Shranappa Mutyappa Halke vs State Of Maharashtra(And Connected ... on 27 August, 1963

Equivalent citations: 1964 AIR 1357, 1964 SCR (4) 589, AIR 1964 SUPREME COURT 1357, 1964 4 SCR 589, 1964 MAH LJ 514, 1964 MPLJ 604, 1964 ALLCRIR 100, 1964 SCD 305, 1966 BOM LR 250

Author: K.C. Das Gupta

Bench: K.C. Das Gupta, S.K. Das, M. Hidayatullah

PETITIONER:
SHRANAPPA MUTYAPPA HALKE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA(and connected appeals)

DATE OF JUDGMENT:
27/08/1963

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
DAS, S.K.
HIDAYATULLAH, M.

CITATION:
1964 AIR 1357 1964 SCR (4) 589
CITATOR INFO :
R 1971 SC1450 (20)
RF 1978 SC1770 (28,29)

ACT:
Criminal Trial-Evidence of witness before committing court-Resiled in Sessions Court-Whether corroboration required -Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 28.

HEADNOTE:
The appellants were convicted by the High Court for committing three murders. In this case the High Court considered the testimony of one "Parwati", given by her in the committing court. She was in eye witness of the occurrence according to her testimony in the committing

court. In the sessions court she resiled from her previous statement before the committing Magistrate and made a definite statement that she had not seen the occurrence. Her evidence before the committing court was tendered as evidence under s. 288 Criminal Procedure Code in the court of sessions. Her evidence before the committing court was not corroborated in respect of participation in the occurrence by four appellants. The High Court convicted the appellants on the basis of the statement made by Parwati before the committing Magistrate on the ground that it was substantive evidence which did not require any corroboration.

Held, that the evidence of a witness tendered under s. 288 of the Code of Criminal Procedure before the Sessions Court is substantive evidence. In law such evidence is not required to be corroborated. But where a person has made two contradictory statements on oath it is ordinarily unsafe to rely implicitly on her

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evidence and the judge, before he accepts one or the other of the statements as true, must be satisfied that this is so. For such satisfaction it will ordinarily be necessary for the evidence to be supported by extrinsic evidence not only as to the occurrence in general but also about the participation of the accused in particular. But in a case where even without any extrinsic evidence the judge is satisfied about the truth of one of the statements, his duty will be to rely on such evidence and act accordingly.

Bhuboni Sahu v. The King, A.I.R. 1949 P.C. 257, relied on.

On the facts of this case, it was held that without corroboration from extrinsic evidence, the High Court was not justified in acting on the evidence of the only eye witness Parwati, given in the committing court.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 75, 100 and 101 of 1963.

Appeals from the judgment and order dated February 27, 28, 1963 of the Bombay High Court in Criminal Appeal No. 1077 of 1962.

S. G. Patuwardhan and A. G. Ratnaparkhi for the appellant(in Cr. A. No. 75 of 1963).

B. B. Tawakley, Harbans Singh and A. G. Ratnaparkhi, for the appellants (in Cr. A. Nos. 100 and 101 of 1963). D. R. Prem, K. L. Hathi and B. R. G. K. Achar, for R. H. Dhebar, for the respondents.

August 27, 1963. The Judgment of the Court was delivered by DAS GUPTA J.-On June 11, 1961 at 5 p.m. the road in front of the Temple of Shri Maruti in the village of Chinchpur of Taluk Sholapur was

the scene of a terrible tragedy. Three persons-Revansidappa, and his two maternal uncles, Yellappa and Maruti were done to death there in a most gruesome manner. Revansidappa's neck was severed from the body, except for a piece of skin and one of his legs was chopped off. The spinal cord and vertebra of Yellappa were cut off. The jaw, vertebra, tongue and a major part of the neck of Maruti were cut off.

