Noorahammad And Ors vs State Of Karnataka on 2 February, 2016

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Bench: S.A. Bobde, V. Gopala Gowda

|NON-REPORTABLE |

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 412 OF 2006

NOORAHAMMAD AND ORS ……APPELLANTS

Vs.

STATE OF KARNATAKA ……RESPONDENT

J U D G M E N T

V.GOPALA GOWDA, J.

This criminal appeal by special leave is directed against the impugned judgment and order dated 02.06.2005 passed in Crl. A. No. 184 of 1999(A) by the High Court of Karnataka at Bangalore

whereby partly allowing the appeal filed by the State, the High Court has set aside the acquittal order passed by the Trial Court and convicted the appellant nos. 1 to 4 for the offences punishable under Sections 304 part II, 324, 353, 379 and 411 read with Section 34 of Indian Penal Code, 1860 (for short the "IPC"). However, it has upheld the acquittal of all the four appellants for the offence punishable under Section 24(e) of the Karnataka Forest Act.

Brief facts are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

> The case of the prosecution is that on 27.06.1995, at around 3.00 am, the informant party, comprising of about 10 forest officials in a jeep, intercepted a bullock cart on Yallur-Nitagikoppa Kacha Road. It was alleged that the appellants herein were present on the said cart and transporting stolen teak wood log clandestinely and illegally, without a pass or permit. It was further alleged that an altercation ensued and Papasab (accused- appellant no.3) attacked V.C. Marambid (PW-8), Forest watcher, with a club. The aforesaid attack resulted in a bleeding injury to PW-8. It was further alleged that R.L. Patagar (since deceased), RFO and G.B. Nayak (PW-6), incharge R.F.O. (Plantation Superintendent) at Hangal tried to catch hold of the remaining accused, when Noorahammad (accused-appellant no.1) picked up a club from the cart and hit R.L. Patagar on back of the head. It was further alleged that Allauddin (accused-appellant no.2) also took up a club and beat R.L. Patagar. Further, Tajusab (accused-appellant no.4) took up club and beat G.B. Nayak. Thereafter, all the accused left the teak wood log and escaped in the bullock cart.
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> On 27.06.1995 at around 8.00 am, FIR No. 213 of 1995 in respect of the incident was lodged at the instance of one Timmanna (PW-1) at Hangal Police Station which was recorded by Sub Inspector, Maruti Raoji Shindhe (PW-19).
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> R.L. Patagar, who was undergoing treatment at KMC Hospital, Hubli, expired on 28.06.1995 at about 3.00 pm. During the course of investigation all the four appellants were arrested from their house at Hullatti village and bullock cart and bullocks used in the commission of the said offence were also recovered.
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> The trial was conducted by Additional Sessions Judge, Dharwad for the offences punishable under Sections 302, 324, 353, 379 and 411 of IPC read with Section 34 of IPC and Section 24(e) of the Karnataka Forest Act. During trial, in order to prove its case, prosecution examined 22 witnesses. All the appellants, in their statement made under Section 313 of the Cr.P.C., denied all the incriminating circumstances appearing against them in the prosecution evidence. The Trial Court vide its judgment and order dated 13.11.1998 acquitted all the accused-appellants from the charges levelled against them.
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> Aggrieved by the decision of the Trial Court, the respondent-State preferred Criminal Appeal No. 184 of 1999(A) before the High Court of Karnataka, at Bangalore urging

various grounds and prayed for setting aside the judgment and order of acquittal passed by the Trial Court.

The High Court vide its judgment and order dated 02.06.2005 has allowed the appeal in part and convicted all the accused-appellants for the offences punishable under Sections 304 part II, 324, 353, 379 and 411 read with Section 34 of IPC. For the offence punishable under Section 304 part II of IPC read with Section 34 of IPC, all the four appellants have been sentenced to undergo rigorous imprisonment for a period of 4 years each and to pay a fine of Rs. 1,000/- each and in default of fine, to undergo further rigorous imprisonment for a period of 2 months each. No separate sentences have been awarded for other offences. However, the acquittal of all the appellants under Section 24(e) of the Karnataka Forest Act has been left undisturbed by the High Court. Aggrieved by the judgment and order passed by the High Court, all the four appellants has preferred this appeal praying for their acquittal.

