Bhimapa Chandappa Hosamani And Others vs State Of Karnataka on 20 September, 2006

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Bench: B.P. Singh, Altamas Kabir

CASE NO.:
Appeal (crl.) 367 of 2005

PETITIONER:
Bhimapa Chandappa Hosamani and others

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 20/09/2006

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:

JUDGMENT B.P. Singh, J.

The appellants have appealed to this Court by special leave against their conviction and sentence passed by the High Court of Karnataka at Bangalore on 26th May, 2004 in Criminal Appeal No. 1485 of 1998. The appellants were charged of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code for having committed the murder of Lakshman at about 6.00 a.m. on May 30, 1996 while he was sleeping on the 'katta' of his house. The Principal Sessions Judge, Bijapur, who tried the appellants in Sessions Case No.144 of 1998 acquitted them of the charge by his judgment and order of September 14, 1998. The trial Court held that out of the four witnesses examined as eye witnesses, two, namely- PW.8 and PW.9 turned hostile and did not support the case of the prosecution. The remaining two witnesses were PW-1, Smt. Nimbavva, mother of the deceased and PW-2, Ayyappa, the younger brother of the deceased, aged about 12 years. On an appreciation of their evidence the trial court held that PW-2 had not really witnessed

the occurrence while PW-1 was not a truthful witness. The High Court on re- appreciation of the evidence on record came to the contrary conclusion that PWs. 1 and 2 were truthful eye-witnesses and on the basis of their evidence the appellants could be safely convicted of the offence punishable under Section 302 read with Section 34 IPC. Accordingly the appellants were sentenced to undergo imprisonment for life.

The case of the prosecution is that on May 30, 1996 the deceased was sleeping on the 'katta'in the outer portion of the house by the side of the road, while the remaining members of the family were sleeping inside. According to PW-1 on May 30, 1996 her husband Basappa, PW-3 woke up at about 5.00 a.m. since he had to go to Muddebihal. PW-1 and PW-2 also woke up with him. PW-3 wanted the deceased to accompany him to Muddebihal but he insisted on sleeping and stated that he will come to Muddebihal with food by 9 O' clock bus. While PW-3 left for Muddebihal, she started washing utensils at a place which was at a distance of about 2 meters from the 'katta' where the deceased was sleeping. There is evidence on record to the effect that at about 5.00 a.m. it was dark but at about 6.00 a.m. there was some light as the sun was about to rise. At about that time she noticed the three accused variously armed coming there. While appellant No.2 was armed with an axe the other two were armed with 'Jambiya'. They came saying that they will finish the deceased. In spite of her begging of them not to do so, they started assaulting the deceased. She saw that appellant No.2 gave 2 or 3 blows on the neck of the deceased while the remaining two assaulted him with their weapons on different parts of the body. According to her, the occurrence was witnessed by her younger son, PW-2 and PWs. 8 and 9, the neighbours, who had come on hearing her cries. According to her a police havaldar came to her house after about 4-5 hours and recorded the information given by her. At about 12 noon an Inspector came who held inquest over the dead body of the deceased and took other steps in the course of investigation. The dead body of the deceased was then sent for post-mortem examination.

In the First Information Report lodged by PW-1, it was stated that about 3 months before the date of occurrence, her son Lakshman, the deceased, who had illicit connection with Renuka (sister of appellant No.2) was seen following Renuka while she was going to wash clothes to the village 'nallah'. People of village had seen him following Renuka and with a view to protect her reputation Renuka complained to her mother and mother-in-law about the deceased dragging her. Thereafter the mother and mother-in-law of Renuka had come to her house and abused the deceased in filthy language. From that day onwards the appellants were moving about in the village saying that the deceased had insulted their sister and, therefore, they will not spare him and will finish him. In this background the occurrence took place on May 30, 1996. It is stated that her husband got up at 5.00 a.m. in the morning since he had to go to Muddebihal . She tried to wake up her son (deceased) but he insisted on sleeping since it was dark and said that he will get up after sun rise. She thereafter started sweeping and washing utensils. At about 6.00 a.m. the appellants came and finding her son sleeping on the 'katta' said that they will not spare Lakshman (deceased). So saying, appellant No.2 assaulted the deceased on his neck twice or thrice with an axe while the remaining accused assaulted him with 'Jambiyas' on his back and thigh. Her son died on the spot. They then ran away saying that they had finished Lakshman. She further stated in the FIR that her mother-in-law and her son PW-2 came out and witnessed the occurrence. PWs-8 and 9 of the neighborhood also witnessed the assault. It was alleged that out of anger and to take revenge for her son having illicit connection with

Renuka, the appellants had committed the murder of her son.