The first information that reached the police station of this tragedy was by a letter of the village police patel written on the same day and addressed to the Police Sub- Inspector of Mandrup. It merely stated that three murders had taken place in course of riot and maramari at 5 p.m. in the evening and mentioning the names of the men who had been murdered. This letter reached the police sta-

tion at 2.30 a.m. Head Constable Bansode who was in charge of the police station then left for the place of occurrence after having sent a report to the Police Sub-Inspector who was camping at Bhandrkavathe village. The Sub-Inspector reached Chinchpur at about 11 a.m. on the 12th. Some constables had already reached the village. Vishwanath, Head Constable of Mandrup with two other constables who had been on duty on the bridge over the Bhima river which runs west of the village Chinchpur learnt of these terrible murders at 7 p.m. on the very date of the murders and left for the place, arriving at the village at 9.30 p.m. They found the three dead bodies lying there and the Police Patel and some other persons present. Head Constable Ram Chandra Bansode reached the place at 6.30 a.m. on the 12th and after making enquiries had three persons, Gurpadappa, Parasappa and Daulappa brought to the place. They were arrested by the Sub-Inspector when he arrived. The only witness the Sub-Inspector could examine on that date was Parwati, the step mother of the deceased Revansidappa. He found that all the men had left the village and only women were present. After completing the investigation the Sub-Inspector sent up cliarge-sheet against 13 persons.

All the thirteen were tried by the Sessions Judge on a charge under s. 148 of the Indian Penal Code, on three charges under s. 302/34 of the Indian Penal Code, with three alternative charges under s. 302/149 of Indian Penal Code and a further charge under s. 342 of the Indian Penal Code. Three out of the 13, viz., Gurpadappa, Parasappa and Annarava Shivabala were convicted by the learned Sessions Judge under s. 302/34 of the Indian Penal Code on each of the three counts and sentenced to imprisonment for life. All the three were also convicted under s. 342 of the Indian Penal Code and sentenced to six months' rigorous imprisonment. Gurpadappa and Annaraya were also convicted under s. 147 of the Indian Penal Code and sentenced to rigorous imprisonment for two years. Parasappa was convicted under s. 148 of the Indian Penal Code and sentenced to rigorous imprisonment for three years. The sentences were directed to run concurrently. The other 10 accused persons were acquitted by the learned Judge.

Gurpadappa, Parasappa and Annaraya Shivabala appealed to the High Court of judicature at Bombay against their conviction and sentence. Their appeal was dismissed and the conviction and sentence of Gurpadappa and Annarava were affirmed. Parasappa's conviction was also affirmed but after notice on him as to why the sentence should not be enhanced, the sentence of life imprisonment was enhanced to one of death. The State appealed against the order of acquittal of all other accused except that of Sangappa. The High Court allowed the State's appeal in respect of three

of these, viz., Shranappa, Ganpati and Tipanna and convicted them of the offence with which they were charged. The High Court sentenced Shranappa to death and Ganpati and Tipanna to imprisonment for life. The State's appeal in respect of the other six were dismissed. Sliranappa had filed the present appeal under Art. 134(1)(a) of the Constitution. The other five, viz., Gurpadappa, Parasappa, Annaraya, Ganpati and Tipanna were granted special leave to appeal by this. Court and on the basis of that they have filed the appeals against the orders of conviction and sentence passed against them. The prosecution case is that there had for sometime been trouble between Gurpadappa and his brother Dhannappa on the one side and Parwati and the deceased Revansidappa on the other over the possession of a plot of land in Chinchpur. According to Parwati and Revansidappa this land had merely been mortgaged to Gurpadappa by Revansidappa's father and the debt had been paid out and they were entitled to get back possession. To this Gurpadappa did not agree. He, however, agreed to Parwati's request that the dispute may be settied by a Panchayat. But without calling a Panchayat Gurpadappa and his brother started cultivating the land on June 10. When Parwati saw this, she protested ; but to no purpose. The two brothers said that there would be no Panchayat.

