Supreme Court of India
Somappa Vamanappa Madar And ... vs State Of Mysore on 24 April, 1979
Equivalent citations: AIR 1979 SC 1831, 1979 CriLJ 1358, (1980) 1 SCC 479
Author: R Kailasam
Bench: P Kailasam, R Sarkaria
JUDGMENT R.S. Kailasam, J.

1. This appeal is preferred by accused Nos. 1 and 2 in the trial court by certificate granted by the Mysore High Court against its judgment reversing the order of acquittal passed by the Sessions Judge, Bijapur and convicting them of an offence under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to imprisonment for life.

2. The two appellants and Ningappa Hanmantappa Polici, the third accused, were charged for the offence of murder of one Basangouda Gurappagouda Biradar alias Patil said to have been committed by them at about 7-45 p.m. on 29th May, 1970 at Bijapur town by cutting him with axe and sickle.

3. The trial court found that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt and acquitted all the three accused of the offences with which they were charged. The State of Mysore preferred an appeal against the judgment of acquittal passed by the Sessions Judge to the High Court of Mysore. By its judgment dated 20th October, 1972 in Criminal Appeal No. 219 of 1971 the High Court allowed the appeal of the State so far as the appellants are concerned, found them guilty of an offence under Section 302 read with Section 34 of Indian Penal Code and sentenced each of them to rigorous imprisonment for life. It dismissed the appeal of the State so far as the third accused is concerned. Leave to appeal having been granted to the appellants by the High Court this appeal is before us.

4. The case for the prosecution may be briefly stated. One Shivappa, a resident of Ingalgeri had two daughters and extensive landed property, about 72 acres in extent. He transferred the lands to his son-in-law P.W. 17, Siddappa Dhari, who had married his first daughter Somawa, P.W. 17 undertook to transfer half the extent of land to the person who would marry the younger daughter Sangavva, P.W. 16. Shivappa wanted to give his younger daughter in marriage to Shivappa Irappa Gureddi of Ingalgeri. Irappa Gureddi refused to marry her but he suggested that the girl may be given in marriage to his friend, the deceased Basangouda Gurappagouda Biradar alias Patil. Accordingly, P.W. 16 was married to the deceased and P.W. 17 Siddappa Dhari transferred half of the lands gifted to him by his father-in-law Shivappa. It is the case of the prosecution that Shivappa Gureddi demanded transfer of one of the lands to him by the deceased on the ground that he brought about the marriage. The deceased refused to oblige and on that account there was enmity between the deceased Basangouda Patil and Shivappa Irappa Gureddi. Shivappa Gureddi became a leader of a party to which A-1 to A-3 and others belonged and started threatening the deceased. Basangouda Patil left, the village afraid of the threat and started living with his wife P.W. 16 at Bijapur for about 6 years. While at Bijapur he joined the party of one Basavantaraya Nadagouda of Ingalgeri who was inimically disposed towards Shivappa Gureddi for 20 years. The father-in-law of Baswanataraya Nadagouda was murdered in 1956-57 and Shivappa Gureddi and the third accused Ningappa Polici's father Hanmanthappa Polici and others were tried for the murder and were convicted and

sentenced to 4 years' rigorous imprisonment. After the conviction the deceased Basangouda Patil went back to his village Ingalgeri and started living there. After serving their term Shivappa Gareddi and others came back to the village and the trouble again started. The deceased leased his lands and again left the village and came to Bijapur with his wife and children. About 2 years prior to the incident on 12th December, 1968, Shivappa Gureddi was murdered and the deceased' Basangouda Patil and 8 others were charged for the murder. They were acquitted but the trouble did not end. The three accused and another started giving trouble to the deceased by looting his crop and burning the hay-stack. Police started proceedings against the two parties for keep-tog peace. The existence of faction and bitter enmity between the deceased on one side and A-1 to A-3 on the other is not seriously challenged. In fact, the trial court which acquitted the accused accepted the prosecution case and found that there was bitter enmity between the parties. The High Court has also agreed with the finding of the trial court regarding the existence of enmity.

