# Yamanappa Goolappa Shirgumpi And Three ... vs State Of Karnataka on 5 November, 1980

## Equivalent citations: AIR1981SC646, 1981CRILJ164, 1980SUPP(1)SCC345, 1981(13)UJ64(SC), AIR 1981 SUPREME COURT 646, 1981 CRIAPPR(SC) 27, 1981 UP CRIC 50, 1981 SCC(CRI) 271, 1980 SCC(SUPP) 345, 1981 UJ (SC) 64, (1981) CURLJ(CCR) 118

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## Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This is an appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and is directed against the judgment of the Karnataka High Court dated 21/22-1-1975 setting aside the acquittal of accused Nos. 1, 2, 3 and 7 passed by the trial court, convicting them under Sections 302/34, Indian Penal Code, and sentencing them to imprisonment for life.

2. The prosecution case has been set out in detail in the judgment of the High Court and that of the trial court and it is not necessary to repeat the same all over again. The occurrence which resulted in the death of Fakirappa Gulappa Shirgumpi and Hanamantappa Gulppa Shirgumpi, is alleged to have taken place in village Venkatapur, district Belgaum, on the 22nd October, 1972 at about 8-30 a.m. The F.I.R. of the occurrence was lodged by the complainant, PW 2 who reached Katkol on the same day at about 5 p.m. Thereafter the police arrived at the scene some time after midnight and held the usual inquest. After the investigation a charge-sheet was submitted against eight persons who were all acquitted by the Sessions Judge after a trial.

3. The defence of the accused was that all the accused persons were falsely implicated due to serious animus which they bore against the deceased and the prosecution witnesses.

4. The Sessions Judge, after recording the evidence and hearing the arguments, gave a very detailed judgment in which he found that the prosecution case against the accused had not been proved and that an attempt was made by the eye-witnesses to falsely implicate as many as four persons due to enmity. The Sessions Judge accordingly rejected the entire prosecution case and acquitted all the accused.

5. The State then filed an appeal before the Karnataka High Court which allowed the same in respect of accused Nos. 1, 2, 3 and 7 and convicted them as indicated above.

6. Appearing for the appellants Mr. Ram Reddy submitted that a perusal of the judgments of the trial court and the High Court would show that the view taken by the former cannot be said to be perverse or, at any rate, one which was not reasonably possible. The learned Counsel has taken us through most of the evidence in order to show that the Sessions Judge had given cogent reasons for disbelieving the prosecution case and that even the High Court had agreed with him in some of the important conclusions regarding the creditability of the eye-witnesses.

7. After hearing counsel for the parties and going through the record we are satisfied that on a plain reading of the judgment of the high Court this is not a case in which the order of acquittal passed by the Sessions Judge should have been reversed. The main evidence against the accused consisted of two categories: (1) the evidence of eye-witnesses, viz., PWs. 2 to 7, and (2) the recovery of various articles stained with human blood at the instance of the appellants. The High Court agreed with the trial court that there was undoubtedly a deliberate attempt by the prosecution to rope in the four accused persons who had been acquitted by the courts and that this was done due to animosity. The High Court further endorsed the finding of the trial court that all the eye-witnesses were interested in the prosecution and inimical to the accused and that therefore their testimony should be approached with great care and caution and should not be accepted unless it was corroborated by independent evidence. The High Court found that the evidence of the eye-witnesses was corroborated by two circumstances: (1) the evidence of PW 5 who was an independent witness, and (2) the recovery of the dhoti and the shirt, both stained with human blood, which were produced by A-2 at the police station when he surrendered before the police So far a the first circumstance is concerned, the High Court was clearly wrong because the evidence of PW 5 suffers from the same infirmity as that of other prosecution witnesses namely, PWs 2, 4 and 6, as PW 5 was a servant of the deceased and PW 2. So far as PWs 6 and 7 are concerned, the High Court itself disbelieved their evidence. We are thus left with only the evidence of PWs 2, 3 and 4. As regards the recovery of the clothes from A-2, who is said to have assaulted the deceased with an axe, the story appears to us to be wholly improbable because when A-2 appeared before the police as an innocent person, he would not have done so after wearing blood-stained clothes so as to entangle himself in a murder case, especially when he had sufficient time at his disposal to destroy these clothes or the stains of blood on them It was not a case of an accused who had committed offence under some emotional strain and, having been repentant, appeared at the Police Station to plead his guilt. If such would have been the conduct of A-2, we should have expected him to make a clear confession either before the police or before the magistrate. For these reasons we are unable to accept the evidence given by the prosecution in respect of the production of blood-stained clothes by the second appellant. As regards the recoveries of weapons made at the instance of other accused persons, the Sessions Judge has given cogent reasons for disbelieving the same which have not been properly displaced by the High Court. As regards the evidence of PW 2 which has been criticised by the Sessions Judge for various reasons we find that it is replete with material contradictions and discrepancies. To begin with, the manner in which the F.I.R. was lodged appears to be extremely suspicious. PW 2 claims to have gone from his village to some other village and then to Ramdurg where he got PW 8 to write a report and then proceeded to Katkol Police Station to lodge it with the Police. This version is

completely falsified by the intrinsic evidence furnished by the F.I.R. itself where it has been clearly mentioned in the penultimate paragraph that he had appeared at the Police Station after visiting Ramdurg and was lodging the F.I.R. at Kotkol. Thus the evidence of PWs 2 and 8 appears to be false on the circumstances in which the F I R was lodged. Further more, there is no mention in the F.I.R of the names of the important eye-witnesses or of the overt acts committed by accused other than the appellants. This shows that at a later stage an attempt was made by the prosecution to rope in innocent persons which the High Court also clearly found. Having regard to these infirmities the Sessions Judge was not prepared to accept the prosecution case and it could not be said that the view taken by him was so unreasonable as to warrant interference by the High Court. On the other hand, the High Court itself had applied two tests to find corroboration for the evidence of the eye-witnesses both of which fail because as indicated above, PW 5 was a servant of the deceased and the recovery of blood, stained clothes is not acceptable. In these circumstances we are satisfied that it was not a fit case for the High Court to have interfered with the order of acquittal passed by the Learned Sessions Judge. We, therefore, allow this appeal, set aside the Judgment of the High Court as well as the conviction and sentences imposed on the appellants and acquit them of the charges framed against them.