidal death.

11. The question is whether this homicidal death was due to assault made by the respondent-accused as stated by P.W. 1. Though the prosecution attempted to examine three eye-witnesses-P.W. 7, P.W. 9 and P.W. 10, they did not support the case of the prosecution. The place of incident in front of V.N.R. Bar of Srirampuram is also not in dispute, Having regard to the time and the place, it was quite possible atleast for the persons working in the Bar to know what exactly had happened A sincere effort was made to bring one person before the Court i.e., P.W. 7 Unfortunately prosecution was not successful in their effort. We cannot expect many people moving around at that hour especially in front of a Bar except the persons concerned with the Bar or the visitors of the Bar at that hour. P.W. 9 seems to be a Medical Transcriptionist and P.W. 10 is his friend from Davangere. Even their presence at that hour having regard to the profession of P.W. 9 is quite natural. As already stated above, but even these witnesses did not support the case of P.W. 1. Therefore, we are left with the evidence of P.W. 1 so far as the actual incident is concerned and the rest of investigation through P.W. 11.

12. As per the contents of complaint-Ex. P1. when this complainant was returning from his duty at about 10-45 p.m. on his motorbike, he noticed one person being chased by three persons near 6th Cross, 7th Main of Srirampuram. They were chasing him from 5th Cross towards Kush Hotel. When the victim fell down, the three persons stabbed the victim with a knife on the chest. On seeing P.W. 1 nearing them, they sped away as police were approaching. He stops the motorbike and chases the three persons to a short distance, but they escape into darkness.

13. He secures Head Constable 345 and Police Constable 5857 and shifts the victim to K.C. General Hospital in an auto. The Doctors declared the victim as dead. Even they ascertained his identity as D. Santhanam from the identity card in his pocket. He kept P.C. 5857 to watch the dead body and returned to the Police Station by 11-45 p.m. and registers Crime No. 358/1998 for the offences punishable u/s 302 read with Section 34 against three persons. The incident took place at about 10-45 p.m. as per Ex. P1. In the F.I.R. names of A1 and A2 were shown and the name of the third assailant was not mentioned. The contents of original Ex. P1 and Ex. P2 reveals the concerned jurisdictional Magistrate received the F.I.R. along with the complaint at 3 x. P1 by 1.40 a.m. on 8-12-1998. The incident according to P.W. 1 occurred at 10-55 p.m. on 7-12-1998. He shifted the victim to the hospital after securing help from his

assistants, ascertained the death of victim and returned to the Police Station to register the crime. For all this minimum 1 to 1 1/2 hours would have taken. Some time must have been taken to prepare Ex. P1 and Ex. P2 as well. By 11-45 p.m. the crime is registered. Exactly within 55 minutes from the time of incident the crime number is registered. The Constable at that hour was sent with the F.I.R. to the Magistrate which is evident from the endorsement made by the Magistrate both at Ex. P1 and Ex. P2. Within two hours from the time of registration of case, the complaint and F.I.R. were received by the Magistrate. This would only indicate that the P.W. 1 did not waste much time in attending to the victim, registering the case and dispatching the F.I.R.

14. The question would be was it possible for P.W. 1 to notice while riding a motorbike all the details explained in the complaint Ex. P1. It was 10-45 p.m. when he was returning home. Being a Policeman it is natural that any strange or peculiar thing would catch his eye, especially something to do with a crime. Even for a normal or ordinary person at that hour if one person being chased by three persons on a main road it would look strange. Even a common man would divert his attention to such event. Being a Police Sub-Inspector it was quite natural for P.W. 1 to notice the events happened in front of him while proceeding towards his home. Especially if it was noticed near a Bar and Restaurant, he had better reason to observe it. Mere chasing would not have raised any suspicion straightaway. In all probability, P.W. 1 could not have anticipated what would happen or what was the actual intention of the culprits chasing the victim. Therefore at the first sight of such chasing of the victim by the assailants, he did not shout to stop the incident. Before he could realise what was happening, the incident had taken place. When he saw them chasing first, the distance was 75". By the time the victim fell down, he was at a distance of 30" from the incident. It is nobody's case that there were no lights at the place of incident. It was on 7th main road of Srirampuram. The victim followed by the assailants was coming from 5th cross to 6th cross in the opposite direction. At which point of time the assailants noticed. P.W. 1 is also a question. The fact that they were concentrating on the victim chasing him, it was possible that they did not notice P.W. 1 immediately. After committing the crime when the motorbike came nearer to them, they might have noticed. Therefore the observation of the learned Judge as if accused saw P.W. 1 in the uniform on the motorbike and then committed the crime is an erroneous conclusion. Straightaway P.W. 1 names the name of accused No. 1 in the complaint and he also deposes to the same effect before the Court. Whatever stated in the complaint at Ex. P1 is reiterated in the evidence so far as identity of the assailants, chasing of the victim, falling of the victim, stabbing of the victim by accused No. 1 and others. This is strange according to defence. Even in the complaint, when he refers to the stabbing by other two persons, he does not disclose their names. He says, after chasing, others also stabbed. Later, when A-1 alerted other two saying "Govardhana" that police are coming, then they ran away. The police who was coming must have made him to alert one of the other two i.e., Govardhana. Therefore, P.W. 1 refers