On the next day i.e., June 11, Revansidappa who used to live with his maternal uncles at the neighbouring village, Chanegaon, came to Parwati's house at Chinchpur with his two uncles, Maruti and Yellappa. Shortly after this all the thirteen accused persons came in front of the house and demanded that Revansidappa, Yellappa and Maruti should come out of the house. When they did not, some of the accused went on the roof of the house and began to remove it by means of spades. Some iron sheets were actually removed. Ultimately, at the instance of two neighbours Gourava and Panchppa the three unfortunate young men came out of the house. They were led to the school which stands some way north of Parwati's house. From there one by one they were taken near the Maruti Temple outside the Ves, the village wall and done to death. It is said that Yellappa was struck by Parasappa and Shranappa with axes while the other accused beat him with sticks. He died instantaneously. Next was the turn of Revansidappa. He was also struck with axes by Shranappa and Parasappa and all others with sticks. Revansidappa died immediately. Maruti was brought there last of all; Parasappa and sangappa struck him with axes and the other accused with sticks. He also died on the spot. All the accused then left the place. Three of them, Gurpadappa, Parasappa and Daulappa were taken into custody on the very next day. Annaraya Shivabala was arrested on June 13 and Sliranappa and Ganpati Shamraya on the following day. Three more accused, Dhanappa, jakanna and Ganpati Gurling were arrested three days later. On August 6, 1961 were arrested Tipanna and Dhondappa. The remaining accused Sangappa surrendered in Court on October 16, 1961.

All the accused pleaded not guilty. Their case was that they had been falsely implicated-Gurpadappa and his brother Dhanappa because they were in possession of the land purchased by them, which Revansidappa and his step-mother, Parwati, had been claiming and the other accused either on suspicion or because they had supported Gurpadappa and his brother over the land dispute.

Shranappa's appeal is one of right under Art. 134(1) (a) of the Constitution. To decide his appeal it is therefore necessary for us to examine the evidence adduced in the case for ourselves and to see whether the assessment of the evidence on which the High Court convicted him is proper and

justified. That evidence consists in this case of the testimony of a single witness Par-

wati, given by her in the Court of the Committing Ma- gistrate. This is undoubtedly substantive evidence, which if believed, would be sufficient in law to support the order of conviction. For, it was brought on the record of the Sessions Court under the provisions of s. 288 of the Code of Criminal Procedure ; when in, the Sessions Court Parwati resiled from her previous statement before the Committing Magistrate and made a definite statement that she had not seen the occurrence the question has. naturally been raised whether this evidence of Parwati which is substantive evidence at the Trial under the provisions of s. 288 of the Code of Criminal Procedure required corroboration before the Court should act on it.

The question how far evidence in the Committing, Court given by a witness who refiles from it at the Trial in Sessions and which is brought in as evidence at the Trial under s. 288 of the Code of Criminal Procedure requires corroboration or not, has engaged the attention of most of the High Courts in India in numerous cases.. Many such judgments have been cited before us and extensive passages have been read out from some of them. While the dust of controversy sometimes obscured the simplicity of the true position, most of the learned Judges have, if we may say so, with respect, appreciated the situation correctly. That is this. On the one hand, it is true that corroboration of such evidence is not required in law ; but it is equally true that in order to decide which of the two versions, the one given in the Committing Court and the one in the Sessions Court, both of which are substantive evidence, should be accepted, the judge of facts would almost always feel inclined to look for something else beyond this evidence itself to help his conclusion. We cannot do better in this connection than to quote from the observations on this question by their Lordships of the Privy Council in Bhuboni Sahu v. The King(1). In that case the evidence of an approver in the Committing Court had been brought on the record under s. 288 of the Code of Criminal Procedure. Dealing with the question as to the value that can be attached to such evidence their Lordships observed thus (1)A.I.R. 1949 (P.C.) 257.

> "Apart from the suspicion which always attaches to the evidence of an accomplice it would plainly be unsafe, as the judges of the High Court recognized, to rely implicitly on the evidence of a man who had deposed on oath to two different stories."

