Bhimappa Jinnappa Naganur vs State Of Karnataka on 25 February, 1993

Equivalent citations: AIR1993SC1469, 1993CRILJ1801, 1993(3)CRIMES411(SC), JT1993(2)SC165, 1993(1)SCALE705, 1993SUPP(3)SCC449, AIR 1993 SUPREME COURT 1469, 1993 AIR SCW 1357, (1992) 2 CURLJ(CCR) 501, (1992) 3 ALLCRILR 100, (1992) 3 CRIMES 347, (1993) 2 ALLCRILR 271, (1993) 2 CURCRIR 1301, (1993) 26 DRJ 567, (1993) 50 DLT 164, 1993 SCC(CRI) 1053, (1993) 3 RECCRIR 324, 1993 CRIAPPR(SC) 356, (1993) 2 JT 165 (SC), 1993 (2) JT 165, 1993 (3) SCC(SUPP) 449, (1993) 2 CHANDCRIC 72, 1993 CHANDLR(CIV&CRI) 333, (1993) SC CR R 314, (1993) 1 ALLCRILR 734, (1993) 1 CURCRIR 81, (1993) MAD LJ(CRI) 463, (1994) 1 RECCRIR 571, (1993) ALLCRIC 265, (1993) 3 CRIMES 411

Bench: P.B. Sawant, Yogeshwar Dayal

ORDER

1. This is an appeal against the judgment of the High Court of Karnataka dated 9th November 1984 whereby the High Court set aside the order of acquittal dated 11th February 1982 passed by the IInd Additional Sessions judge, Belgaum in Sessions Case No. 84 of 1981 and sentenced the appellant under Section 302 of the Indian Penal Code for having caused the murder of the Devappa Dharmanna Aski (in short Devappa) of Harugeri on 27th June, 1981.

2. Briefly the prosecution case was that there was a common well for irrigating the land of the deceased Devappa accused/appellant and another person (PW. 11). The deceased and PW. 11 had 50% share in the water of the well and the accused had the other 50%. Earlier the water from the well was utilised by all three on these turn and the water was drawn from the well with the help of a diesel pump installed by the deceased. About a year or two before the incident the accused had installed an electric pump-set. Whenever the deceased would put on his diesel pump the accused also would simultaneously put on the electric pump and deprive the deceased of the water from the well. The said act had caused bad blood between the appellant and the deceased.

3. The case of the prosecution further was that at the relevant time the deceased alongwith his second wife Srimanti (PW. 1) and grand-son Ajit (PW. 2) aged 10-11 years was residing in a farm house at Kurubkodi. The land belonged to his first wife Padmawa but stood in the name of their son Dharamanna (PW. 10). Ajit is a son of Dharamanna.

4. It was the case fo the prosecution that on 27th June, 1981, the deceased, after sun rise, went to drudgery and came back at about 12 noon to his farm house at Kurbkodi; took his midday meal and thereafter at about 1.00 p.m. came out of his house smoking beedi with a towel (MO-5) on his

shoulder. At that time the accused was in his land and he called out the deceased saying 'Ye Devya, come here'. As the deceased also retorted accused saying "Yakale Bheemye" and went towards the accused by a few paces, the accused all of a sudden started beating him and pushing him towards Raibag-Harugeri road, even as the deceased was questioning him as to why he was being beaten. In the meanwhile Crimanti (PW. 1) had come out of the house to the court-yard for throwing out waste water form the plate in which the deceased had taken the food and was standing in the court-yard and saw the assault on the deceased and started shouting that the accused was killing the deceased. But, before anybody could come to the rescue of the deceased, the accused took the deceased beating him on his head and face with an axe and pushing across the feed-canal and on to the road when the deceased fell down on the right-side, he cut him with the axe. When PW. 3, Jinnappa, PW. 4, Imams and PW. 10. Dharmanna and Ors. came there, he left the place and went away. Sarasaawa (PW. 7) who was going on his bullock-cart towards his garden land coming from the side of Harugeri towards his garden land coming from the side of Harugeri towards him saw the accused coming and going away and the accused had alleged to have told him that he had murdered the deceased Devappa saying "..." meaning thereby that he had committed the murder of Devappa and he may be got released. As PWs. 3, 4, 7, 9 and Ors. came to the palace of incident on the road side, they found the deceased, who had sustained the injuries, was still alive. They tried to put some water in the mouth of the deceased but the deceased breathed his last. On coming to know of the incident PW. 10 the son of the deceased alongwith his wife also came to the place of incident and thereafter accompanied by PW. 1 went to the shop of PW. 8, Parisa at Haurgeri and got a complaint written for being given to Police Station at Kudachi. Accordingly the complaint as prepared by PW. 8 was handed over by PW. 1 at about 4.00 p.m. to the Head Constable, in-charge of the Police Station, PW.l5, Mudakayya. On the basis of the complaint Ext. P-1 the case was registered and in FIR (Ext. P-20) was lodged.

