Ravasaheb @ Ravasahebagouda vs The State Of Karnataka on 16 March, 2023

Author: Sanjay Karol

Bench: Sanjay Karol, Vikram Nath, B.R. Gavai

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1109-1110 OF 2010

RAVASAHEB @ RAVASAHEBGOUDA ETC. …APPELLANTS

VERSUS

STATE OF KARNATAKA ..RESPONDENT

WITH

Crl. A. No. 1229/2011 , Crl. A. No. 1230/2011,
Crl. A. No. 213/2012 & Crl. A. No. 682/2013

JUDGMENT

SANJAY KAROL J.

1. The only point which arises for consideration is whether on the basis of testimony of a solitary witness, eight men can be allowed to suffer incarceration for life, as has been concurrently Reason: held by the courts below. In the aforesaid backdrop, we are duty bound to examine as to whether the testimony of this sole eye- witness Yankappa Panchagavi (PW-1) is worthy of credence; Is he trustworthy?; Has he deposed truthfully?; Is his testimony believable and free from embellishments, improvements or material discrepancies so as to render it shaky or doubtful?; and as to whether the prosecution has established its case beyond reasonable doubt, against all accused persons or not? All this is what we are called upon to examine.

2. It is not in dispute that one Satyappa was found to have been murdered in broad day light in village Kaltippi, Jamakhandi Taluka. It is also not in dispute that in relation to the said incident, the very same day, i.e., on 13.08.2004 at 04.00 p.m. a report was lodged with Terdal Police Station, District Bagalkot, Karnataka. It is also not in dispute that the I.O Shri Hanamappa Sangappa Keri (PW-32), who conducted the investigation reached the spot and after making preliminary inquiries and conducting investigation, recovered the dead body and sent it for post- mortem which was conducted by Dr. Shabbir Patel, PW-27. The post-mortem report (Ex.P-25) duly proven by the said expert, does establish the deceased to have sustained 21 stab injuries inflicted on different vital parts of the body. The multiple injuries serious in nature, were caused by sharp-edged weapon(s). They being on all the vital parts of the body, resulted into the death of the deceased. Herein only, this Court notices, that in relation to the said crime, the trial court convicted all the eight accused persons, namely, Ramappa (accused No.1), Shanker (accused No.2), Krishnappa (accused No.3), Gulappa Gavappa Karigar (accused No.4), Beerappa (accused No.5), Ravasaheb Laxman Patil (accused No.6), Yankappa Shivappa Naik (accused No.7) and Parappa @ Gulappa (accused No.8), for having committed murder of the deceased with the use of different weapons, i.e., jambia/jambe (sharp-edged weapon), button knives. Chilli powder was also used as a weapon of assault.

3. In the considered view of the trial court, despite most of the prosecution witnesses (32 in number) having turned hostile, the prosecution case stood established beyond reasonable doubt, through the unrefuted testimony of PW-1 as supported by the unrefuted part of testimony on the hostile witness, namely, Shasappa Reddi (PW-7). Hence, the trial court convicted the accused and sentenced them to undergo imprisonment as indicated in the tabular form hereunder :

Sr. No.	Name	Section under which sentence was awarded under Indian Penal Code,
1	Ramappa Shanker (A-1)	
2	Shanker (A-2)	143 - 6 months simple imprisonment &
3	Krishnappa (A-3)	fine of Rs. 500/- each
4	Gulappa Gavappa Karigar (A-4)	147 - 6 months simple imprisonment & fine of Rs. 500/- each
5	Beerappa (A-5)	
6	Ravasaheb Laxman Patil (A-6)	148 – 1 year simple imprisonment & fine of Rs.1000/- each
7	Yankappa Shivappa Naik (A-7)	504 – 1 year simple imprisonment & fine of Rs.1000/- each
8	Parappa @ Gulappa (A-8)	302 – Life Imprisonment & fine of Rs. 1,000/- each

The sentences, identical for all accused persons, were awarded to run concurrently.

4. The High Court, while concurring with the reasons and findings returned by the trial court, also took note of the factum of prior animosity inter se the parties in relation to a land/boundary dispute.

5. Before us, only three accused, namely, (i) Ravasaheb @ Ravasahebgouda (A-6), (ii) Yankappa Shivappa Naik (A-7) and (iii) Parappa @ Gulappa (A-8), have assailed the said judgment by way of these two appeals by special leave.

