
(1999) 10 KAR CK 0049
In the Karnataka High Court
Case No : Criminal Appeal No. 459 of 1995

State of Karnataka

APPELLANT

Vs

Mallappa Dyavappa Harijan @ Talawar and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2000) 2 KCCR 1321

Hon'ble Judges : N.S. Veerabhadraiah, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : B.V. Pinto, Additional State Public Prosecutor, for the Appellant; C.M. Desai and Arvind Desai, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The State of Karnataka, through this appeal has assailed the order of acquittal passed in favour of accused Nos. 1 to 6 in S.C. No. 84 of 1991 by the learned I Additional Sessions Judge, Bijapur on 26.6.1993. Accused Nos. 1 to 6 were charged with having committed offences punishable under Sections 143, 147, 148, 302 read with 149 Indian Penal Code. As per the charge framed against them it was alleged that late on the night of 12.5.1991 at about 1.30 a.m. at Ammalzeri village within the jurisdiction of Bilagi Police Station, the six accused persons out of whom accused No. 1 and accused No. 5 were armed with axes had formed an unlawful assembly and that they had in furtherance of the common objective of the unlawful assembly attacked the residence of Siddappa and that when he came out, that they followed him for some distance and fatally assaulted him as a result of which Siddappa died on the spot. It is material for us to mention here that it is the prosecution case that deceased Siddappa and his brother's son Kallappa had assaulted the brother of accused No. 1 Pawadappa a short while earlier and killed him and it is further alleged that the present incident was the outcome of the murder of Pawadappa. We specifically refer to this aspect of the prosecution case because, as we shall presently point out it

assumes very great significance. The complaint in respect of the murder of Siddappa was lodged at the police station at about 8.15 a.m. on the morning of 13.6.1991 and there is no dispute about the fact that the six accused persons have been implicated and it is alleged that Siddappa died as a result of the trial at the hands of these six persons. The F.I.R. in question reached the Court at about 5 PM that evening and we shall have something to say with regard to the time lag. The police commenced the investigation and on completion of the same the six accused were charge sheeted and put up for trial. The learned trial Judge rejected the basic evidence in this case which consists of the depositions of PW-1 Saraswathi who is the wife of the deceased and who is an eye witness, PW-2 Muttappa who is the son of the deceased, PW 4 who is the daughter-in-law of the deceased all of whom claim to have witnessed the incident and have been examined by the prosecution as eye witnesses. The principal reason for rejecting this evidence is that there was some level of hostility between the parties and the learned Judge was of the view that it would be unsafe to base a conviction on the strength of the depositions of family members who were not only partisan but hostile and that in the absence of any independent evidence the accused came to be acquitted. The order of acquittal has been challenged through the present appeal. At the hearing of the appeal, we have heard the learned Additional State Public Prosecutor Mr. Pinto and the learned Counsel who represents the respondents-accused Sri C.M. Desai. We have also perused the record of the case and have heard the learned Counsel on points of fact and points of law and have also taken into account the most important preliminary aspect namely that this is an appeal against acquittal.

2. To start with, we have perused the judgment of the trial Court and prima facie, it appeared that the judgment requires a reconsideration because of the solitary ground for rejection of the evidence of the three eye witnesses namely that they are hostile and partisan. A perusal of the evidence of PW-1 Saraswathi, PW-3 Muttappa and PW-4 Sulochana indicates that the deposition follows a common pattern. They have very clearly stated that the accused persons came to their house and that they were behaving in an aggressive fashion, they were armed with axes and stones and other weapons and that they were threatening deceased Siddappa which was why the door was closed but these persons started throwing stones and threatening to break down the door whereupon despite entreaties from the wife Saraswathi, deceased Siddappa came outside. A verbal altercation took place after which Siddappa moved some distance away and the accused persons followed him and assaulted him and all the three eye witnesses are very clear about the fact that accused No. 1 to accused No. 5 were armed with axes and that they inflicted several blows on the deceased and that other accused persons also participated in the assault with the help of stones. Siddappa virtually collapsed and died on the spot and on the basis of this evidence which has virtually remained unshaken in cross-examination, the learned Additional State Public Prosecutor submitted that this is a case in which we have not one but three eye witnesses, that their versions support each other

that their depositions concur and furthermore that a perusal of the medical evidence will indicate two things. The first is that Siddappa died a homicidal death and consequently that this death was due to the multiple injuries inflicted on him by the accused persons. The cause of death is essentially attributable to the axe injuries. The submission therefore was that the charge of unlawful assembly, rioting and murder are all established and that all the accused are liable to be convicted.

3. On the other hand, what was submitted on behalf of the respondents was that there is a background of hostility between the parties and that the witnesses are the aggrieved family members of Siddappa. It was also pointed out to us that the version is very one sided in so far as all the aggression is attributed to the accused and the role attributed to Siddappa is almost on par with what one would expect from a Sadhu. The submission is that this version itself is too good to be believed and that it was very clear that the whole objective was to hit back at the accused persons merely because Siddappa has died, totally overlooking and suppressing very important aspects relating to the other persons. Mr. Desai submitted that there is something very unusual in this case namely the fact that it is totally deliberate, conscious effort has been made to bypass and avoid even the remotest reference to the murder of Pawadappa which has happened at the same time and he has demonstrated to us that this has been carried through not only by these witnesses but also as far as the medical evidence is concerned and lastly right up to the investigation stage. With regard to the motive, he submitted that the interconnection that has been remote has not been established and as far as this aspect of the case is concerned, we uphold the findings of the learned trial Judge that the prosecution has failed in establishing what the real motive for the assault was.