5. Regarding the occurrence the case for the prosecution is that on the morn-tog of the day of the occurrence i.e. 29th May, 1970, when the deceased Basangouda Patil went into the Bazar at Bijapur he met A-3 Ningappa Polici and one another person from Jammaladinni village in a tea shop. The latter went out of the tea shop looking at the deceased. A-3 noticed the presence of the deceased. The deceased got suspicious and when he returned to his house he informed his wife P.W. 16 about the presence of the third accused. In spite of protestations by his wife in the afternoon he went out of his house towards the bus stand saying that his Mama Mallangouda of Yakkundi was expected to come from his village. When the deceased was returning back to his house at about 7-45 p.m. by the road passing from the side of the court of the Judicial Magistrate II, the three accused started chasing him armed with axe and sickle in their hands. The deceased ran and was finally caught hold of by Somya Madar A-1 and Shankarappa Kaddi A-2 in front of the house of Lalseb Ukkali P.W. 15. The accused started cutting him with the axe and sickle in their hands. The third accused Ningappa (sic) was standing on the road side with a sickle in. his hand. The deceased again escaped from their (sic) and ran into the house of P.W. 15 but the first two accused chased him inside the house. Brought him out and started cutting him with weapons in their hands. The incident is claimed to have been witnessed by eye-witnesses, F.Ws. 4 to 7 and 11 to 14. The witnesses rushed towards the accused, surrounded A-1 and A-2 and caught hold of them with weapons in their hands. P.W. 7 Nazeer Ahmed Maniyar snatched the sickle from the hands of A-2 Shankarappa. P.W. 5 Sahablal snatched the axe from the hands of A-1 Somya. A-2 who was being held by P.W. 7 and P.W. 14 managed to escape from their grip and ran away. A-3 also escaped Thereafter P.W. 5 Sahablal went (sic) the deceased who was lying in front of the house of P.W. 15 and questioned him in the presence of other witnesses. The deceased gave out his name and told him the names of the two assailants and stated that all of them be-longed to Ingalgeri village. Thereafter P.W. -5 went to Khadi Gramodyoga building which is at a distance of one furlong and telephoned to the police station Gandhi Chowk about the incident. While under their custody witnesses also questioned the first accused and he told the witnesses that the person who was standing on the road was Ningappa Polici A-3 and also gave particulars about himself and the second accused. On receipt of the telephonic message P.W. 38 the P.S.I. came to the site, found the deceased Basangouda Patil lying there with bleeding injuries on his person and had him sent to the Civil Hospital, Bijapur, in a jeep. P.W. 38 thereafter took charge of A-1 in his custody and took him along with P.W. 5 to the police station. The weapons the axe and the sickle which had been seized from the accused by the

witnesses were taken by P.W. 5 to the police station. At the police station P.W. 38 seized the two weapons from P.W. 5. The weapons were found to be stained with blood and on examination by the Chemical Examiner they were found to have been stained with human blood. P.W. 38 made a personal search of the first accused and seized his clothing which be found to be stained with blood. The seizure memo is Ex. P-4 but due to some inept handling by the police constable the clothing seized from the accused were not sent to the Chemical Examiner. P.W. 38 immediately thereafter went to the scene at about 10.30 p.m. and recorded statements from all the eye-witnesses. In the meanwhile, the deceased who was taken in the jeep to the hospital was produced before Dr. Vasudeviah P.W. 32 at about 8 p.m. The doctor examined the deceased and found on him as many as 15 injuries. The deceased was not in a position to talk and at about 2.35 a.m. the next morning on 30th May, 1970 the deceased died.

6. The police officer proceeded with the investigation. A-2 and A-3 were absconding and proceedings were taken against them under Section 87 and Section 88, Criminal Procedure Code. Ultimately they surrendered before the Magistrate on 26th October, 1970. An identification parade was held in respect of A-2 and A-3 on 10th November, 1970. Due to the absconding of A-2 and A-3 the case against them was filed later and two sessions cases at the request of the prosecution were tried together. Before the trial court the accused pleaded not guilty and submitted that they were falsely implicated due to enmity and the witnesses were falsely deposing at the instance of Mallanagouda Patil, the brother-in-law of the deceased.

7. The prosecution relies on the evidence of the eye-witnesses and their speaking to the dying declaration alleged to have been made by the deceased implicating the appellants in the crime, the apprehension of the two appellants red-handed at the spot, the prompt information to the police, the production of the first accused by the witnesses before the police officer and his arrest, the recovery of the two bloodstained weapons MOs. 1 and 2 which were found to be stained with human blood, and the evidence of the Taluka Magistrate who conducted the identification parade in which the two appellants were identified by the witnesses.