Mr. M. Khairati, the learned counsel for the appellants contended that the High Court has failed to appreciate that there is nothing on record to establish that R.L. Patagar (deceased) died only due to head injury which was caused by the appellants and therefore, there is no justification to convict them under Section 304 part II read with Section 34 of the IPC and sentence them to undergo rigorous imprisonment for the said offence.

He submitted that the High Court has failed to apply the law laid down by this Court while setting aside the judgment of acquittal passed by the Trial Court. He placed strong reliance upon the decision of this Court in the case of Satvir Singh v. State of Delhi[1], authored by me, wherein this Court has laid down the circumstances in which the High Court, as an appellate court, would reverse an order of acquittal passed by the trial court. In that case it has been held by this Court that while the High Court has full power to review, re-appreciate and reconsider the evidence, upon which the order of acquittal is founded, but should not disturb the finding of the trial court if two reasonable conclusions are possible, on the basis of the evidence on record. He further placed strong reliance upon the decision of this Court in the case of S. Govindraju v. State of Karnataka[2], in which Justice S.A. Bobde was one of the companion Judge, the relevant para 20 of which, reads thus:

“20. It is a settled legal proposition that in exceptional circumstances, the appellate court, for compelling reasons, should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse i.e. if the conclusions arrived at by the court below are contrary to the evidence on record, or if the court’s entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice, or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the

court below bolsters such presumption of innocence." It was further contended by the learned counsel that a perusal of the judgment passed by the High Court shows that the High Court has not recorded a finding regarding the ignorance of any relevant evidence by the Trial Court. Further, the High Court has also not recorded a finding to the effect that some irrelevant evidence has been considered by the Trial Court while acquitting the appellants. He further submitted that it is also not found by the High Court that the Trial Court has proceeded on erroneous understanding of the law or of the facts of the case. Further, it is also not found that the Trial Court has dealt with the evidence in an illegal manner. Hence, the finding of the High Court that the judgment of the Trial Court is perverse is an incorrect finding. He placed reliance upon the decision of this Court in the case of Sumitomo Heavy Industries Ltd. v. ONGC Ltd.[3] to elaborate upon the meaning of the expression "perverse". The relevant para 42 relied upon by the learned counsel reads thus:

"42. Can the findings and the award in the present case be described as perverse? This Court has already laid down as to which finding would be called perverse. It is a finding which is not only against the weight of evidence but altogether against the evidence. This Court has held in Triveni Rubber & Plastics v. CCE that a perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in Arulvelu v. State." It was further contended that the High Court has incorrectly relied upon the testimonies of eye witness-G.B. Nayak (PW-6) and V.C. Marambid (PW-8) to reverse the judgment of acquittal passed by the Trial Court. It has failed to take note of some inherent inconsistencies, contradictions and improbabilities in the evidence which make the testimonies of the said witnesses difficult to be believed. The learned counsel, further, drew the attention of this Court towards certain circumstances which the High Court has failed to consider. They are, interalia, as follows:

Timmanna (PW-1), at the instance of whom the FIR was registered, claims to be the eye-witness to the occurrence. In his evidence, he has claimed that he knew the name of appellant no.1 i.e., Noorahammad at the time of incident. However, he has lodged FIR against unknown persons. He has failed to explain this vital contradiction.

The appellants were arrested on 05.07.1995 i.e., after 8 days from the date of the occurrence, allegedly on the statement of V.C. Marambid (PW-8) given to the investigation officer under Section 161 Cr.P.C. There is considerable doubt as to the correctness of the said statement as PW-8 himself in his evidence, has disowned a part of the same. Therefore, it cannot be said, beyond any reasonable doubt, that the statement projected by the prosecution is the statement which was given by PW-8 naming the appellants.

In view of the fact that the FIR was registered against unknown persons and even description of the accused was not mentioned, a Test Identification Parade (TIP) ought to have been conducted so as to inspire confidence about the identity of the assailants. However, the prosecution has not rendered any explanation as to why said TIP was not conducted. In such circumstances, dock identification by the witnesses, after 2 years from the incident was rightly not relied upon by the Trial Court.

The clubs allegedly used by the appellants to attack the forest officials should have had blood stains but the same were not sent for forensic examination.

The appellants were alleged to be carrying valuable teakwood. As per the prosecution story, after assaulting the prosecution party, they fled away in the bullock-cart after dropping the teakwood log, which is difficult to believe.