The evidence on record discloses that all the three appellants are the neighbours of PW.1.

Since PWs. 8 and 9 did not support the case of the prosecution, they were declared hostile. Their evidence was, therefore, of no assistance to the prosecution. Apart from the mother, PW-1, the other witness PW-2 was the younger brother of the deceased. The trial court came to the conclusion that he was not an eye witness and, therefore, placed no reliance on his testimony. The High Court disagreed with the trial court and held that PW-2, in clear terms, claimed in his examination in-chief that he had witnessed the incident and had seen all the accused assaulting the deceased with their respective weapons. The High Court observed that even in his cross- examination no material contradiction had been elicited and PW-2 had denied the suggestion that he had not witnesses the incident. What PW-2 stated was that he came from inside the house when his mother PW-1 shouted and by the time he came the assault was over. The High Court was of the view that since PW-1 in her evidence stated that she shouted when the assault was going on and at that time, hearing her shouts her neighbours PWs. 8 and 9 had come, it was but natural that PW-2, who was inside the house would have also come out and witnessed the incident. There was thus no reason to doubt the testimony of PW-2.

We have carefully examined the evidence of PW-2. Learned counsel for the appellants submitted that on a mere reading of the evidence it is quite clear that PW-2 is not an eye witness. In all likelihood he was sleeping inside the house and when he came out of the house later, he only saw the dead body of the deceased. He cannot, therefore, be said to be an eye witness.

PW-2 stated that on the date of the incident he was sleeping inside the house with his father, mother and grand-mother. There was a 'katta' in the front portion of the house where the deceased was sleeping. In his examination-in-chief he asserted that he woke up early in the morning when his father and mother woke up. His father had to go to Muddebihal and while leaving for Muddebihal he (father) tried to awaken the deceased but the deceased insisted that he will come by 9 O' clock bus and will bring meals. The deceased again went to sleep. He was then asked by the deceased to bring 'beedi' which he brought from inside the house. The deceased smoked the 'beedi' and again went to sleep. When his father left for Muddebihal it was dark. His mother, PW-1, was washing utensils inside the house and at that time he was standing in the front-yard. He saw the appellants coming variously armed and he also witnessed the assault by them on his brother. The appellants after assaulting his brother went away saying that they had finished Lakshman. When the accused had come, his mother PW-1, had begged of them not to assault her son, yet the appellants murdered his brother. When the incident took pace there was light though the sun was not visible. Thereafter the police had come to his house. At about 8.00 a.m. Inspector also came.

It appears from his deposition that while his mother was washing utensils he was standing in the front yard of the house and he saw the appellants coming to his house and assaulting his brother. He also saw the mother pleading with them not to assault his brother. This witness in his examination-in-chief asserted that he had seen the entire occurrence from the very begging. In his cross-examination, however, he gave a different version altogether. He stated that when his father

left for Muddebihal he did not wake up. He was not even aware as to when his father left, as he was asleep. He stated that on hearing the sound of bowling of his mother he woke up and saw the dead body of his brother. However, he denied the suggestion that he did not see the appellants assaulting his brother. It also appears from the evidence of PW-11, the Investigating Officer, that PW-2 had not stated before him that his father woke up his elder brother and asked him to accompany him but his brother did not go, and went to sleep, and that the accused came to their house. He also did not state about his mother pleading with the accused not to assault her son.

In this state of the evidence, we entertain a serious doubt as to whether PW-2 is really an eye witness. In his examination-in-chief he claims to have woken up with his father when he was leaving for Muddebihal. In his cross-examination, his version is to the contrary. He has stated quite clearly that he did not even know when his father left since he was sleeping, and further that when he got up on hearing cries of his mother, the incident was over and on coming out he had seen the dead body of his brother. The evidence leads us to suspect the assertion of PW-2 that he is an eye witness. We are, therefore, inclined to accept the finding of the trial court that PW-2 had not witnessed the occurrence. His evidence cannot be relied upon. We are then left with the evidence of the sole eye witness, namely PW-1, the mother of the deceased. As noticed, in the First Information Report it was clearly stated by PW.1 that there was a motive for the commission of the offence, namely that the deceased had illicit relations with one Renuka and this had come to the knowledge of her family members who had protested against the conduct of the deceased. They had in fact come to the house of PW-1 and abused the deceased in filthy language, and since then the appellants were heard saying that they will not spare the deceased. From her cross-examination, it appears, that she has gone back on her statements made in the First Information Report as also in her examination-in-chief. In fact she denied that she knew about her son having any illicit relations with Renuka. On the other hand she stated that the relationship between the two families was cordial till the date of murder. Prior to the murder of her son there had been no quarrel, complaint or dispute between the accused and her son. The members of the two families used to visit each other.