8. The trial court on a scrutiny of the evidence of eye-witnesses found that the witnesses who spoks of the incident were strangers to the accused and they neither knew the deceased Basangouda Patil nor the accused before the incident. It also found that the place where the incident took place is surrounded by residential houses and that the witnesses who spoke of the occurrence had their houses in the vicinity. The trial court found that the eye-witnesses were independent witnesses and as they were living in the close proximity of the place where the incident took place they are natural witnesses to the occurrence. Having found so much in favour of the prosecution regarding the eye-witnesses, the trial court observed that the circumstances by themselves would not he sufficient to hold that the story of the incident as told by them is true. The High Court on a consideration of the evidence of the eye-witnesses came to a different conclusion and found their evidence as acceptable. It is therefore necessary for us to consider at some length the various factors taken note of by the trial Judge and the High Court and determine whether the evidence of the eye-witnesses could be accepted.

9. The trial court rejected the evidence of the eye-witnesses on several grounds. Firstly, it found there is material discrepancy about the time of the occurrence. It found that according to the evidence of P.W. 38 P.S.I. at the police station he got the telephonic message at 8-10 p.m. from P.W. 8 that A-1 and A-2 had caused injuries to the deceased and that immediately he made entry in the station diary about the information received and thereafter proceeded to the scene and reached there at 8.15 p.m. After reaching the scene he sent a Yadi Ex. P-20. at 8 p.m. along Basangouda Patil who reached the Civil Hospital and was examined by P.W. 32 Dr. Vasudeviah' at 8 p.m. The trial court noting that the doctor examined Basangouda Patil at the hospital at 8 p.m. came to the conclusion that the prosecution case that the information would have been received much earlier than 8 p.m. and that the prosecution version that the telephone message was received at 8-10 p.m. and the police officer reached the scene a 8-15 p.m. is not acceptable. The High Court dealing with the discrepancy in the time given regarding the receipt of the message at the police station, the visit of the police officer to the scene and the production of the injured at the hospital came to the conclusion that the time element should not be taken literally. The High Court observed that it is idle to expect that the two watches worn by P.Ws. 32 and 38 would have shown identical time and that a variation of about 10 or 15 minutes between the time of the receipt of the information at the police station and the production of the injured person before the doctor is not a sufficient ground for rejecting the testimony of the eye-witnesses. Regarding the discrepancy about the time we are inclined to agree with the view taken by the High Court. Though the report is said to have been received at the police station at 8-10 p.m. in the Yadi Ex. P-20 which was sent in the jeep along with the injured person the time is noted as 8 p.m. and according to the doctor the injured was received at the hospital at 8 p.m. There is certainly some discrepancy but even on the internal evidence it is obvious that the time noted at different places cannot be said to be accurate. Obviously, if the injured was sent from the place of occurrence at 8 p.m. as noted in Ex. P-20 he would not have been at the hospital at 8 p.m. itself. Taking all the circumstances into account we agree with the High Court that the evidence of the eye-witnesses cannot be rejected on the sole ground of discrepancy in the timings noted at various places. The trial court was in error in [holding that the discrepancy in the timings has rendered false or shaky and doubtful the evidence of the witnesses and that the very foundation is removed and as the very foundation is removed, the superstructure built on such shaky foundation must also collapse. Equally unacceptable is the conclusion of the trial court that it is easy to secure witnesses who speak about the incident and repeat it like a parrot as they have done in this case.

10. The trial court also found that though the two appellants were caught hold of red-handed by the witnesses no trace of blood was found either on the person or on the clothing of the witnesses especially cm those of the 3 witnesses who have claimed to have snatched the weapons or held them. The trial court proceeded to observe that the two weapons were fully stained with blood and one could expect blood from the weapons staining the hands of at least those 3 witnesses who either snatched the weapons or held them even though no blood fell on their clothes. We do not feel that the trial judge was justified in rejecting the evidence of the eye-witnesses because of the absence of blood stains in their clothing or in their hands. It is no doubt true that several cuts with sharp-edged weapons were inflicted on the deceased and the deceased has profusely bled but there is hardly any material to come to the conclusion that during the incident the accused also were stained with blood. The weapons were no doubt bloodstained but from the circumstances it can not be stated that

the clothing of the witnesses should also have been bloodstained. It may be that when the weapons were seized the hands of the witnesses might have got stained but the absence of proof of such bloodstains cannot disprove the prosecution case.

