REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.774 - 776 OF 2010

K.A. KOTRAPPA REDDY AND ANR. APPELLANTS

VERSUS

RAYARA MANJUNATHA REDDY
@ N.R. MANJUNATHA & ORS. RESPONDENTS

J U D G M E N T

Pinaki Chandra Ghose, J.

1. These appeals are directed against the judgment and order dated 19th November, 2008 passed by the High Court of Karnataka at Bengalore in Criminal Appeal Nos.790, 829 and 1408 of 2007. Criminal Appeal Nos.790 of 2007 and 829 of 2007 were filed by accused Nos.1 to 10 against their conviction and the same were allowed by the High Court. Criminal Appeal No.1408 of 2007 was filed by the State of Karnataka against the acquittal of accused Nos.11 and 12, which was dismissed by the High Court.

2. The brief facts necessary to dispose of these appeals are that on 13.09.2005 at about 10:30 A.M., one Ajjanna Reddy (deceased), who was the President of Nandigavi Village Panchayat in Harihara Taluk, District Davangere, Karnataka, was monitoring execution of the road repair work in front of Ishwar Temple situated near the house of accused Nos.1 to 4. Accused No.6 objected to the same as the said repair would reduce the area of the front yard of his house. The accused persons picked up quarrel with Ajjanna Reddy and asked him to stop the work which he refused to do so. It is alleged that the accused persons, who were 12 in number, formed an unlawful assembly carrying dangerous weapons, abused and beat the deceased at about 12:30 P.M. and soon, about 50 odd people gathered at the place of occurrence and there was a chaos. PW1, PW2 and PW5 came to rescue the deceased but they were also thrashed. Further, the accused left the scene, the deceased was taken to Davangere Hospital where he was declared brought dead at 2:30 PM. PW1 went to lodge the FIR at about 6:30 P.M. at Malebennur Police Station against 11 accused persons and one Siddappa (not accused herein).

3. After investigation, charge-sheet was filed against 12 accused persons (name of 12th accused Siddappa was substituted with Nadigara Tipeswamy). After considering the material on record and hearing the counsel for the accused, they were charged for offences punishable under Sections 143, 147, 148, 504, 114, 323, 324 and 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The charges were read over and explained to them. All the accused persons pleaded not guilty and claimed for trial.

4. The Trial Court by its judgment and order convicted the accused Nos. 1 to 9 for the offences punishable under Section 143, 148 and 302 read with 149 IPC. Accused No. 10 was found to be guilty of the offence punishable under Section 114 read with 302 IPC. Accused Nos.2, 4 and 9 were also convicted for the offence punishable under Section 324 IPC. The convictions were based on the evidences of the eye witnesses, which included two injured witnesses, and the recovery of weapons used further corroborated by the extra-judicial confession made to PW14 (B.M. Halaswamy) and the motive being established. However, the Trial Court gave benefit of doubt to accused Nos.11 and 12 and acquitted them of all the charges. Accused Nos.1 to 9 challenged their order of

conviction by filing Criminal Appeal No.829 of 2007, accused No.10 separately challenged his conviction order by filing Criminal Appeal No.790 of 2007 before the High Court and the State also filed Criminal Appeal No.1408 of 2007 against the acquittal of accused Nos.11 and 12. The High Court by the impugned judgment and order allowed the first two appeals and dismissed the third appeal filed by the State, on the ground that the prosecution failed to bring home the guilt of the accused beyond reasonable doubt and as such, they were entitled for benefit of doubt. The acquittal was based on ground that there was delay in filing the FIR and the eye witnesses who were relied upon by the Trial Court were interested and partisan witnesses. The motive was also not clearly established since there was no proof of any repair work in front of the house of the accused and it was proved on record that the accused never contested any election against the deceased.

5. The Informant PW1 has filed the present appeals before this Court. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant has made various submissions on the basis of the Trial Court judgment. It was argued that there was no undue delay, as the informant had to travel to various hospitals for about

61 Kms. Regarding the testimony of the eye witnesses, the learned senior counsel for the appellant contended that except PW1 (Kotrappa Reddy), no other witnesses are related to the complainant or the deceased. It was also contended that PW1 was independent witness as he was also a relative of the accused party. The testimony of PW1 and PW5 was more trustworthy as they were injured witnesses and PW10 and PW11 were chance witnesses who were working in an Anganwadi within close proximity to the place of incidence. Learned senior counsel also submitted that there was no dispute regarding the fact that the deceased died a homicidal death on account of serious injuries inflicted upon him which caused profound bleeding. With regard to accused No.12, it was argued that PW5 specifically stated his role in the alleged assault in the statement recorded by the police immediately after the FIR was lodged. Against the acquittal of accused No.11, it was argued that the certificate was not in the name of accused No.11 and even otherwise, merely a certificate would not prove the attendance of the accused at some other place.