According to the prosecution story, there were 8-9 forest officials and they had a jeep with them. Only a few of them were allegedly attacked by the appellants. When the attackers were fleeing away in a bullock cart, the remaining forest officials could have chased and caught them in a jeep.

In normal circumstances, when serious injuries were caused to forest officers and subsequently one of them died the next day and moreover, names of the accused-appellants were also made known to the police officials on 29.06.1995, there should have been an immediate arrest of the appellants.

The fact that the accused were arrested from their house 8 days later clearly shows that prosecution had no inkling about the involvement of the appellants and they were subsequently implicated.

V.C. Marambid (PW-8) in his examination-in-chief before the Trial Court has stated that Papasab accused-appellant no.3 attacked him with club, but, further, he clearly stated thus: “at this point of time, I am unable to identify who that Papasab is amongst these accused persons”. This casts a grave doubt on the prosecution story.

It was further contended by the learned counsel by placing reliance upon the decision of this Court in the case of Sunil Kumar Shambhudayal Gupta v. State of Maharashtra[4] that the trial court which has the benefit of watching the demeanour of witness is the best judge of the credibility of the witness. In the present case, the Trial Court after considering the demeanour of the witnesses came to the right conclusion that it would be unsafe to place conviction on the testimony of the witnesses and hence, acquitted the appellants.

Per contra, Mr. V.N. Raghupathy, the learned counsel on behalf of the respondent-State sought to justify the impugned judgment and order passed by the High Court on the ground that the same is well founded and is not vitiated in law. Therefore, no interference of this Court is required in exercise of its appellate jurisdiction.

He contended that the High Court has rightly appreciated both the documentary and oral evidence on record in its entirety. The evidence of PW- 6 and PW-8 are fully corroborated by the evidence of PW-1, PW-2 and PW-19 in the instant case and therefore, the High Court has rightly set aside the Trial Court's decision and convicted the appellants for the charges levelled against them.

It was further contended that the prosecution witnesses, who were forest officials and at the time of incident they were equipped with torches has successfully identified the accused-appellants in the court. He further submitted that the circumstances under which the incident in question had occurred, there could be no other witnesses, except the forest officials themselves, who could have witnessed the said incident. Hence, the High Court has rightly found these witnesses credible, reliable and trustworthy. Further, there appears to be no reason to falsely implicate the appellants as there was no animus or grudge against them.

Mr. Raghupathy further submitted that the High Court has rightly relied on the evidence of V.C. Marambid (PW-8) to the extent he has supported the case of the prosecution, though he partially turned hostile. He further submitted that it is well settled position of law that the evidence of a hostile witness is not to be rejected in totality. He placed strong reliance upon the decision of this Court in the case of Rameshbhai Mohanbhai Koli and Ors. v. State of Gujarat[5], the relevant para 16 of which reads thus:

> "16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide Bhagwan Singh v. State of Haryana, Rabindra Kumar Dey v. State of Orissa, Syad Akbar v. State of Karnataka and Khujji v. State of M.P.)" We have carefully heard both the parties at length and have also given our conscious thought to the material on record and the relevant provisions of law. The question for our consideration is whether the prosecution evidence establishes beyond reasonable doubt the commission of the offences by the accused-appellants under Sections 304 part II, 324, 353, 379 and 411 of IPC read with Section 34 of IPC.
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> A careful reading of the evidence on record clearly highlights the material contradictions and discrepancies in the prosecution evidence especially the testimonies of G.B. Nayak (PW-6), V.C. Marambid (PW-8) and Timmanna (PW-1). In the instant case, the written complaint about the incident was made by Timmanna (PW-1) on the basis of which FIR was registered. In the said written complaint, allegations were made against four unknown persons and not against the appellants despite the fact that the complainant knew the name of the accused-appellant no.1 i.e., Noorahammad. This factum is clear from the testimony of the complainant-Timmanna when he deposed before the Trial Court as PW-1. The relevant portion of his evidence reads thus:

"5. In that Complaint, I have not mentioned the name of those accused persons. At that time, I knew the name of this A-1. But, IO did not know the names of other accused persons. Prior to the incident, I did not know the name of the accused No.1 also. I came to know the names and address of all those accused persons correctly through that V.C. Marambid. Subsequently, the police have reached my further statement and at that time, I have told the name and address of all these accused persons." The aforesaid loophole in the evidence adduced by the prosecution has been rightly appreciated by the Trial Court holding thus:

"11....His evidence is to the effect that he knew the name of the accused no.1 even at the time of the complaint as per Exh.P-1. According to him, he did not know the names and addresses of the culprits and that later on, he came to know the names and addresses of the other culprits through his subordinate PW-8 V.C. Marambid a forest officer. It is his evidence that 2 or 3 days later, he came to know the names and addresses of the culprits. Still, he has maintained throughout that he knew the name of the accused no.1 very much at the time of the complaint though he was not aware of his address. When that is so, certainly in his complaint at Exh. P-1, he could have disclosed atleast the name of the accused no.1. On the other hand, it is the clear recital in Exh. P-1 that the complainant did not know the names and whereabouts of the culprits." Further, V.C. Marambid (PW-8) in his evidence has disclosed the fact that he knew all the accused-appellants, who were residents of Hullatti Village, from before the occurrence by virtue of his duty in Nilgiri plantation at Hassanabadi and Hullatti. If the aforesaid fact as deposed by him is believed to be true, then he should have disclosed the identities of all the accused-appellants to the complainant-Timmanna (PW-1) at the time of the incident. If not at the time of incident, then the same should have been disclosed to the police officer at the earliest possible occasion. In this regard, the view taken by the Trial Court is correct as it has assigned valid and cogent reasons for the same. It has rightly held thus:

"12.....An attempt is made by the prosecution to impress upon the court that PW-8 Veerappa Channappa Maranbid knew about these accused persons previously. If that was really so, what prevented him from disclosing the very names and addresses to the complainant at the earliest occasion? It is the very evidence of the complainant as PW-1 that PW-8 Veerappa Channappa Maranbid was very much there at the spot at the time of the incident. It may be that PW-8 was hospitalised when the complaint was lodged. As revealed, according to PW-1, he complained to the police in the morning at

7 or 8 a.m. itself on the very same day. But,Exh. P-1 complaint discloses that it was registered at 8 a.m. It has to be seen that Hangal Police Station is not far away from the hospital where the injured were being treated at that time. The evidence has probablised that the said hospital is very close to the said police station. It is not as if PW-8 who according to him, was one of the injured, had gone unconscious. As revealed, the injuries sustained by him were simple in nature. Therefore, when he was very much available in the adjoining hospital, the complainant could have certainly ascertained

the names and addresses of the alleged culprits through PW-8 if really PW-8 knew about the names and addresses of the culprits...." In the instant case, TIP of the accused-appellants should have been carried out at the instance of the investigating officer. The High Court, in this regard, has erred in appreciating the evidence on record in the light of the facts and circumstances of the present case. From the material on record, it is sufficiently clear that the incident occurred in the night around 3.00 am, at a place where there was no proper light. From the material on record it is not clear whether the source of light in the form of torches and jeep flash light was sufficient to enable the forest officers to see the accused-appellants for the purpose of their identification in later stage of the case. No doubt, law with regard to the importance of TIP is well settled that identification in court is a substantive piece of evidence and TIP simply corroborates the same. This Court in the case of Dana Yadav alias Dahu and Ors. v. State of Bihar[6] has elaborated upon the importance of test identification parade in great details. The relevant para nos. 6, 7 and 8 read thus:

> "6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in the cases of Kanta Prashad v. Delhi Admn., Vaikuntam Chandrappa, Budhsen, Kanan v. State of Kerala, Mohanlal Gangaram Gehani v. State of Maharashtra, Bollavaram Pedda Narsi Reddy, State of Maharashtra v. Sukhdev Singh, Jaspal Singh v. State of Punjab, Raju v. State of Maharashtra, Ronny, George v. State of Kerala, Rajesh Govind Jagesha, State of H.P. v. Lekh Raj and Ramanbhai Naranbhai Patel v. State of Gujarat.
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> 7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In the case of Budhsen it was observed:
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> "There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

8. In the case of State of Maharashtra v. Sukhdev Singh it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of Rajesh Govind Jagesha it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of State of H.P. v. Lekh Raj it was observed (at SCC p. 253, para 3) that "test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration".

