

Supreme Court of India

Krishna Reddy And Ors. vs State Of Karnataka on 3 August, 1994

Equivalent citations: JT 1994 (4) SC 645, 1994 (3) SCALE 650, 1994 Supp (3) SCC 137, 1994 (2) UJ 480 SC

Bench: M Punchhi, K J Reddy

JUDGMENT

1. This is an appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with Section 379 Cr. P.C. All the original accused nos. 1 to 6 are the appellants. They were tried for offences punishable under Sections 148 and 302 read with 149 I.P.C. The trial Court acquitted them. The State preferred an appeal and the High Court reversed the order of acquittal and convicted the appellants under Sections 302/34 I.P.C. and also alternatively under Sections 302/149 I.P.C. and sentenced each of them to suffer rigorous imprisonment for life. Among them, A-1, A-3, A-4 and A-5 were also convicted under Section 148 I.P.C. and sentenced to undergo one year's R.I. and A-2 and A-6 were held guilty under Section 147 I.P.C. and sentenced to undergo R.I. for six months. All the sentences were directed to run concurrently. The prosecution case is as follows:

2. All the accused, the deceased Chandrappa and the material witnesses belong to Village Chikkabanaswadi, a suburb of Bangalore City. P.W. 2 Krishna Reddy is the elder brother of the deceased. P.W. 3 Nagamma is the wife and P.W. 4 Raghava Reddy is the son of P.W. 2. P.W. 9 Shakuntalamma is the wife of the deceased. A-1, A-3 and A-6 are the sons of one Pilla Reddy. A-2 is the son of sister of A-1, A-3 and A-6. A-4 is the son of one Papa Reddy who is their elder brother. A-5 is the grand-son of Pilla Reddy's elder brother. There had been dispute between P.W. 2 and the deceased on the one hand and the accused on the other hand in regard to a site called 'Kana' situated in the Village at a close distance from the residential house of P.W. 2 and the deceased. P.W. 2 and the deceased were claiming to be in possession of the same and the accused were claiming to be the owners. In that site P.W. 2 was tethering his cattle in one shed and the other shed was used as a garage for parking his tractor. About three months prior to the incident in question, A-2 to A-5 assaulted P.W. 2 and the deceased and P.W. 2 complained to the police. But when the police did not take any action, he filed a private complaint in the Court of Chief Judicial Magistrate, Bangalore which was referred to the police for investigation. Because of that, it is alleged that the accused were also threatening and abusing P.W. 2. A few days prior to the incident it is the case of the prosecution that in the absence of P.W. 2, A-4 and A-5 trespassed into the cattle shed, in the site and assaulted P.W. 3. A complaint was also given to the police in respect of this incident and a case was registered against A-4 and A-5. P.W. 2 apprehending dispossession filed a suit on 20.12.78 against some of the accused and sought permanent injunction and interim injunction also. The application was opposed and the hearing was adjourned to 1.1.1979.

3. On 21.12.78 in the morning P.W. 2 accompanied by P.W. 4, his own son and servant Muniswamy (not examined) went to his land at Kada Agrahara, situated six miles away from his Village with the tractor to bring the sheaves of harvested ragi to the 'Kana' in the Village. At about 9 P.M. when P.W. 2 alone returned to the Village and was going on the road towards his house by the side of 'Kana', the six accused who were sitting in a bullock-cart, seeing him so going from there giggled at him and