The trial court as well as the High Court have not accepted the evidence regarding existence of motive as alleged by PW-1 in the First Information Report. In fact she herself in the course of her deposition denied the existence of such a motive. The High Court has agreed with the view of the trial court on this issue. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. The law on this aspect is well settled.

However, in the instant case we are left with the evidence of a sole eye witness and it therefore, becomes the duty of the Court to critically scrutinize her evidence with a view to assure itself that the witness is stating the truth and that her evidence is so convincing and appears to be so natural and truthful that it is not necessary to look for other evidence to record a conviction. Viewed from this angle, it is established that in the First Information Report, a false statement had been made by PW-1 as to the existence of motive.

Learned counsel for the appellant submitted that the evidence on record will establish that PW-1 is not a truthful witness. In fact after her husband arrived at the scene, a false case was concocted and the appellants were named as the assailants. In her cross-examination, PW-1 stated that after recording her complaint the police officer did not read out the same to her but her thumb mark was taken on the complaint. Her thumb mark was taken five times on five white sheets of paper. After she had lodged the report she was never questioned by police. She, however, denied the suggestion that the police had prepared a false complaint at the behest of her husband. PW-1 admits that she had been made to sign (thumb mark) five blank sheets of paper and that she was never questioned by the police. This is only one of the suspicious circumstances which appears on record.

In her First Information Report she had stated that PW-2 had witnessed the occurrence after coming out of the house alongwith her mother-in-law on hearing her cries. In her evidence, however, she gave a different version. She stated that when the appellants came, her son PW-2 was standing in the front yard of the house. Both she and her son pleaded with the appellants not to assault the deceased but they were both pushed by them and the appellants started assaulting the deceased. An improvement has been made by the witness in an attempt to project the presence of PW-2 from the very beginning of the occurrence which, as we have held earlier, is not true. Another aspect of the matter which deserves notice is the fact that neither her clothes nor that of PW-2 had any blood stains, though having regard to the nature of injures of the deceased a lot of blood must have come out. She explained by saying that she only touched the body of the deceased to find out whether he was alive. The conduct, to say the least, appears highly unnatural. Learned counsel for the appellant submitted that the absence of blood stains on the clothes of PWs.1 and 2 suggests that they had not witnessed the occurrence as they were perhaps inside the house and later when they came out they saw the dead body of the deceased on the 'katta' with severe injuires. It was submitted that according to PW-2 when the occurrence took place at about 6.00 a.m. the sun had not risen but there was sufficient light to identify the appellants. According to PW-2, his mother PW-1 was washing utensils inside the house. The speed with which the occurrence took place as described by PW-1 is such that she had hardly any time to raise her voice when the accused started assaulting her son. By the time she could raise her voice, the accused had murdered her son and had run away. In the light of these circumstances it was argued before us that while she was inside the house, the murder of her son had taken place outside on the 'katta' where he was sleeping and the assailants had disappeared after committing the offence. Her claim, therefore, that she was an eye witness cannot be accepted.

There are several circumstances which give rise to a serious doubt about the truthfulness of PW-1. It is the case of the prosecution supported by PW-1 that her husband PW-3 slept inside the house while her deceased son slept outside on the 'katta'. This assertion of PW-1 is again contradicted by her husband PW-3 who stated that on that night he had not slept inside the house. In fact he had slept with his deceased son on the 'katta'. He further stated that he left his son sleeping and washed his face and, untied the cow tethered in front of his house and took the cow for sale to Muddebihal market. There was a pot of water on the 'katta' where they had slept and he used that water for washing his face. He did not go inside the house. While leaving, he only awakened his wife. It obviously means that without going inside the house he may have awakened his wife by calling her and asking her to wake up.