6. Briefly, we may summarise that the deceased died as a result of multiple injuries inflicted with sharp-edged weapons. For the sake of brevity, we need not repeat, as already noticed supra, the injuries and the incised wounds sustained by the deceased on different parts of the body. Most of the spot witnesses or the witness to the events prior or leading to the incident have not supported the prosecution. However, that would not mean that the testimonies of all these witnesses would automatically stand discarded, with the natural corollary being acquittal of the accused.

7. In the exercise of the power under Article 136 of the Constitution of India, this Court, normally would not interfere with the concurrent findings of fact, except in very special circumstances or in the case of a gross error committed by the courts below. Only where the High Court ignores or overlooks "crying circumstances" and “proven facts” or “violates and misapplies well established principles of criminal jurisprudence” or refuses to give benefit of doubt to the accused persons, etc., would this Court step in to correct the legally erroneous decisions. We are also not to interfere only for the reason that we may arrive at a different conclusion, unless, of course, there are compelling circumstances to tinker with conclusions drawn and that the accused were innocent/guilty. Undoubtedly, there are limitations in interfering with the findings of conviction, concurrent in nature.

8. We are not dealing with a case of circumstantial evidence. Here, the evidence is direct both in relation to the crime as also the reason thereof.

9. At this juncture, we may record the relationship between the accused and the deceased who were far off cousins. Both the parties were holding lands adjacent to each other. Deceased (Satyappa) is the real brother of Yanakappa Panchagavi (PW-1). Accused Nos.4 and 5 are real brothers of accused No.1 and accused Nos.2 and 3 are sons of accused No.1. Accused Nos.6 to 8 are all relatives of accused Nos. 1 to 5. It has come forth in the testimony of the witnesses especially PW-1, which, to this extent stands unrefuted that there was a dispute inter se the opposing parties with respect to the use of bullock cart road. In relation to it, six months prior to the incident a quarrel had taken place when accused No.1 had filed a complaint with respect thereto. The dispute was resolved with the intervention of the elders of the family/village. But nonetheless, allegedly, as per the statement of the said witness, the dispute persisted. Shasappa Reddi (PW-7) who is also a relative of the parties, though initially stated that there was no dispute between the deceased Satyappa and accused but then, in the very same breath, clarifies that, 15 days prior to the incident, dispute in relation to the land had arisen and "as per my advise accused No. 1 Ramappa has not provided passers way to Satyappa". Even Pandappa Sidareddi (PW-8) does depose the factum of the dispute between the parties in relation to the land. Thus, to our mind the findings of the courts below in relation to the factum of the inter se dispute cannot be said to be not borne from the material on record or incorrect appreciation of evidence led by the prosecution.

10. The next question which arises for consideration is as to who committed the crime, and in what manner. The courts below have concurrently, fully appreciating the testimony of PW-1, found the accused to have committed the same by using different weapons referred to supra.

11. Elaborating further, having perused the testimony of PW-1 we notice him to have deposed that on the fateful day, i.e, 13.08.2004 both he and the deceased had met at a place known as Terdal where the deceased handed him a sum of Rs.50,000/- which he had withdrawn from the Grameen Bank Sasalatti branch. The deceased, after purchasing fodder started returning on his bicycle to the Kaltippi Village (Place of his residence). This witness along with a pillion rider, Ashok Mareguddi (PW-19), started following him. On the way, around 2.45 p.m. the witness found all the accused (Nos.1 to 8), who had been hiding in the jali kanti trees, running towards the deceased. Accused Nos.2 and 8 started abusing that 'found satya Sulemagane Ninnanu Kondu Hakut teve' (You son of a whore, we will kill you). Noticing them, the deceased leaving his bicycle started running away from the spot with all the accused chasing him. Thereafter, accused No.8 Parappa @ Gulappa threw chilli powder on the face of the deceased; accused Nos.1 and 2 gave blows with jambia/jambe on the left side of the neck and chest of the deceased; accused Nos.3 to 7 gave blows with button knives on various parts of the body, which led to the death of the deceased on the spot. Soon accused fled away towards Golabhavi village. The witness cried for help when Shasappa Reddi (PW-7), Pandappa Sidareddi PW-8), Shrishail (PW-11) and Ramappa (PW-12) arrived at the spot. Also, adjacent land owners, namely, Lakawwa Siddapur (PW-9) and Sushilawwa (PW-13) arrived. He got a complaint drafted through an Advocate, namely Hanamant Bhimappa Reddi (PW-

24) and being illiterate, affixed his thumb impression, and lodged report with the police.