declared that today they should remove his head. P.W. 2 went to his house and mentioned about the same before his wife P.W. 3 and also expressed his apprehension that the accused might create some trouble after the tractor came. P.W. 9, the wife of the deceased, who happened to be there later told about the same to the deceased, and they were anxiously waiting for the arrival of the tractor. At about 11 P.M. they heard the sound of the tractor and P.Ws. 2,3 and 9 and the deceased came out of the house and stood at the door of Krishnappa. Soon after parking the tractor in the shed, P.W. 4 alongwith servant Muniswamy came out. Immediately all the accused appeared on the scene armed with spears, sickles and crowbars and chased P.W. 4 and the servant. Seeing this the deceased went ahead saying that he would ring up to the police. A-3 held him and stabbed him with Bharji and thereafter all the accused surrounded him. A-6 instigated and the remaining five accused went on assaulting the deceased with the weapons in their hands. On hearing the sound of tractor, P.Ws. 5 and 6 came out of their house and P.W. 7 who was sleeping in a shop of his son-in-law and others came out and witnessed the assault. When assault was going on, P.W. 3 went running from the rear side of the house to telephone to the police. After assaulting the deceased when the accused moved towards the house of P.W. 2, P.Ws. 2, 4 and 9 went inside the house and bolted the door. When P.W. 3 was going towards the road leading! to Subbaiahnapalya, one Kamalanabha Reddy, P.W. 11 met her and enquired as to why she was going so at that odd hours and she told him that the deceased was being assaulted and she wanted to inform the police on phone. P.W.11 told her that he would inform the police and asked her to return. Accordingly P.W. 3 returned and P.W.11 went on his motorcycle to the house of one C. Muniyappa and rang up to the police control room and informed that a big galata was going on in the Village at about 0005 hrs. (i.e. 5 minutes past midnight) when P.W. 13, Sub-Inspector of Police, received the phone message, he made an entry to the effect that there was a serious clash between two parties in Chakkabanaswadi and required urgent police help. He gave wireless message and informed K.R. Puram Police Station. On receipt of the phone message, P.W. 14, the S.H.O. made an. entry and directed P.W. 10 to inform P.S.I., P.W. 16 and the police party reached the Village in the van at about] 12.30 A.M. P.W. 19 P.S.I, saw the dead body of the deceased lying in the vacant site along with the weapons spear, sickle, club and knife. He also found four pairs of chappals lying scattered. Soon people collected and P.W. 2 identified the dead body as that of his brother. P.W. 19 questioned P.W. 2 and recorded his complaint Ex. P. 3 and endorsed the same and sent the same to the police station for registering the crime. The crime was duly registered. Meanwhile he Circle Inspector of Police, P.W. 20 also reached the scene of I occurrence and instructed P.W. 19 to continue the investigation. P.W. 19 after the day-break examined P.Ws. 1 to 4 and held the inquest and seized the articles and sent the dead body for post-mortem. The Doctor, P.W. 8, who conducted the post-mortem, found 14 injuries, three of them were stab wounds and the remaining were chopped wounds and abrasions. Only injuries nos. 13 and 14, the stab wounds were on the vital parts. The Doctor opined that the death was due to shock and haemorrhage as a result of multiple injuries and injury No. 14 by itself was sufficient in the ordinary course of nature to cause death. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The plea of the accused has been one of denial.

4. The prosecution case mainly rested on the evidence of alleged direct witnesses P.Ws. 2, 3,4 and 9 who were all members of the family of the deceased and P.Ws. 5 to 7, the neighbours who came out hearing the galata and claimed to have witnessed the occurrence. The learned trial Judge having noticed that P.Ws. 2, 3,4 and 9 are highly interested witnesses] observed that their evidence should

be scrutinised with great care and caution and he scrutinised their evidence in the light of the medical evidence as well as other surrounding circumstances and with reference to their earlier statements. The trial court held that there are many discrepancies in their evidence and that their evidence is in conflict with the medical evidence as to the nature of the weapons alleged to have been used by the accused. The trial court also held that the presence of blood-stains on the cart of the accused parked by the side of the road and the fencing pillar indicates that the incident could not have taken place as alleged by the prosecution and that there must have been a path commencing from the road side upto the spot where the dead body was found. Thus the trial court doubted the place of occurrence. The trial court also held that there was delay in giving the F.I.R. and there is no proper explanation for the same. The trial court further held that Ex.P. 3, F.I.R. runs into several pages and it must have taken a long time and that there is any amount of doubt whether the same was recorded at 1 A.M. The trial court also noticed that the names of P.Ws. 5 to 7 were not mentioned in the F.I.R. and also further held that they are also interested witnesses as there was rivalry between them and the accused. The trial court examined the evidence of P.Ws. 5 to 7 in detail. In the evidence of P.W. 5, the trial court has pointed out several discrepancies. The occurrence took place at 11 P.M. P.W. 5 stated that he was unable to identify the victim for want of sufficient light but still he could identify the six assailants. He did not go to the scene of occurrence in the morning and did not inform the police. In the chief examination he stated that he is unable to say which accused beat the deceased with what weapon. But after few days when he was cross-examined he came out with all the details and he was confronted with his earlier admissions in the chief-examination. The trial court pointed out that P.W. 5 was prepared to say anything to suit the prosecution and rightly observed that P.W. 5 had spoken to the facts in the evidence which he never stated during the investigation.