The deposition of PW-1 is to the effect that after her husband left for Muddebihal she started sweeping and cleaning the utensils. The evidence of PW-2, her son, Ayyappa, is that after his father left, his mother started rinsing utensils sitting inside the house and that he was standing in the front yard. The First Information Report is silent where she was washing utensils but in her deposition she clearly asserted that she was washing utensils just about 2 meters by the side of the 'katta' on which her son, the deceased, was sleeping in the outer portion of the house by the side of the road. The evidence of PW-1 and PW-2 are, therefore, not consistent on this point. Apart from these inconsistencies there is one another aspect of the matter which creates a serious doubt about the truthfulness of the prosecution case. As noticed earlier, PW-10, Havaldar Appanna the Havaldar of Nidagundi Police Out Post was the first person to reach the place of occurrence. He deposed that at about 7.00 a.m. he had received a wireless message from the Circle Police Inspector of Basavan Bagewadi informing him that a murder had taken place in village Areshanker and that he should immediately proceed to the village. The CPI informed him that he would also be reaching there. According to PW-10 he reached the Village Areshanker at about 8.00 or 8.30 a.m. CPI Bagewadi had already reached the village. They questioned PW-1 and recorded the complaint as stated by her. As per the orders of CPI he took the original complaint to Kolhar Police Station and handed over to PSI Kolhar to register a crime. He asserted in his examination-in-chief that CPI Bagewadi was present when he wrote the complaint. After a case was registered at Police Station Kolhar a copy of the FIR was given to him and he took it and gave it to the CPI in the village. He denied the suggestion that the information Ext.P-1 was not written in the village and that it was prepared at 2.00 p.m. in the police station.

Shri Saidappa, CPI Bagewadi (PW-11) has a different story to tell. He deposed that after receiving wireless message he immediately rushed to Areshanker Village at about 9.30 a.m. He does not claim to have instructed PW-10 to reach the village of occurrence. When he went there PW-10 the Havaldar was not present. He came to learn that he had already obtained a complaint from PW-1 and had gone to Kolhar P.S. He waited till he got the FIR at about 1.30 p.m. from PW-10 who came from the police station and handed over a copy of the First Information Report.

According to PW-1, PW-11 came to the village at about 12 noon and held inquest over the dead body of the accused. The defence is that PW-1 did not give any information to the police as she was not an eye witness, and only after her husband PW-3 returned from Muddebihal a false case was concocted. That explains why there is so much inconsistency between the statements of PW-10 the Havaldar and PW-11, the Investigating Officer. While PW-10 asserts that PW.1 was questioned by both of them and that on the instruction of PW-11 he left for Kolhar PS with the information to get a case registered, PW-11 on the other hand states that when he reached the place of occurrence PW-10 was not there at all and that he had already left with the report for getting the case registered at Kolhar P.S. This circumstance does raise a doubt as to whether the FIR was recorded early in the morning at about 8.00 or 8.30 a.m. or whether it was recorded later. PW-11 does not state that he had sent a wireless message to PW-10 to reach the village of occurrence. In fact he went to the village of occurrence with another Havaldar and a Police Constable, and there he learnt that PW-10 had already recorded the information given by PW-1, and had gone to the police station to get the case registered. How PW-10 came to know about the occurrence is shrouded in mystery? The inconsistencies in the evidence of PWs. 10 and 11 could not be explained and this gives rise to

serious suspicion about the recording of the FIR at village Areshanker at 8.00 a.m. If PW-10 is to be believed that the information given by PW-1 was recorded in the presence of PW-11, then it must follow that it was not recorded at about 8.30 or 9.00 a.m. as claimed by the prosecution but later at about 10.00 a.m. or 12 noon when PW-11 as well as PW-3 came to the place of occurrence. This probablises the defence case that PW-1 was not an eye witness and therefore, only after her husband PW-3 and CPI (PW-11) came to the village, a false report was got scribed in the village or at the police station involving the appellants.

We have undertaken a very close and critical scrutiny of the evidence of PW-1 and the other evidence on record only with a view to assess whether the evidence of PW-1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.

So tested, we do not find the evidence of PW-1 to be of that quality. In the first instance, she began with inventing a false story about existence of a motive. The narration of events as they took place before the actual murder of her son are also shown to be untrue. There is considerable doubt as to whether the first information was recorded on her saying at about 8.00 or 8.30 in the morning. Her evidence also leaves a lurking suspicion about her being an eye witness. Having discarded the evidence of PW-2, and the other two alleged eye witnesses having turned hostile, we find no reliable corroboration of her testimony. We do not find this case to be one in which the judgment of acquittal deserved to be set aside. We, therefore, feel compelled to give to the appellants the benefit of doubt while allowing their appeal. Accordingly, this appeal is allowed, the appellants are acquitted of the charge levelled against them, and they are directed to be released unless required in connection with any other case.