11. Before we leave this aspect of the case we must take note of the fact that the investigation in the case has been most unsatisfactory. The case for the prosecution is that a telephone book is kept at the police station. There was some attempt on the part of the prosecution to make out that only local messages were recorded in the telephone book. It was further stated that the telephone book message was entered in the general diary. When this Appeal was taken up on an earlier occasion this Court directed the State to produce the records of the police station relating to the entry made at the police station on receipt of the telephone message. When this appeal again came up before us we asked the State to produce the documents. Though sufficient time was given the Public Prosecutor informed us that the records could not be produced. One other disturbing feature in the case is that even according to the prosecution the bloodstained clothing that were seized from the first accused and which were sent through the police constable never reached the Chemical Examiner. According to the prosecution this laps-was due to the negligence of the police constable and departmental action is being taken against him. The failure of the production of the station records, and the story of the loss of bloodstained clothes make us feel that all is not well with the investigation and the affairs of the police station. It is up to the authorities to probe the matter further.

12. Added to these infirmities the learned Counsel appearing for the appellant Mr. Jhavali, pointed out that the (sic) cannot rely on Ex. P9 25 F.I.R. as the statement of P.W. 5 was recorded at the police station at shout 9 p.m. long after the investigation commenced. It is common ground that on receipt of information regarding the occurrence at about 8 p.m. P.W. 33 the Police Officer went to the scene, saw the injured, sent him to the hospital and also arrested the accused and seized his clothes long before the statement was recorded from P.W. S. The statement recorded from P W. 5 will therefore be statement recorded during investigation and no reliance can be placed on it except as a statement recorded by the police during investigation. The learned Counsel also read to us the extracts from Ex. P-9 and pointed out the meticulous manner in which the particulars of the accused and the deceased are given with their names, surnames, fathers' names and the names of the villages and submitted that the entire document is suspicious leading to the conclusion that the document was prepared after considerable deliberation. We agree with the learned Counsel that the statement recorded from P.W. 5 cannot be used as F.I.R. So far as his comment on the particulars given regarding the deceased and the accused is concerned we feel that as they were recorded during investigation, it is probable that the particulars were obtained when the accused who was in custody was questioned. The rejection of Ex. P-9 as F.I.R. would not detract the testimony of the eye-witnesses which will have to be assessed on its own merits. The learned Counsel submitted that it is evident that the eye-witnesses were too anxious to exaggerate. When they speak of the dying declaration as having been given by the injured person when they saw him after the attack by the accused. According to the learned Counsel the deceased was so badly injured that he could not have been in a position to speak. He further relied on the circumstances that the police officer did not question the injured and when the injured was produced before the doctor the, doctor is very clear that he (the injured) was not in a position to speak. He also relied on the conclusion arrived at by the trial court on this aspect. The trial court observed that P.W. 32 stated that when he was brought to

the dispensary his power of speech was affected. The doctor also stated that his sensory area of the brain which is at the parietal region was affected. We have gone through the testimony of the doctor and we are not satisfied that his evidence is sufficient to come to the conclusion that the deceased would not have been in a position to talk immediately after the occurrence. No doubt, the doctor would state that there would have been instantaneous shock but that would not rule out the possibility of the deceased speaking for a while. P.W. 18 Madanappa, the doctor, who conducted the post-mortem was of the view that the deceased might have been conscious and might have been able to speak for some time even though he was not able to say how long he would have been conscious. According to P.W. 18 the center of speech was not affected. In the cross-examination of P.W. 32, questions of general nature were put to the doctor and the doctor expressed his view generally in the following manner:

The speech depends upon the coordinate activities of the sensory and systic motor area.

Apart from the statement that power of speech of the deceased was affected, he stated that the patient was under shock and looking at the injuries it must have been instantaneous shock. The evidence of P.W. 32 which is at variance with the evidence of P.W. 18 who conducted the post-mortem is not sufficient to rule out the possibility of the deceased having made the dying declaration to the eye-witnesses. The High Court rightly commented on the evidence of the experts and expressed its view that whether the shock had actually set in on Basangouda Patil when he sustained injuries could be narrated by the persons who had seen him at that point of time and the doctor who examines an injured later would not be in a position to provide a satisfactory answer to such a question. The opinion of the doctor that looking to the injuries he was of the view that the shock would have been instantaneous cannot be conclusive on a question of the ability of the deceased to talk. We agree with the conclusion arrived at by the High Court.