to the name of A-2 and states under what context he learnt the said name. This would only suggest he knew the name of Govindaraju only. The question is how this PSI would know the name of A-1-Govindaraju? When we went through the entire cross examination of PW. 1, no effort was made by the defence to ascertain from this witness, under what context he knew A-1-Govindaraju or they did not attempt to know the reason to implicate the said Govindaraju in the complicity of the crime. In other words, not even an attempt was made by the defence to bring on record, why this PW. 1-PSI would have an eye on A-1-Govindaraju to implicate him falsely in a crime but for witnessing the same. On the other hand, the defence theory would suggest A-1 was known to PW. 1 We come to this conclusion because if the motive of PW. 1 was to implicate the accused persons in a false case or false crime, he would have mentioned the name of A-2 also at the first instance instead of learning such name through A-1. Therefore, in the absence of any effort on the part of PW. 1 to exaggerate in his anxiety to saddle the accused with the responsibility of the crime in question, the narration of the events noticed by him as it is, lend much credence to his statement before the Court. Merely because he is a police officer, there is no rule coming in the way of appreciating his evidence like any other independent witness before the Court. He being a responsible police personnel when he came across such heinous incident he seems to have reacted in the normal way. In other words, he has performed his duty the way he was expected to discharge his duties.

15. The learned counsel for the defence to dispel the evidence of PW. 1 submits that when he was coming on the motor cycle, after seeing the stabbing of victim why did he stopped the motor cycle to chase the assailants instead of chasing them on his motor cycle? Definitely there is no reference to conservancy at. Ex. P.1 in his complaint. He only sees them running away from the spot along with their knives, he chased them but they escaped into darkness. In the evidence he says they ran into conservancy lane when he chased them after stopping his motor cycle. This would only suggest that it was not possible for him to proceed on his motor cycle chasing the assailants, otherwise being a police officer he would have done so. If it were to be an ordinary citizen we expect him to react in a different way. Further, this discrepancy was not at all confronted to witness during the cross-examination. Unfortunately, the learned Judge, takes the responsibility of discussing this motorable conservancy which was not the defence of the accused. It was not even suggested by the defence that it was possible for P.W. 1 to chase the accused on his motor cycle to catch them. Even otherwise there is no hard and fast rule that all the minute details must be mentioned in the complaint if main ingredients are mentioned like the name of the assailant, name of the victim, place of the incident and the manner in which it was committed, it would be sufficient. There may be a case where no eye-witness is there, then the Courts of law do not expect the complaint to disclose all the details. Therefore, non-mentioning of the conservancy in the complaint is not at all fatal to the prosecution as opined by the trial Court. On the other hand,

as pointed out by the learned Government Advocate that as per Ex. P.3 spot mahazar, 10 feet beyond the place of incident, conservancy lane starts on the northern side, so the presence of conservancy cannot be disputed.

16. According to the trial Court, the entire incident must have happened within a matter of one minute or less than one minute. The discussion of the learned trial Judge would indicate that P.W. 1 ought to have reacted as if he was waiting for the incident to happen at that place at that hour at the fag end of the day at 10.45 P.M. when he was returning home on the motor cycle. He comes across the incident, which is purely a coincidence. Therefore, the observation of the learned Judge that he could have caught hold of atleast one of the assailants or assailants ought to have noticed P.W. 1 in the uniform, seems to be a perverse approach.

17. P.W. 1 noticed when victim was being chased by the assailants. This suggests that there must have been something else earlier to that event, some injuries might have been caused to the victim. On the other hand it indicates that victim was aware of some danger to his life at the hands of assailants Therefore, he was running away from them but the assailants were chasing him holding the weapons in their hands.

18. The disclosure in the complaint and before the Court by P.W. 1 refers to stab injuries. He does not disclose how many attacks were made by each of the assailants. According to the learned defence Counsel when he had noticed all the details he ought to have disclosed how many stab injuries were caused by each of the assailants at what place. Unfortunately, even the learned Judge proceeds on the premises that P.W. 1 saw three stab injuries being caused by the assailants. No where in his evidence or in the complaint he refers to number of stabs given by the assailants. He only says A-1 stabbed with a knife followed by other two assailants. Incident was witnessed when P.W. 1 was moving on his motor cycle. Therefore he was not only witnessing what was happening but was riding a two wheeler. Therefore, some attention is required in riding as well in that span of one minute or less than one minute we cannot expect him to count the number of stab injuries caused by each of the assailants. As it was a main road, apart from the streetlights he had the benefit of light from his motor cycle. Therefore, it was possible for him to notice what was happening ahead of him within 30 feet.