In that case, laying down the aforesaid law, acquittal of one of the accused by the High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being corroborated by any other evidence. In the case of Ramanbhai Naranbhai Patel it was observed:

> "It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case." The Court further observed:
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> "the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight". In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court." Another important fact which the High Court has failed to appreciate is that the prosecution witness identified the accused-appellants in court for the first time, during trial, in the year 1997-98 and the incident occurred in the year 1995. Thus, after considering some undisputed facts like occurrence of incident at night, at a

place with improper lighting and all the accused-appellants were not known to the forest officers, except one present at the place of incident, there should have been TIP conducted at the instance of the investigating officer. Therefore, the identification of the accused-appellants by the prosecution witness for the first time after a gap of more than 2 years from the date of incident is not beyond reasonable doubt, the same should be seen with suspicion.

Further, all the accused-appellants were arrested on 05.07.1995 from their home at Hullatti village. Prosecution has failed to explain the delay of 8 days on the part of the investigating agency to make arrest of all the accused-appellants, when the incident occurred on 27.06.1995 and allegedly V.C. Marambid (PW-8) in his statement under Section 161 of Cr.P.C. had already revealed the identity of all the culprits involved in the incident. Though the prosecution tried to explain the delay in making arrest by pressing upon the ground that the accused-appellants were absconding. But the same was rightly not believed by the Trial Court. If they were really absconding, then they should have remained absconding. Their arrest from their home casts a shadow of doubt on the prosecution story rendering the same to be concocted and dubious. Rather the aforesaid fact, on the other hand, fortifies the plea taken by all the accused-appellants that they have been falsely implicated in the case.

The High Court has further failed to appreciate some other important facts which create reasonable suspicion and shadow of doubt in the truthfulness of the prosecution story, namely, instead of confronting with the forest officers, who were on patrolling duty in jeep, the accused-appellants would have tried to conceal their presence either by hiding themselves or by running away. Further, the forest officers, including the driver of the jeep, were 10 in number and on the other hand, accused-appellants were 4. It is difficult to believe that the forest officers made no frantic efforts to nab the culprits when they allegedly assaulted them. The forest officers could have easily apprehended the culprits had they tried, as they outnumbered them. Further, it is clear from the record that all the forest officers were deployed on patrolling duty to keep a check on the then increasing forest offences. It means incident, like in the instant case, could reasonably be anticipated. It has been rightly appreciated by the Trial Court that under such circumstances, they should have been armed with weapons atleast for their own safety. As per record, when the incident occurred all the forest officers were found to be without weapons. It cannot be believed that the forest officers on patrolling duty were without any weapon. In this regard, the High Court has erred in observing that the Forest Department being poorly equipped failed to provide weapons to meet the situations, like in the instant case. Further, the accused-appellants were caught with a teak wood log in their bullock cart. The prosecution version is that after the assault, all the accused-appellants ran away in their bullock cart leaving behind the said wooden log. It has rightly been observed by the Trial Court that if the accused-appellants had any intention to carry away the said wooden log, they would have easily done so as after the alleged assault, they had no hurdle, whatsoever, in that regard. Thus, the

aforesaid story certainly casts a shadow of doubt on the truthfulness of the prosecution case and renders the same to be unreliable.

The reasoning given by the High Court in its judgment and order in itself is contrary. On the one hand, it has observed that when the accused- appellants started assaulting the forest officers, none of the officers, who were unarmed, dared to go near the culprits with a view to catch them, thus, placing the accused-appellants in a dominating position. On the other hand, it has further observed that the accused-appellants had dropped the said wooden log to make their bullock cart light in weight with a view to move swiftly. This Court finds the aforesaid reasons assigned by the High Court to be incorrect. Once the accused-appellants were in a dominating position, none of the forest officers could go near them for the purpose of nabbing them. Thus, there can be no justification for leaving behind the said wooden log. They could have easily carried it away with them, if they had the intention of doing so. The prosecution has failed to explain the reason behind the accused-appellants not taking away the said wooden log with them.

In the post mortem report of the deceased, the presence of a surgical wound on the left side of the head, measuring 13cms long extending vertically upwards from point 1.5cms above and in front of left ear, has remained unexplained by the prosecution, is another lacuna in the prosecution story which casts a shadow of doubt on the same and the benefit of which should certainly go to the accused-appellants.