5. P.W. 6 is said to be a teacher and also running a shop and he is alleged to have peeped through the window of the door of the shop but P.W. 2 stated in his evidence that the shop had no windows. Yet P.W. 6 has given some details of the occurrence which happened during the night and he also gave the individual parts played by the accused. This is also noted by the trial Judge that his evidence in the chief examination which was on an earlier date, was altogether different from what he stated in the cross-examination at a later date. P.W. 6 also did not go to the scene of occurrence when the police arrived and he did not mention this incident to anyone else.

6. P.W. 7 stated that he generally sleeps in the shop of his son-in-law and that night at about 11 P.M. he heard the sound of the tractor and galata thereafter and witnessed the occurrence and went inside his shop and closed the door. In the cross-examination he admitted that there were criminal cases between him and his brother on the one hand and Pilla Reddy, the father of A-1, A-3 and A-6 on the other hand. He also admitted that a criminal case of assault had been filed against him and in that case Pilla Reddy gave a complaint against him. Therefore the trial Judge rightly pointed out that he was inimical and interested witness. He also did not go and inform the police next day when the police came to the Village and he was examined much later. He, however, did not speak about the presence of A-2 and A-6. The trial Judge has pointed out a number of discrepancies in the evidence of this witness. Then coming to the evidence of P.Ws. 2, 3, 4 and 9, the trial Judge noted that they have made improvements in their versions which they have dolled out in a parrot-like manner and that they attributed the fatal injury to A-3 said to have been caused by him by Bharji, M.O.I. The

Doctor, P.W. 8 having examined the weapon categorically stated that the said fatal injury could not have been caused by that weapon and that M.O.I could have been caused the superficial injury No. 1. The learned trial Judge has examined the evidence of these eye-witnesses in the light of the medical evidence and held that the prosecution version as to the respective parts played by the accused appears to be highly doubtful. The trial Judge also pointed out that the evidence of these witnesses is full of discrepancies and contradictions and is in conflict with the medical evidence. Therefore it is not at all safe to rely on the evidence of these witnesses who are highly interested and accordingly acquitted the accused.

7. The High Court, in the first instance, noted that there is no dispute that the incident took place at about 11 P.M. in the Village and these eye-witnesses could be the natural witnesses and that though they are partisan witnesses their evidence has to be scrutinised with great care and caution but can not be rejected outright. Coming to the various discrepancies pointed out by the learned trial Judge, the High Court observed that the discrepancies are minor and they do occur when the evidence is given at a later stage. Coming to the conflict between the medical evidence and the direct testimony, the High Court pointed out that the weapons used were found at the scene of occurrence and that the High Court was prepared to place more reliance on the testimony of the eye-witnesses rather than what has been stated by the medical evidence which was only in the nature of an opinion.

8. The High Court also disagreed with the trial Judge regarding the findings given on the F.I.R. and its contents and accordingly set aside the acquittal holding that the evidence of P.Ws. 2, 3,4 and 9 who are interested witnesses finds corroboration from other witnesses like P.Ws. 5, 6 and 7 who, in the opinion of the High Court, were independent witnesses.

9. The learned Counsel for the appellants submitted that all the eye-witnesses namely P.Ws. 2, 3,4 and 9 and P.Ws. 5,6 and 7 are interested witnesses and their evidence bristles with contradictions, infirmities and material omissions and that they have improved their versions from stage to stage to fall in line with the story set up in the F.I.P. which was highly belated and that at any rate their evidence is also in conflict with medical evidence which itself shows that they could not have actually witnessed the occurrence which took place in darkness. The learned Counsel also commented that the conduct of P.Ws. 5, 6 and 7 is highly unnatural and if they had witnessed the occurrence in the manner stated by them, there is no reason whatsoever why they did not appear before the police and inform them when the police arrived on that very night and even in the next morning they did not inform the police and they were examined at a belated stage. Learned counsel also submitted that their cross-examination shows that they were inimical towards the accused and they cannot be called as independent witnesses. Coming to the evidence of P.Ws. 2, 3,4 and 9, the learned Counsel submitted that they are highly interested, not only being the close relatives of the deceased but also in view of long-pending disputes and criminal cases between the families. The further submission is that the view taken by the learned Sessions Judge is quite reasonable and in an appeal against acquittal the High Court ought not to have interfered even assuming that another view is possible.