12. Here only, we may record that the presence of the accused on the spot is not disputed by anyone of them. This we may say so not only from the line of their cross-examination of the witnesses but also as we would notice hereinafter, to have come on record through the testimonies of the witnesses, who despite not having supported the prosecution on the issue of the accused having assaulted the deceased, have supported on this count. Perusal of cross-examination part of the testimony of PW-1 unrefutedly reveals all the accused hiding in bushes at the spot. This witness, despite being cross-examined extensively, is consistent in his testimony to the effect that the accused caught hold of the deceased and inflicted serious injuries upon his person. The accused had used chilli powder as a weapon to stop him from fleeing away and pushed him to the ground. Though, the witness is not clear as to which one of the accused had assaulted the deceased after he fell down, but then he is categorical with regard to the role played by each one of them.

13. PW-7, despite being hostile, in his undisputed testimony, has recorded the presence of accused Nos.1, 2 and 3 on the spot. Immediately after the incident they were seen fleeing towards Golabhavi Village. Further he noticed the deceased to be inflicted with several injuries as also chilli powder found on his body. Here only we may record that Lakkappa Siddapur (PW-9) and Ashok Mareguddi (PW-19) though turned hostile in Court, had in fact made statements to similar effect before the police, with which they were confronted, which fact, in any event stands proven through other prosecution witnesses.

14. In view of the aforesaid, the questions in respect of the testimony of the sole eye-witness PW-1 being worthy of credence, trust-worthy, truthful and believable are answered in the affirmative.

15. To answer the point of law as to whether the testimony of a single eye-witness is sufficient to put all the eight persons behind bars, for life or not, we must deal with the submissions made at the bar.

16. It is stated that it is the quality and not the quantity of the witnesses that matters and since, PW-1 is an interested witness being the brother of the deceased, and that his statement is not "inherently believable" or of "sterling quality" as recently held by this Court, in the presence of two possible versions, the one that favours the accused is required to be taken.

In support of their submissions, the learned senior counsel rely primarily on Marudanal Augusti Vs. State of Kerala (1980) 4 SCC 425, specifically on the part where the learned Division Bench notes that 29 hours' delay in the FIR reaching the Magistrate despite the same having been sent by express delivery, as a "serious infirmity"; and the recent judgment in Chotkau Vs. State of U.P. (2022) SCC OnLine 1313. Both these cases have been cited to substantiate the submission that there is a delay in the FIR reaching the Magistrate.

17. This Court has on numerous occasions considered cases similar in nature, and, from such consideration emanated various principles in deciding the cases. Some of the principles essential for the instant lis to be decided are – 17.1 Evidence of hostile witness:

> a) Corroborated part of the evidence of a hostile witness regarding the commission of offence is admissible. Merely because there is deviation from the statement in the FIR, the witness's statements cannot be termed totally unreliable;
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> b) The evidence of a hostile witness can form the basis of conviction.
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> c) The general principle of appreciating the evidence of eye-witnesses is that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the Court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses. [Mrinal Das Vs. State of Tripura (2011) 9 SCC 479] 17.2 Effect of omissions, deficiencies:
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> Evidence examined as a whole, must reflect/ring of truth. The court must not give undue importance to omissions and discrepancies which do not shake the foundations of the prosecution's case. [Rohtash Kumar Vs. State of Haryana (2013) 14 SCC 434; Bhagwan Jagannath Markad Vs. State of Maharashtra (2016) 10 SCC 537; and Karan Singh Vs. State of Uttar Pradesh (2022) 6 SCC 52] 17.3 Reliance on single witness:
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> If a witness is absolutely reliable then conviction based thereupon cannot be said to be infirm in any manner. [Karunakaran Vs. State of Tamil Nadu (1976) 1 SCC 434; and Sadhuram Vs. State of Rajasthan (2003) 11 SCC 231] 17.4 Testimony of a close

relative:

A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The principle of "falsus in uno, falsus in omnibus" is not one of general application. [Bhagwan Jagannath Markad Vs. State of Maharashtra (2016) 10 SCC 537] 17.5 Preponderance of probabilities:

To entitle a person to the benefit of a doubt arising from a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. [Gopal Reddy Vs. State of Andhra Pradesh (1979) 1 SCC 355] 17.6 Delay in sending FIR:

Unless serious prejudice is caused, mere delay in sending the FIR to the Magistrate would not, by itself, have a negative effect on the case of the prosecution. [[State of Rajasthan Vs. Doud Khan (2016) 2 SCC 607] One of the external checks against ante-dating or ante- timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. A dispatch of a copy of the FIR forthwith ensures that there is no manipulation or interpolation in the FIR. [Mehraj Vs. State of U.P. (1994) 5 SCC 188; and Ombir Singh Vs. State of U.P. (2020) 6 SCC 378] 17.7 Last seen theory :