13. The learned Counsel challenged the identification parade held by P.W. 31, Taluka Magistrate, as being unreliable. The trial court was of the view that it cannot be said from the evidence on record that the witnesses had no opportunity to see the accused till they identified them in the identification parade held in the jail. There is no evidence worth the name adduced by the prosecution to show that precautions were taken and if at all any precaution was taken to see that the witnesses either did not see the accused or they had no opportunity to see them before the identification parade. The learned Counsel was justified in his comment that the second accused was arrested a few days earlier and that he was in police custody and that he was produced before the Magistrate for remand and that there is nothing in the Panchnama prepared by the Taluka Magistrate to show that either he questioned the accused if he was shown to the witnesses or he himself questioned the witnesses if they had seen the accused. The High Court rejected the evidence regarding identification of A-3. Considering all the circumstances we think much reliance cannot be placed on the identification parade regarding the establishment of the identity of the third accused. As far as A-1 and A-2 are concerned it is clear that both of them were apprehended and the witnesses had ample opportunity to note their features at that time and identify them. The proceeding in the identification parade discloses that A-2 was identified by most of the eye-witnesses. Because of some defects in proceedings relating to the identification parade, we will not be justified in rejecting the evidence of the witnesses regarding the participation of A-2.

14. Having in mind the various aspects of the case which we have discussed we now proceed to assess the evidence of the eye-witnesses. It is not in dispute that the eye-witnesses are living in the close vicinity to the scene where the incident took place and as such are natural witnesses. It is also admitted that both the deceased and the accused belonged to a different village and are total strangers to them. It was not suggested that the witnesses had any enmity or ill-feeling against the accused or the deceased. The trial court rejected their testimony on the ground that the brother-in-law of the deceased i.e. Mallanagouda is the mastermind behind the prosecution case. The trial court found that Malanagouda Patil and two retired police Sub-Inspectors were watching the proceedings and were present in the court when P.W. 1 Sangayya was examined and they continued to be present and watched the proceedings till all the eye-witnesses were examined and the moment the examination of the eyewitnesses was over they disappeared. From this circumstance the trial court came to the conclusion that there is nothing improbable in Mallanagouda having had a hand in the preparation of the detailed complaint Ex. P-9. The High Court disagreed with this view and found that the time available was hardly sufficient to manoeuvre and manipulate and get ready with the material and found that there is no evidence to show that Mallanagouda had come to Bijapur by that time. The High Court observed that if Mallanagouda had a hand in the framing of the F.I.R. he would have utilised the opportunity to project himself as an eye-witness. The High Court also found that in the cross-examination of P.W. 38 the P.S.I., there is no suggestion that he was approached by any retired police officer on Mallanagouda's behalf for help to manipulate Ex. P-9. We agree with the High Court that the trial Judge was not justified in coming to the conclusion that Mallanagouda and his two friends, the two retired police officers, were instrumental in framing the F.I.R. Ex. P-9.

15. Apart from the fact that eyewitnesses are independent and natural witnesses their evidence is reinforced by the fact of recovery of the two bloodstained weapons MOs. 1 and 2, the axe and the sickle, which are found to be stained with human blood. The High Court rightly placed considerable reliance on the presence of bloodstains on the weapons. The evidence of the prosecution witnesses is that they surrounded the accused and caught hold of them and snatched their weapons. The first accused was caught red-handed and was kept by the witnesses and handed over to the police. The second accused managed to escape. It was submitted that evidence as to recovery of weapons cannot be acted upon as the police officer did not seize the weapons immediately but allowed P.W. 5 to have them till they were seized at the police station. We do not think that this circumstance would affect the prosecution case in any way. It is not disputed that the two weapons were carried by P.W. 5 and handed over to the police officer. The fact of the seizure or the time and the place of the seizure is not questioned. In fact, the trial Court has not made any adverse comment on this aspect of the case. Apart from these facts, the punchanama relating to seizure of the clothes of the first accused clearly shows that the accused was at the station soon after the incident and the case of the witnesses that he was apprehended at the scene and produced before the police officer stands amply corroborated. We have been taken through the relevant portion of the evidence of the eye-witnesses and see no reason for rejecting their evidence. As observed by the High Court the recovery of the bloodstained weapons corroborates the evidence of the eye-witnesses. We might add that the production of the first accused at the police station immediately after the occurrence is an equally strong circumstance which proves the truth of the prosecution case.

16. On a consideration of the entire evidence and appreciation of the testimony of the witnesses we have no hesitation in "accepting the testimony of the eye-witnesses. The dying declaration of the deceased immediately after the occurrence in the presence of the eyewitnesses in which he mentioned the two accused as assailants, the recovery of the bloodstained weapons, MOs. 1 and 2, and the production of the first accused at the police station prove beyond all doubt the complicity of the two appellants. We have no hesitation in agreeing with the reasoning and conclusion arrived at by the High Court and confirm the conviction and sentence imposed on them. In the result we dismiss the appeal.