19. The learned Counsel relies upon the following decisions:

Meharaj Singh (L/Nk.) Vs. State of U.P., where the failure of the prosecution to produce eye witnesses was coming in the way of proof of the crime. The Apex Court said if prosecution fail to produce the eye-witnesses, the presumption would be that such witnesses were not prepared to support the false case. In the said case the contents of the details at FIR and the gist of statements recorded during the inquest proceedings were indicating that prosecution story was still in embryo when FIR came into existence. Therefore it was known that false

implication was possible because of the distorted efforts during the inquests proceedings. In that context the Apex Court said the absence of eye-witnesses for the prosecution before the Court would only lead to presumption that they were not prepared to support the false case. In the present case there is nothing like something was in embryo when the complaint came to be lodged. Whatever was deposed before the Court finds a place at Ex. P.1. At Ex. P.1 it does not refer to the persons of P.W. 9, 7 and 10 at the spot. P.W. 1 did not disclose their names. Of course, he only refers to the assistance of the public apart from Police Constable and Head Constable to shift the victim to the hospital. Further investigation must have revealed the presence of P.W. 7, 9 and 10. All the efforts were made to examine the eye-witnesses P.W. 7, 9 and 10 But unfortunately, none of them supported the case of the prosecution. This does not lead to presumption that they were reluctant because of the false case. There could be hundred and one reasons why these eye-witnesses did not support the prosecution case.

20. The second decision was to place reliance on the principle that when the evidence of the eye-witnesses was rejected in respect of four other accused, the same cannot be relied upon in respect of one accused merely because the fatal blow is attributed to him, when the evidence is common to all the five accused. This is reported in *Hardial Singh Vs. State of Punjab*, in the case of *Hardial Singh Vs State of Punjab*. In the present case the situation is entirely different. The trial Court did not believe P.W. 1 in respect of both the accused. Against A-1 it was disbelieved. Against A-2 he was not present On the other hand that the State has come up in appeal challenging the acquittal of both the accused.

21. As a matter of fact it is noticed at the time of admission so far as A-2, the Court felt no case is made out because P.W. 1 did not know the name of A-2 until it was disclosed by A-1, Govindaraj. In other words no discussion of evidence was made regarding the material available against A-2 at the time of rejecting the leave to appeal against A-2. Therefore, this would not come to the assistance of the defence.

22. The third decision is to stress on the principle that when the evidence of the eye-witnesses were disbelieved by High Court partly resulting in acquittal of one of the accused it would not be safe to believe those eye witnesses qua other accused. This is reported in *Lakkappa Ningappa Ittappannavar and Others Vs. State of Karnataka*, in the case of *Lakkappa Ningappa Ittappannavar & Ors., Vs State of Karnataka*.

23. The case of *Ram Ashrit Ram and Others Vs. State of Bihar*, was pressed into service in order to establish unnatural behaviour of P.W. 1 at the time of incident. As already stated above we cannot compare the behaviour of a police officer with that of an ordinary commoner when they come across a ghastly incident of this nature. Normally the police officer is expected to react in a composed manner in such situation. They are trained to do so. Therefore, this decision is not at all applicable.

24. The learned Government Advocate relies on the decision reported in Karamjit Singh Vs. State (Delhi Administration),

25. Surinder Singh and Another Vs. State of U.P., the Supreme Court has held thus:-

Independent witnesses were constables performing patrolling duty in area where deceased and prosecution witnesses lived-They had no reason to falsely implicate accused persons-Merely because they know names of deceased and prosecution witnesses-Is no ground to reject their evidence as chance witnesses-Their presence on spot quite natural-Non-mention of name of one of them in site plan-Does not render his presence at place of occurrence improbable-Non-examination of shop-keepers as independent witnesses-Not fatal-Since they appeared to be terrified at ghastly attack and did not come forward to depose-Acquittal was held as not justifiable.

26. The learned Counsel relies upon Budh Singh and Others Vs. State of U.P., in the case of Budh Singh and Ors. Vs State of U.P. to contend that where two views are possible on the basis of the some set of facts, the High Court should not ordinarily set aside the judgment of acquittal unless it finds the reasoning of the trial Court as perverse. Challenge is against the acquittal of the accused. It is also well settled that after the trial Court considering the material holds the accused as innocent, when the matter comes up before the High Court their innocence rises to greater height. In the present case only one view that was possible for P.W. 1 to witness the incident as stated by him.

27. We are now concerned with A-1 as other two are not before us for different reasons. The entire recovery of weapon in this case is spoken to by P.W. 11 alone whether hostility of the witness for Ex. P.5 and 6 would come in the way of prosecution. It is well settled that if direct evidence is available even if the weapon is not seized it would not come in the way of the prosecution. It is also well settled principle why the testimony of investigating officer should not be believed for the recovery of the material object. Having regard to the entire discussions, we are of the opinion that the reasoning of the trial Court is nothing but perverse in its approach. Therefore, we allow the appeal setting aside the judgment and order of acquittal against the accused No. 1 Govindraju, we hold A-1 guilty of offence punishable u/s 302 Indian Penal Code. Heard regarding sentence.

As the case does not fall under one of the rarest cases, in our opinion the ends of justice would be met by sentencing the accused for imprisonment of life. He shall also pay a fine of Rs. 10,000/- in default he shall undergo RI for another one year. The period of custody if any shall accrue to the benefit of accused u/s 428 of Cr.P.C.