On its own, last seen theory is considered to be a weak basis for conviction. However, when the same is coupled with other factors such as when the deceased was last seen with the accused, proximity of time to the recovery of the body of deceased etc. The accused is bound to give an explanation under Section 106 of the Evidence Act, 1872. If he does not do so, or furnishes what may be termed as wrong explanation or if a motive is established – pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon. [Satpal Singh Vs. State of Haryana (2018) 6 SCC 610; and Ram Gopal Vs. State of M.P. (2023) SCC OnLine 158] 17.8 Cases involving several accused Persons A three judge bench of which one of us (B.R Gavai J.) was a member, observed as under in respect of the application of Section 149, of the Indian Penal Code, 1860-

"30. Section 149 of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew would be committed in prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence, and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed." [Hari v. State of UP 2021 SCC OnLine SC 1131; Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725] While overt act and active participation may indicate

common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. [Lalji Vs. State of U.P. (1989) 1 SCC 437] When a case involves large number of assailants it is not possible for the witness to describe the part played therein by each of such persons. It is not necessary for the prosecution to prove each of the members' involvement especially regarding which or what act. [Masalti Vs. State of UP AIR 1965 SC 202] 17.9 Power of Court of Appeal:

> a) The Court of appeal has wide powers of appreciation of evidence in an order of acquittal as in the order of conviction, along with the rider of presumption of innocence which continues across all stages of a case. Such Court should give due importance to the judgment rendered by the Trial Court. [Atley Vs. State of UP AIR 1955 SC 807]
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> b) Referring to Gurudutt Pathak Vs. State of U.P. [(2021) 6 SCC 116] the judgment in Geeta Devi Vs. State of U.P. [2022 SCC OnLine 57], this Court appreciated the law on this aspect and then observed that the High Court, being the First Appellate Court must discuss/re-appreciate the evidence on record. Failure to do so is a good ground enough to remand the matter for consideration.

17.10 Power of the Supreme Court under Article 136:

> In the absence of very special circumstances or in the presence of gross errors of law committed by the High Court, this Court does not interfere with the concurrent findings of fact of the courts below. [Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116] The limitations under Article 136 are self-imposed limitations where in the ordinary course appreciation of evidence is not to be done in the absence of manifest error or the judgment, subject matter of the special leave, being ex facie perverse. [Kalamani Tex Vs. P. Balasubramanian (2021) 5 SCC 283]

18. Learned counsel for the appellants would have this Court hold that the learned Trial Court and the High Court erred in convicting the accused as PW-1's statements, which are indirect in respect of number of the accused in no way form a solid basis for the conviction to hold.

19. Having considered the submissions across the Bar, the material objects and the exhibits forming the record of the case, the learned Trial Court observed that on the basis of the sole evidence of the complainant PW-1 and the supporting evidence of PW-7 (a hostile witness) the prosecution had proven its case beyond reasonable doubt. It was observed as under:

> "The prosecution has proved its case against the accused persons by adducing acceptable evidence of the complainant and other witnesses referred to above and as such the accused persons are found guilty of the offences of unlawful assembly, commission of rioting who were armed with deadly weapons and they have abused the deceased Satyappa in filthy language and then they have committed murder of the deceased Satyappa on 13.08.2004 in the afternoon at about 3.00 p.m., on a public

> road leading from Terdal to Kaltippi and as such they have to be punished accordingly." The view stands affirmed by the High Court substantiating cogent reasons, in full appreciation of entire evidence on record that the assistance of Hanamant Bhimappa Reddi (PW-24) in drafting the complaint does not put a question to its credibility;

discrepancy in the time of entrustment of FIR to PW-28 as to the working hours being 8 a.m. to 8.00 p.m. does not dislodge the statement in the examination-in-chief where the time mentioned was 4.45 p.m.

20. In regard to the delay in the FIR reaching the Magistrate, it is the settled position of law that each and every delay caused is not fatal to a case in the absence of demonstrated prejudice [Bhajan Singh @ Harbhajan Singh Vs. State of Haryana (2011) 7 SCC 421]. In Chotkau (supra) it has been held that a Court is "duty bound to see the effect of such delay on investigation and even the credit worthiness of the investigation." In the present case, though, while there is reliance at the Bar on this principle no submission has been made to show prejudice having been caused to the accused. Statements sans adequate backing cannot sway the Court. Even the delay in the receipt of the FIR with the concerned Magistrate cannot be a reason to disbelieve the prosecution case. It is not a case of non-compliance of provisions equally the delay is not inordinate so as to cast any doubt. For an FIR registered on 13.08.2004 at 4.45 p.m. was immediately forwarded and received at 1.15 a.m.