4. There has also been considerable amount of criticism from the defence with regard to the time of the incident and we do find that there is a lot of vagueness with regard to this aspect. We do not accept rustic villagers to be precise with regard to the exact minute but we do expect from the prosecution particularly in murder trials a certain degree of precision with regard to the time of the incident because this assumes a lot of significance. We shall demonstrate immediately that having analysed and dissected the evidence before us that we find that neither has the timing of Pawadappa's murder been established nor for that matter has the timing of the present incident been established to our satisfaction. The level of vagueness is not with regard to a few minutes or an hour but if one looks at the manner in which the prosecution has put forward its evidence, one is led to believe that there was a time gap of about six hours between the two incidents which is impossible to accept. It is the prosecution's own case that the two incidents followed each other in rapid succession and Mr. Desai's principal submission was that if the case were to be analysed from this point of view the Court will find that there are too many unanswered questions in this proceeding. To compound matters, though the complaint was lodged at the police station at 8.15 a.m. there is absolutely no explanation as to how and

under what circumstances it took the authorities one full day or in other words a full nine hours before the F.I.R. reached the Court. It is not for us to indicate as to what the fall-out of such a situation is except to record that where there are serious lacunae of this type in the prosecution case which are unexplained that the general credibility level starts eroding to a point where a Court would find it extremely unsafe to base a conviction on such a record.

5. We need to devote special attention to the medical evidence. It is true that the prosecution has examined PW-3 Dr. Veerendra who has produced the post mortem report and who has deposed to the effect that the deceased had sustained multiple injuries out of which several were necessarily fatal and that he had died a homicidal death and furthermore it was these injuries that caused the death. What was demonstrated to us however on behalf of the defence was that there is again something very strange and unacceptable with regard to the medical evidence. The post mortem is alleged to have commenced at 4 PM on 13.6.1991 and concluded at about 5 PM on 13.6.1991. A perusal of the post mortem report produced by the doctor indicates to us that at all places in that report where the date is required to be mentioned that the date is set out as 23.6.1991. At two places the figures 23 have been overwritten and corrected to read 13 and the doctor has sought to explain that this was a typographical error. All the remaining references still read 23.6.1991. We are not prepared to accept a record of this type particularly in the crucial area of medical evidence because even though the learned Additional State Public Prosecutor submitted that it is an obvious error and that the doctor has said so, what was pointed out on behalf of the defence was that in the first instance the errors have not been corrected right through this document but that this has been done at only two places. More importantly, the doctor has stated that the crucial entries with regard to the injuries that had been sustained by the deceased Siddappa were noted on a separate plain sheet of paper and signed by him and due to over sight these were not forwarded along with his report and that he has produced this sheet of paper before the Court for the first time. This is not the manner in which crucial evidence in a murder trial is required to be treated and we are not willing to accept the evidence of this type because as was submitted on behalf of the defence it does appear to us that the post mortem may have been conducted on the 13.6.1991, but we use the word "may" because there again there is no definite indication if the entries were made ten days later as appears to be the case, then the medical evidence becomes extremely unreliable. In a murder trial of the present type the medical evidence is vital evidence and this evidence would have provided the strongest and only corroboration to the evidence of the three eye witnesses PWs 1, 2 and 4 and on the state of records as it exists, we refuse to place any reliance on the medical evidence and if this head of evidence goes, then the prosecution is left with the uncorroborated evidence of the three eye witnesses. It has come on record that the two incidents were ones of considerable seriousness as is obvious to us that the villagers had all collected there and in this background the fact that none of them have come forward to

support the prosecution is an aspect of the case which we take serious note of. We refer to this feature because the evidence of family members and partisan witnesses does not have to be rejected outright and if the evidence appears reasonably good it can certainly be relied upon but a Court would look to some degree of supportive evidence.

6. Not only do we not find any supportive evidence in this case but we find something that is totally destructive of the prosecution evidence. Mr. Desai vehemently submitted that once the evidence relating to motive gets discarded that there is a large question mark that arises namely the question as to what actually happened on that night which resulted in the two deaths when it is the prosecution's own case that the present murder was a sequel to the earlier murder it was quite elementary for the prosecution to have realised that it ought to have produced complete facts in respect of Pawadappa's murder in the present trial. This is a case in which once an interconnection has been pleaded, it was necessary to place before the Court what precisely happened. It would be too one sided for the prosecution to contend that there is absolutely no provocation or for that matter that there was absolutely nothing done from Siddappa's side and that he was a virtual innocent victim in the assault. It is not for us to conjecture as to what could have happened but the law with regard to the presentation of all facts and complete facts is that the prosecution was required to have placed before the trial Court all the prosecution witnesses, the complete facts in relation to Pawadappa's murder and in relation to the subsequent course of that action. We find from the conscious avoidance that has been apparent and very obvious at all stages of the trial that there has been a deliberate effort to suppress anything with regard to that incident and on this basis we must necessarily hold in law that an adverse inference would arise vis-a-vis the prosecution. We conclude by stating that where it is the duty of the prosecution to produce crucial evidence before the Court and where it is established that such evidence is suppressed then the credibility of the prosecution gets seriously eroded and, regardless of the fact that the evidence of P Ws. 1, 2 and 4 in itself is reasonably good evidence it would still be impossible to convict on the basis of this evidence. The reason for it is because even though these witnesses may have described what according to them was the correct version of the incident it is obvious to us that they are suppressing some vital facts.

7. Having very carefully analysed the record before us and having considered the position in law with regard to the various aspects of the case, in our considered view this record is unfit to sustain a conviction against the accused. In this background, no interference is called for as far as the present case is concerned. While we confirm the order of acquittal recorded by the trial Court in favour of the six accused, we make it clear that the acquittal is based on the reasoning incorporated in this judgment.

8. The appeal accordingly fails and stands dismissed. The bail bonds of the

respondents-accused to stand cancelled.