Supreme Court of India
Joga Gola vs State Of Gujarat on 18 January, 1980
Equivalent citations: AIR 1982 SC 1227, 1982 CriLJ 1579, 1981 Supp (1) SCC 66
Author: S M Ali
Bench: A Koshal, S M Ali
JUDGMENT S. Murtaza Fazal Ali, J.

1. The appellant Joga Gola who was A-1 before the trial Court was tried along with other four accused persons by the Sessions Judge under Section 302/34 and Sections 412 and 396 of the I.P.C. and other charges. The Trial Court acquitted the accused and disbelieved the approver's testimony which was the central, evidence on the basis of which the prosecution wanted the Court to convict the accused. The State filed an appeal against the order of acquittal passed by the Sessions Judge but the High Court dismissed the appeal so far as accused Nos. 3, 4 and 5 are concerned in limine but admitted the appeal of accused Nos. 1 and 2. The accused No. 2 did not appear before the High Court and remained absconding, so that the High Court had merely to consider the case of accused No. 1 who is appellant Joga Gola before us.

2. The prosecution case was that on 12th Sept. 1967 at about 5.00 p.m. the five accused persons wanted to kill Ramdevsingh, FW-18, but when they came across the two deceased Mangubha Khumansingh and Makhubha Amarsingh, they assaulted them with lathis as a result of which these two persons died. The accused then, particularly accused Nos. 1 and 2, bolted away with buffaloes belonging to them. Accused Sara Popat, who is the approver in the case, was the main witness which sought to prove the prosecution case against the accused.

3. The trial Court disbelieved the approver completely and also held that the evidence led by the prosecution to corroborate the testimony of approver was also not reliable. The High Court however after going through the evidence of the prosecution found that although the evidence of the approver suffered from some infirmities, it was fully corroborated by the evidence of a number of witnesses who had seen the accused near the place of occurrence of near about the same place during the evening or at other times of the day. The High Court while considering the evidence of the approver completely overlooked two important infirmities which appeared in the evidence of the approver and which were sufficient to discredit the entire testimony of the approver apart from the question of corroboration. In the first place, it would appear from the evidence of the approver that his confession which preceded the pardon as a result of which he became approver was wholly exculpatory and the approver did not implicate himself in anyway in the murderous assault on the deceased persons. Secondly, the High Court itself found that the approver falsely implicated three persons namely accused Nos. 3, 4 and 5 who had been acquitted by the Trial Court and whose appeal the High Court itself dismissed in limine. In view of these two infirmities, no reliance could be placed on the evidence of the approver, more particularly when the trial (Court who had the initial advantage of watching the demeanour of the witness had disbelieved the approver on the intrinsic merits of his evidence. For these reasons, therefore, we would have to exclude evidence of the approver totally from our consideration. We would now endeavour to find out if there is any other evidence to connect the appellant with the crime. Reliance was placed on the evidence of PWs 3, 9. 10, 18 and 23 to show the presence of the appellant and accused No. 2 near about the place of

occurrence along with the buffaloes which by itself is not sufficient to raise an irresistable conclusion that the appellant committed the murder of the deceased. It is well settled that before a court can act on circumstantial evidence, the evidence must exclude every other reasonable hypothesis except the guilt of the accused. In the instant case, even if the appellant was found with the buffaloes belonging to the deceased, it is quite possible that he may have got hold of the buffaloes from some field and tried to steal them away. For these reasons therefore, the evidence in this case is not conclusive to prove the participation of the appellant in the crime alleged against him. In this view of the matter it is not necessary for us to go to the evidence of the witnesses indicated above.

4. There may be no doubt, however, that the buffaloes did belong to the deceased and there is sufficient evidence to show that the two deceased had gone to the fields with the buffaloes and did not return. It is also found from the evidence that buffaloes also did not return but were seized from the possession . of accused Nos. 1 and 2. It has also been proved from the evidence of PWs 15 and 17 that the buffaloes belonged to the deceased persons. In these circumstances, therefore, although there is no evidence to support the conviction of the appellant Under Sections 302/34, 396 and 412 of Indian Penal Code, but the prosecution has undoubtedly proved that the appellant was in possession of stolen property namely the buffaloes belonging to the deceased persons. In these circumstances, there fore, the appellant cannot escape conviction Under Section 411 of I.P.C. It appears that the appellant was not granted bail when this appeal was filed in this Court and has already served term of more than five years. For these reasons, therefore, we allow this appeal to this extent that the appellant is acquitted of all the charges except that Under Section 412 which is altered to that Under Section 411 and the sentence is reduced to the period already served. The appellant will now be released forthwith.