There are many more material contradictions in the prosecution evidence which the High Court failed to notice, namely, Kanayya (PW-5), Forest Guard, an eye-witness to the incident, in his examination before the Trial Court, has stated that there were some teakwood logs present on the cart. However, as per the prosecution story there was one teakwood log discovered in the cart by the forest officials. Further, V.C. Marambid (PW-8) in his examination before the Trial Court stated thus:

“At that time, one these accused persons very strongly hit on my head with a club and I fell down. There was a bleeding injury on my head on account of that blow. Accused Papasab had so bet me with that club. At this point of time, I am unable to identify who that Papasab is amongst these accused persons. I got up and went to the jeep and sat inside the jeep. Since I had received a severe blow on my head I did not notice what had happened thereafter. However, myself and G.B.Nayak were taken to Hangal in that jeep for treatment. That G.B.Nayak had also sustained injury. On reaching the hospital at Hangal, I came to know that R.L.Patagar was also assaulted and injured. I did not know how exactly that T.G.Nayak and that R.L.Patagar sustained injuries.” He did not support the prosecution story and was declared a hostile witness. In his cross-examination by Public Prosecutor he stated thus:

“It is not true to say that I have stated before the police that I saw G.B.Nayak being assaulted by accused Tajusab with club and that Patagar is being assaulted by the

> accused Noorahamed and Allauddin with clubs and that on account of these blows that G.B.Nayak had sustained bleeding injury and that Pategar also sustained injury and that the accused persons thereafter dropped that wooden log at that spot and ran away in that cart..." The High Court has failed to appreciate another important piece of evidence that when the injuries sustained by the deceased were more serious in nature than the injuries sustained by other two forest officers, which were minor in nature, then the deceased should have been taken to hospital first or atleast along with other two injured forest officials, who were taken to hospital in the first instance. In this regard, the Trial Court has rightly observed thus:
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> "It is the evidence of the PW-1,4 and PW-6 that the condition of Ramakrishna Lingappa Patagar was more serious than the other two injured persons at the spot. But, it is strange that the other two injured persons namely, PW-6 and PW-8 were taken to the hospital at the first instance in the jeep leaving that Ramakrishna Lingappa Patagar at the spot. It is the case of the prosecution that after return, that Ramakrishna Lingappa Patagar was taken in that jeep, to the hospital." The recovery of bullocks and cart used by the accused-appellants at the time of incident is also under a cloud of suspicion as the panch witness-PW- 11 has turned hostile with regard to the alleged recovery. Hence, the prosecution evidence in this regard cannot be relied upon.

Thus, for the aforesaid reasons, the evidence adduced by the prosecution to support its version does not prove beyond reasonable doubt the offences levelled against all the accused-appellants. This Court in the case of Raj Kumar Singh v. State of Rajasthan[7] has held thus:

> "21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense." (emphasis supplied by this Court) In the instant case, the

material contradictions in prosecution evidence cast a shadow of doubt upon the prosecution story and render the same unreliable and not trustworthy in the eyes of law, which the High Court has failed to appreciate. Therefore, the impugned judgment and order passed by the High Court must be set aside by this Court in exercise of its appellate jurisdiction.

For the reasons stated supra, this criminal appeal is allowed. The impugned judgment and order passed by the High Court is set aside. All the accused- appellants are acquitted of all the charges levelled against them. The bail bonds shall stand discharged.

.....J. [V. GOPALA GOWDA] .....J. [S.A. BOBDE] New Delhi, February 2, 2016 ITEM NO.1B-For Judgment COURT NO.10 SECTION IIB S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Criminal Appeal No(s). 412/2006 NOORAHAMMAD AND ORS Appellant(s) VERSUS STATE OF KARNATAKA Respondent(s) Date : 02/02/2016 This appeal was called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Gaurav Agrawal, Adv.

Mr. M. Khairati, Adv.

Ms. Sunita Gautam, Adv.

Mr. Irshad Ahmad,Adv.

For Respondent(s) Mr. V. N. Raghupathy,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.A. Bobde.

The appeal is allowed in terms of the signed Non-

Reportable Judgment. The impugned judgment and order passed by the High Court is set aside. All the accused-appellants are acquitted of all the charges levelled against them. The bail bonds shall stand discharged.

(VINOD KUMAR)	(CHANDER BALA)
COURT MASTER	COURT MASTER

(Signed Non-Reportable Judgment is placed on the file)

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[1] [2] (2014) 13 SCC 143 [3] [4] (2013) 15 SCC 315 [5] [6] (2010) 11 SCC 296 [7] [8] (2010) 13 SCC 657 [9] [10] (2011) 11 SCC 111 [11] [12] (2002) 7 SCC 295 [13] [14] (2013) 5 SCC 722