6. Mr. B. H. Marlapalle, learned senior counsel appearing for the respondents accused has made various submissions countering

the arguments put forward by the appellant. The FIR was contended to be delayed by more than 6 hours and owing to the relationship between the parties, the said time was used to built up a story wherein as many as 9 members of accused family were named. The learned senior counsel pointed out various lapses in the prosecution story and contended that the prosecution failed to materially explain few facts. For instance, there was no forensic report brought before the Trial Court of PW15 (Geeta-wife of the deceased) or any other person who accompanied the deceased; bloodstains from the jeep car were also not seized; blood-stained clothes of PW1 or PW2 were also not seized. Another fact which was not explained by the prosecution was as to why no action or investigation was initiaited when the police officers came to know about the death of a person in the City Central Hospital itself at about 2:30 P.M. There is also no explanation as to why the deceased was not taken to the Chigatiri General Hospital which is a Government hospital with 1000 beds. The deceased was instead taken to a private City Central Hospital. Another fact which still remains unanswered was as to why the nearest police station was not informed and as to why the FIR was lodged in Malebennur Police Station. Though there was a regional branch of Forensic

Science Laboratory at Davangere, yet the seized articles were sent to Forensic Science Laboratory, Bengaluru, after a delay of about one month. The learned senior counsel for the respondent further argued that there were numerous corrections made in the autopsy report, as was admitted by PW21 (Doctor Tulsi Nayak), and he did not give any explanation as to the cause of delay in drawing the autopsy report.

7. In our considered opinion, there are three main issues on which contentions have been advanced before this Court and we shall now examine each contention in the light of the arguments made before us. The first is regarding motive. It is a settled law that motive is not a necessary element in deciding culpability but it is an equally important missing link which can be used to corroborate the evidences. In the present case, the motive of the accused was stated to be two-fold. One being the already existing political rivalry between the parties and the immediate cause being the heated objections raised by the accused against the deceased for carrying out repair work which would have reduced the area of the house of the accused. Upon perusal of the records, PW1 himself admitted that the accused have not contested any election

against the deceased. As against the immediate cause, PW18 (labourer) stated that the repair was going on at the back of the temple and not in front of the accused's house. The investigating officer did not seize any material nor did he produce any evidence or Panchayat record or contract to prove that any such repair work was going on in front of the house of the accused. Thus, the prosecution squarely failed to impute motive upon the accused.

8. The second issue, which is of paramount consideration, is the testimony of the eye-witnesses. PW1, PW2, PW5, PW10 and PW11 are the five eye-witnesses, out of which PW1 and PW5 are injured witnesses. All the five witnesses are either related or the party members of the deceased, hence they are partisan or interested witnesses. Merely because they are interested witnesses their evidence cannot be discredited. However, in our view, it appears that the evidences of each of these eye-witnesses are doubtful and require careful scrutiny. It is also pertinent to note that the incident in the present case occurred in broad day light in the afternoon and there were a number of neighbours in and around the scene of the incident. But the prosecution has failed to examine any independent witness which casts a doubt on its

genuineness. The High Court has scrutinized at length the statements of individual eye-witnesses and has rightly discredited their testimonies. PW1 and PW2 are closely related with the deceased and are thus interested parties. It has been proved that there has been a series of litigation, both civil and criminal, on each side. The above added to the fact that neither blood-stained clothes of PW1, PW2 or PW5 were seized nor their conduct seemed natural, further weakens the prosecution case. The injuries on PW1 and PW5 are minor and upon medical examination, were opined to be self-inflicted. Thus, the High Court rightly pointed out that they could not have been eye-witness to the incident. PW10 and PW11 are the working ladies in an Anganwadi within close proximity of the place of incident. However, as per their narration of the story, their presence at the place of incidence is itself doubtful. They deposed that the timings of the Anganwadi was 9:30 A.M. to 1:30 P.M., and the fact that they left the school early on that day is unnatural, since the school was an Anganwadi which is usually attended by infants. The witnesses further deposed that they went to collect their honorarium. However, no explanation was given as to why they left early just to collect honorarium, or how could they both have left the infants without

any guidance. Also, no proof of any honorarium being paid to these two witnesses on the date of incidence was ever adduced in the evidence before any Court. Thus, their presence at the time and place of incident is not sufficiently proved. Another witness PW18 was the labourer, who deposed that repair work was going on at the back of the temple and not in front of the house of the accused, as contended by the prosecution. The said witness is the only non-partisan and chance witness. However, he turned hostile and deposed that he did not see any quarrel between the accused party and the deceased, in and around the place of incident. The learned counsel for the appellant relied on the judgment of this Court in ***Brahm Swaroop & Anr. v. State of Uttar Pradesh***,[1] wherein this Court held:

> *"26. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness; more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence... ...*
>
> *28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is*

[1] (2011) 6 SCC 288

generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness".

9. However, in the present case it is proved that there has been a series of litigation, both criminal and civil, on both sides. Moreover, the presence of the injured witnesses is disputed as neither the injuries sustained by both of them are proved, nor their clothes were seized which are alleged to have contained the blood stains of the deceased. Thus, the ratio of the above case fails to support the case of the present appellant.