5. Before the trial court the prosecution mainly relied upon the evidence of PWs. 1 to 3 as eye witnesses; PW. 6, Dr. S. Suryakant corroborating the statement of PW. 1 eye witness; the disclosure statement of the accused coupled with the recovery of axe (MO-9) and the extra judicial confession of the accused. In the FIR neither PW. 2 nor PW. 3 appeared as eye witnesses. The trial court on consideration of evidence disbelieved the presence of PWs. 2 and 3 as eye witnesses. The trial curt also disbelieved PW. 1 Srimanti, the wife of the deceased, as according to the trial court her statement was contradicted by the evidence of Dr. S. Suryakant. The trial court also took the view that the incident never took place as it is alleged at 1.00 p.m. and also disbelieved the story cry of extra judicial confession. The High Court on appeal disagreed with the trial court on the appreciation of the evidence of PWs. 1 to 3 and also relied upon the disclosure statement and the recovery of the axe in pursuance thereof the well as the evidence of extra judicial confession.

6. It may be noticed that the complaint Ext. P-1 on the basis of which the FIR was registered was a written document prepared before being submitted to the Police Station yet it did not mention Ajith (PW. 2) or Jinnappa (PW. 3) as eye witnesses and the trial court had, therefore, disbelieved the presence of PWs. 2 and 3 as eye witnesses. On the facts of the case it cannot be said that the reasons are far fetched.

7. We are thus left with the statement of the wife PW. 1. It may be noticed from the site plan that the place where the beating and pushing started and the place where the body of the deceased was found was more than 400 feet away from the house of the deceased, Devappa. Apart from distance the body was found on the road side gutter across the distributory canal. Though there were more than 10 bleeding injuries on the head and face of deceased yet there was no trail of blood or blood from the house of the deceased right till the gutter on the road side from where the body was found after travelling for about 400 feet. Blood stained towel is stated to have been recovered from the northern side of the distributory canal. Looking at the nature of the injuries all over the face and the head and as described by the eye witnesses one would have found some blood along the route the deceased followed from his house till the place of his death. The doctor had also found that there were three ounces of semi-digested food in the stomach and he in paragraph 13 of his statement in court stated as follows:

> 13. Opinion was sought for by the I.O. regarding the time of death after consuming last meal or food by the deceased. The deceased might have taken his last meal about 1 1/2 to 3 1/2 hours or four hours. The nature of the semi digested food like particles is not stated in the P.M.Report. The particles could be noted if it is less than one and a half hours from the time of consuming the food. Because I could not notice the particles of food I have fixed the time between 1 1/2 hours to 3 1/2 hours to four hours. If a person takes normal meal it may be about 10 ounces.

8. If we take the statement of PW. 1 for its face value the deceased die d within a couple of minutes of his coming out of the court-yard after finishing his mid day meal. It is clear from the postmortem report as well as the statement of the doctor PW. 6 that the deceased could not have consumed his lunch at the time as stated by PW. 1. In other words the incident must have been of a period much before the time as alleged by the prosecution. This was the main reason which persuaded the trial court to disbelieve the prosecution version in toto. Besides, we also notice that as to the disclosure statement which lead to the recovery of the axe (MC-9) the only witness examine is Ramu Mellappa, PW. 13. He did not depose about witnessing to the disclosure statement which led to the recovery-of axe. The only evidence regarding the disclosure is "come with me" and thereafter the accused proceeded towards Harugeri and stopped near the stream situated at a distance of about 2 Kms. away and the accused took out the axe from inside the nallah (stream). In the absence of any disclosure statement the recovery of axe itself become meaningless. The trial court had rejected the evidence in relation to extra judicial confession as unreliable.

9. It appears to us that the High Court did not meet with the reasoning of the trial court while rejecting the statement of eye witnesses. It also appears to us that the behaviour of PW. 1, wife of the deceased, was not natural in the sence that she merely rests by offering water to her deceased husband who was breathing his last. She does not try to nurse him or offer him any other help which would have shown her presence at the time of the death of the deceased at the site of the incident.

10. After going through the entire record we find that it was not a fit case for the High Court to have interfered with the verdict of acquittal recorded by the trial court. It appear to us that the statement of PW. 1 instead of corroborating the medical evidence is inconsistent as to the time of death of the

deceased. Once the substratum of the case goes we have not option but to accept the appeal and set aside the judgment of the High Court. We accordingly allow this appeal, restore the judgment of the trial court and acquit the appellant.