21. Merely because no recovery was made from anyone apart from accused Nos.2 and 4 would not mean that others were not present at the scene of the crime; simply because a number of witnesses had turned hostile, does not on its own give a ground to reject the evidence of PW-1; and that PW-1 being the brother of the deceased and therefore, is an interested as well a chance witness, are untenable submissions. It is in the backdrop that we do not find favour with the submissions of Mr. Nagamuthu S., and Dr. K. Radhakrishnan, learned senior counsel appearing for the appellants that the conviction of eight persons based on solitary evidence is not justified, particularly when there is no vagueness in his testimony with respect to the role ascribed to each one of the accused.

22. The role of PW-24 in drafting the complaint cannot be taken as negative simply because he was an advocate and so he paid attention to detail. PW-1 has stated in his complaint that he does not know how to read and write. The person to whom the role of summoning PW-24 to write the complaint may be attributed or the discrepancy in drafting either on the instructions of PW-1 or on the basis of the notes prepared by the police is not so stark, keeping in view the limited span of time within which all these activities took place for it to lend credence to the grounds urged in these appeals by special leave petitions with respect to the approach of the learned Sessions Judge being entirely erroneous or illegal. The genesis of the prosecution case cannot be said to have been shaken or rendered doubtful. The complaint was alleged to have been drafted by an advocate (PW-24), and not by the petitioner with the help of the police personnel. Does it cast doubt on the prosecution case? In our considered view, none.

For, as we have noticed the defence to have admitted their presence on the spot and the independent witnesses ascribed a specific role to each of the accused.

That a murder has been committed, has been unequivocally and concurrently held by both the courts below. It is then for the appellants before us to establish the existence of special circumstances or any equally probable version of facts opposite to the one taken by the courts, they seek to challenge.

23. The primary submission led was that reliance on a solitary witness to convict as many as eight people (now six, with proceedings against two having abated on their death) is excessive. On a specific query by the Court as to what the learned counsel can point to, to impeach the veracity of PW-1's testimony the answer was to say that looking at a number of external factors as also the testimonies of other witnesses, the elements to demolish the credibility are present – which to our mind does not merit interference. For the heightened scrutiny requirement, as observed by this Court in Jagdish Vs. State of Haryana [(2019) 7 SCC 711] to be held as unsatisfied, the surrounding evidence would have to be called into credible question, which it was not. The admissions made by PW-7 in his examination in chief have not been disputed and neither has, as already observed earlier, the presence of any of the accused been disputed. Keeping in view the principles noted in Mrinal Das (supra), Rohtash Kumar (supra), Karan Singh (supra) and Karunakaran (supra), the testimony of PW-1 can undoubtedly form the basis of conviction of the accused persons.

24. We have also noticed the holding in the landmark Masalti (supra), where four learned judges have held that the prosecution need not prove specific acts to specific persons. With neither the number nor the presence of the accused being disputed, we cannot, within law, hold that the accused have been wrongly convicted by the courts below.

25. PW-1 is an interested witness, being the brother of the deceased; as also he being the solitary witness upon which reliance is placed by the learned Trial Court is put forward as a ground before us to question the verdicts. The position of law as held in Harbans Kaur Vs. State of Haryana [(2005) 9 SCC 195] is clear in stating that there is no proposition of law which doubts the statement of a close relative simply for that reason. There is a note of caution sounded in Bhaskarrao Vs. State of Maharashtra [(2018) 6 SCC 591] which is undoubtedly on point but we may also note the observation of this Court in Rajesh Yadav Vs. State of U.P. [2022 SCC OnLine 150] wherein it has been observed:

> "30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court."

26. The courts below, as we have already observed, have found no reason to disbelieve the testimony of PW-1. In fact, to the exact opposite it has relied on it. Keeping in view the holdings in Bhagwan Jagannath Markad (supra), State of Rajasthan Vs. Madan [(2019) 13 SCC 653], we cannot find ourselves in agreement with the learned counsel for the appellant in this regard.

27. In view of the aforesaid background, submissions advanced, law appreciated and analysed we find the present appeals to be lacking in merit and therefore, the same are dismissed. Accused, if on bail, are directed to immediately surrender before the Court concerned.

Pending application(s), if any, shall stand disposed of accordingly.

.....J. (B.R. GAVAI) .....J. (VIKRAM NATH) .....J. (SANJAY KAROL) Dated : 16TH March, 2023 Place : New Delhi.