This, if we may say so, with respect, is the crux of the question. Where a person has made two contradictory statements on oath it is plainly unsafe to rely implicitly on his evidence. In other words, before one decides to accept the evidence brought in under s. 288 of the Code of Criminal Procedure as true and reliable one has to be sa- tisfied that this is really so. How can that satisfaction be reached? In most cases this satisfaction can come only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. If there be a case-and there is such infinite variety in facts and circumstances of the cases coming before the courts that it cannot be dogmatically said that there can never be such a case-where even without such extrinsic support the Judge of facts, after bearing in mind the intrinsic weakness of the evidence, in that two different statements on oath have been made, is satisfied that the evidence is true and can be safely relied upon, the judge will be failing in his duty

not to do so.

The present is not one such case. It is true that Parwati has in this deposition in the Committing Court given a detailed account of not only the incidents at the house and the three young men, Rvansidappa, Maruti and Yellappa being taken out of her house to the accused persons but also as regards how they were led to the village school, how one after the other the three were taken near the Maruti Temple, how her entreaties to spare them were in vain and the manner of attack on each of the victims. The learned judges of the High Court appear to have been impressed by the very vividness of this description and persuaded themselves apparently from this alone that she was speaking the truth. Unfortunately the important fact that the witness had made a totally different statement on oath in another Court and denied to have seen the occurrence did not receive from the lear-

ned judges the attention it deserved. Again, the ability to describe vividly should not be mistaken for anxiety to speak truly. For, one often exists without the other. Closer scrutiny of Parwati's statement in the Committing Court discloses some features, at least, for which no explanation is available.

According to her account Yellappa was first taken from the school to the temple and that all the thirteen took part in the attack. If that be true, there were none of the accused party to guard Revansidappa and Maruti, who were in the school during this time. Who however was left to guard them? To this we find no answer from Parwati's deposition. There is the same mystery as to who was left to guard Maruti when Revansidappa was next taken and killed-all the thirteen taking part in the attack according to her. It is also to be noticed that she does not clearly state in this deposition where exactly she was standing or sitting during the occurrence. The place where the bodies were discovered and where undoubtedly these three young men were killed is outside the village wall. This wall would have a door through which, if the prosecution story is true, the victims were taken out. Was Parwati also allowed to go out? If she was riot, could she have seen the actual attack on these three persons from her place on the village side of the Ves. We look in vain in Parawiti's deposition for any answer to these questions.

Again, according to her story, three axes were used in the attack. Only one axe was however discovered at the place of occurrence. How is it that while two axes were taken away the third was left behind? There may be a good answer to this question. But none is furnished by the evidence on the record.

This being the nature of Parwati's evidence it is, in our opinion, clearly unsafe to accept her testimony against any of the accused persons unless corroborated by other evidence. In respect of Shranappa, whose appeal we are now considering, there is admittedly no such corroboration. It is not possible therefore to accept what Parwati had said against this appellant as true. The High Court has, in our opinion, fallen into error in acting on her testi-

mony even in the absence of corroboration. We hold that the prosecution has failed to prove its case against him and he must be acquitted of the charges against him. The appeals by the other five, is by special leave of this Court, but what we have stated above as regards the need of corroboration of

Parwati's testimony in the Cornmiting Court applies equally in respect of each of them also. There is no such corroboration whatsoever in respect of Parwati's story of participation in the occurrence of Gurpadappa, Ganpati Shamraya and Tipanna. As regards the other two appellants, Parasappa and Annaraya Shivabala, some slight corroboration has been offered by the prosecution. That is in the presence of stains of human blood on the soles of the Chappals seized from them at the time of their arrest. The value of this corroboration is considerably reduced however by the fact that before these chappals were seized from Parasappa on Julie 12 and from Annaraya Shivabala on June 13, these accused persons had been brought up to the place of occurrence. There is scope therefore for thinking that the soles of the chappals became stained with blood when they walked over the blood-stained ground. It will not be reasonable thereforeto treat the presence of these blood stains on the soles of their chappals as sufficient corroboration of Parwati's evidence against them. The conviction of these five appellants also cannot therefore stand.

Accordingly, we allow the appeals, set aside the order of conviction and sentence passed against them and order that they be acquitted.

Appeals allowed.