10. The third issue is the delay in lodging the FIR. Not only the FIR was delayed but there was delay in sending the seized articles to FSL and in writing the post-mortem report also. Initially a verbal exchange took place at 10:30 A.M., which led to a major attack at about 12:30 P.M. Consequently the deceased was severely injured. The deceased was first taken to Harihar where the doctor, without any paperwork, referred him to some big hospital. The deceased was then brought at City Central Hospital in Davangere where he was declared as dead before arrival at about 2:30 P.M. The dead

body was then taken for post-mortem at Chigatiri General Hospital in Davangere. The FIR was lodged at Malebennur at 6:30 P.M. Despite police stations at Davangere and Harihar, which were closer, the informant went to lodge the FIR at Malebennur Police Station, which was around 16 Kms. from the place of incident. The only explanation the informant gave was that they were under shock due to the brutal attack, which is not explanatory in view of the distance and time taken. Also, looking at the previous enmity and earlier litigations between the parties, the time taken is good enough to cast a doubt upon the entire event. Further, it has been revealed from the depositions that a crowd had gathered in front of the Chigatiri General Hospital on receiving the news that the Chairman of the Village Panchayat was dead. To cater to the law and order situation, many police personnel headed by the Deputy Superintendent of Police were present at the hospital. However, non-action on the news of a homicidal death on behalf of the police officer casts doubt on the role of the informant in connivance with the police officer.

11. One more aspect for our consideration is the non-explanation

of material irregularities by the prosecution. Firstly, the prosecution have no explanation to the fact that when at Chigatiri General Hospital, many police officers were deputed as the information of death of Chairman of the Panchayat had spread, why none of the police officers approached any witness or the relative to enquire about the incident. The informant took the deceased to private City Central Hospital even though a Government Chigatiri General Hospital with 1000 beds was situated in the vicinity. Further, the prosecution did not explain the delay in making the FIR and as to why it was lodged in Malebennur Police Station instead of Harihar or Davangere. The search and seizure was doubtful, as the blood-stained clothes of the witnesses were not seized. The deceased was allegedly resting in the lap of his wife Geeta, however, her blood-stained clothes were also not seized. No efforts were made even to trace the shirt of the deceased. It was only after four days on 17.09.2005, that the blood-stained shirt was seized from the Chigatiri General Hospital from PW7 by the Investigating Officer. The police officer also did not follow the appropriate procedure under investigation. There is no arrest Panchanama drawn by PW23 and duly signed by any witnesses while affecting the alleged arrest. In addition, there is

nothing on record, placed by the prosecution, to suggest that the mandatory provisions of the Code of Criminal Procedure, 1973 as well as the guidelines laid by this Court in ***D.K. Basu v. State of W.B.*** [2], while effecting the arrests were followed. The Investigating Officer sent the seized articles after one month of the alleged recovery, and that too the articles were sent to FSL, Bengaluru, when in fact a regional branch of FSL exists in Davangere. The prosecution also failed to explain as to why the post-mortem report was written on 17.09.2005 when the body was sent on 13.09.2005 and the examination was carried on 14.09.2005. Learned counsel for the appellant, on this point cited the judgment of this Court in ***Mritunjoy Biswas v. Pranab @ Kuti Biswas & Anr.*** [3], wherein it was held:

> *"28. ...It is well settled in law that the discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution*

[2] *(1997) 1 SCC 416*
[3] *(2013) 12 SCC 796*

case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission."

This Court has already held that the question as to material omissions will depend upon the facts and circumstances of each case, and upon the discrepancies noted above, these are all material omissions in our view which are fatal to the present case. These omissions were to be answered by the prosecution and non-explanation creates a serious doubt about the truthfulness and credit worthiness of the investigation, and it seems to be tainted.

12. We have given our careful and anxious consideration to the rival contentions put forward by either sides and also scanned through the entire materials available on record including the impugned judgment. We are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against accused Nos.1 to 10 and the High Court was justified in doubting the veracity of the prosecution case and consequently recording the verdict of acquittal which does not suffer from the vice of

perversity. As against accused Nos.11 and 12, their alibi is sufficiently proved and the prosecution has not been able to rebut the voluminous documents and the testimonies of independent witnesses. The Trial Court and the High Court have arrived at a concurrent and correct finding that accused Nos.11 and 12 were not present in the village at the relevant point of time, then the parrot-like eye witness account given by PWs.1, 2, 5, 10 and 11 becomes suspicious as to its truthfulness.

13. The learned senior counsel appearing for the respondents accused cited the judgment of ***State of Rajasthan v. Raja Ram***,[4] recently quoted in ***Upendra Pradhan v. State of Orissa***,[5] wherein this Court held:

> *"Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the*

[4] (2003) 8 SCC 180
[5] (2015) 5 SCALE 634

appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference..."

14. Thus, in the light of the above discussion, we find no compelling and substantial reasons to interfere with the judgment passed by the High Court. The appeals are, accordingly, dismissed.

.....J
(Pinaki Chandra Ghose)

.....J
(R.K. Agrawal)

New Delhi;
October 15, 2015