10. Since this is a regular appeal, we have gone through the evidence of P.Ws. 2, 3,4 and 9 and also the F.I.R. which is an important document in this case. Likewise we have examined the evidence of

P.Ws. 5,6 and 7 also. We must at once point out that P.Ws. 5 to 7 did not figure as eye-witnesses in the early stages. Their names do not find place in the F.I.R. which is a long and well-prepared document. They claim to have been present when the police came but no information was given by them to the police regarding their witnessing the occurrence. They were actually examined a few days later. P.W. 5 deposed that he witnessed the occurrence at 11 or 11.15 P.M. He admitted that he was examined two days later. In his cross-examination he admitted that A-6 and six others contested for panchayat elections from third block as one group and that he also contested. It is also suggested to him that there are civil and criminal cases pending between the accused and one of his relations which he does not deny. Therefore it cannot be said that he is a disinterested witness. He admitted that he was unable to identify the victim for want of sufficient light and it was dark but at the same time he claims to have identified the six appellants. Though now he states that all the accused assaulted the deceased, in his statement before the investigating officer he did not say that A-2, A-4 and A-6 also assaulted the deceased. P.W. 6 claims to have witnessed the occurrence peeping through a window existing above the door of his shop. But the investigating officer admitted that the shop in which P.W. 6 was sleeping had only doors and no windows. That apart his version as to how he witnessed the occurrence, appears to be very artificial. He was also examined at a belated stage. P.W. 7 again claims to have slept on that day in the shop of his son-in law and is at about 11 P.M. he heard the sound of the tractor and he woke up and saw the occurrence and in the cross-examination it is elicited that there was enmity between the father of A-1, A-3 and A-6 and his brother Pilla Reddy. He also admitted that he was involved in a criminal case. Therefore he was also hostile to the accused. He does not have any proper explanation as to why he did not inform the police. The learned trial Judge having referred to these infirmities in the evidence of these three witnesses has also pointed out several other material discrepancies. Having examined the same, we agree with the learned Sessions Judge that no reliance can be placed on the evidence of P.Ws. 5,6 and 7.

11. Now we shall consider the evidence of P.Ws. 2, 3,4 and 9. Admittedly they are related to the deceased and they claim to have witnessed the occurrence standing at the door of house of one Krishnappa, a tenant of P.W. 2. Further there was enmity between the accused and these witnesses. P.W. 2 deposed that the accused were sitting in a bullock-cart when he returned from his land at about 9 P.M. Except this witness no other witness has spoken about the accused sitting in the bullock-cart at about 9 P.M. Even on his showing the accused did not try to attack him though he was the real target and according to him they waited till 11 P.M. sitting in the cart which on the face of it is highly improbable. He deposed that he apprehended danger but he did not bother to inform the police or telephone to them. He also admitted that he did not inform any of his neighbours or tenants about the threat given by the accused. P.W. 3, as already mentioned, did not witness the occurrence but left the place to telephone to the police. The learned trial Judge has examined the evidence of these four witnesses in great detail. It is clear that a version was set up in the F.I.R. which is a very lengthy document and these interested witnesses have fallen in line and repeated the story verbatim. Their version that the accused leaving out these people simply went and attack Chandrappa, the deceased merely because he said that he would telephone to the police, is highly artificial. That apart it is highly doubtful whether these witnesses could have witnessed the parts played by each of the accused as spoken to by them now, in the night at 11 P.M. P.W. 12, a Junior Engineer, who visited the scene of occurrence and prepared a sketch, has stated that if the witnesses

were standing in front of door of the house of Krishnappa, then they would not have seen the assault which is said to have taken place in the 'Kana'. It may not be necessary for us to point out many other infirmities in the evidence of these witnesses which have been considered in great detail by the learned Sessions Judge. The reasons given by the learned Sessions Judge for rejecting the evidence of all these witnesses are correct and sound and interference in an appeal against acquittal by the High Court in these circumstances was uncalled for.

12. For all these reasons, the convictions and sentences awarded against the appellants' are set aside and the appeal is accordingly allowed.