

State Of Karnataka vs Sri Usman P S on 6 October, 2020

Bench: B.Veerappa, K.Natarajan

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2020

PRESENT

THE HON' BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL APPEAL No.523/2014

BETWEEN:

STATE OF KARNATAKA

BY PUTTUR TOWN POLICE STATION-574201.

...APPELLANT

(BY SRI S.RACHAIAH, HIGH COURT GOVERNMENT
PLEADER)

AND:

1. SRI USMAN P. S.,
AGED 41 YEARS
S/O LATE P. M. SHARIF
R/O BEERAMALE HOUSE
PUTTUR TALUK 574 201.
2. SATHAR
S/O LATE IBRAHIM
AGED 34 YEARS

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R/AT GOLIKATTE HOUSE
PARLADKA, ARYAPU VILLAGE
PUTTUR TALUK 574 201.

3. K. HASSAINAR @ HASSAN
S/O ADAM,
AGE: 45 YEARS,
R/AT GOLIKATTE HOUSE,

PRALADKA, ARYAPU VILLAGE
PUTTUR TALUK 574 201.

4. HAMZA P. S.,
S/O LATE P. M. SHARIF,
AGE: 55 YEARS
R/AT BEERMALE HOUSE
PARLADKA, PUTTUR KASABA
VILLAGE, PUTTUR TALUK-574 201.
5. HASEEB
S/O LATE ABDULLA
AGE: 23 YEARS
R/AT GOLIKATTE HOUSE
PARLADKA, ARYAPU VILLAGE
PUTTUR TALUK 574 201
6. ABDUL KHADER @ ADDU
S/O LATE P. M. SHARIF,
AGE: 31 YEARS
R/AT BEERAMALE HOUSE
PARLADKA
PUTTUR KASABA VILLAGE
PUTTUR TALUK 574 201
7. ABDUL BASHEER
S/O LATE IBRAHIM,
AGE: 37 YEARS

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GOLIKATTE HOUSE
PARLADKA, ARYAPU VILLAGE
PUTTUR TALUK 574 201

8. SAMOON P. S.,
S/O LATE P. M. SHARIF
AGE: 50 YEARS,
R/AT BEERMALE HOUSE,
PARLADKA, PUTTUR KASABA VILLAGE
PUTTUR TALUK- 574 201.

...RESPONDENTS

(BY SRI SUYOG HERELE E., ADVOCATE FOR R1-R8)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
378(1) AND (3) OF THE CODE OF CRIMINAL PROCEDURE,
1973, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER

DATED 17.3.2014 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAKSHINA KANNADA, MANGALORE SITTING AT PUTTUR, D.K., IN S.C. No.26/2012, ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 148, 323, 326, 307 READ WITH 149 OF IPC AND TO CONVICT AND SENTENCE THE ACCUSED FOR THE SAID OFFENCES.

THIS CRIMINAL APPEAL IS COMING ON FOR HEARING THIS DAY, NATARAJAN J., DELIVERED THE FOLLOWING:

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JUDGMENT

The State preferred this criminal appeal against the Judgment of acquittal passed by the V Addl. District & Sessions Judge, D.K., Mangalore, sitting at Puttur (hereinafter referred to as 'Trial Court') in S.C. No.26/2012 acquitting the respondents - accused persons for the offences punishable under Sections 143, 147, 148, 323, 326 and 307 r/w Section 149 of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity).

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The case of the prosecution is that on the complaint of PW.1 - M. Ahammed Bava, Puttur Town Police registered a case against the accused in Crime No.121/2010 for the above said offences on 27.4.2010 and issued the FIR. It is alleged by the complainant - PW.1 in his complaint that on 27.4.2010 at the request of PW.2 - Ibrahim, he went to Advocate's office for the purpose of signing the rental agreement as a witness. At about 10.20 p.m. when he came back from the advocate's office along with PW.2 - Ibrahim, the accused persons formed an unlawful assembly with the common object to commit murder of PW.2, came with the deadly weapons like kathi and club and attacked PW.2 and caused grievous injuries. They also assaulted him (PW.1) and when he raised the alarm, the people started assembling at the spot and the accused persons ran away from the spot. Then, PW.1 shifted PW.2 in his car to the Puttur Mahaveer Hospital and after admitting PW.2 to the hospital, he went to the Police Station and lodged the complaint as per Ex.P1. On the basis of the complaint, the Police registered the case against the accused persons and subsequently, they arrested the accused persons, recovered the weapon under panchanama in presence of the panchas and after completion of the investigation filed the charge sheet before the Judicial Magistrate. After taking cognizance, the learned JMFC, Puttur committed the case to the Court of Sessions. Accordingly, the Trial Court after securing the presence of Accused Nos.1 to 8, framed the charges for the offences stated supra. When the charges were read over and explained to the accused, they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case, in all, examined 14 witnesses as per PWs.1 to 14, got marked 25 documents as per Ex.P1 to Ex.P25 and 10 material objects as per Mos.1 to 10. After completion of evidence of the prosecution, the statement of the accused under Section 313 of the Code of Criminal Procedure has been recorded. The case of the accused was one of total denial. Though they have not examined any witnesses on their behalf, they got marked three documents as per Ex.D1 to Ex.D3.

5. After hearing the arguments of the respective parties, the learned Trial Judge found the accused not guilty and acquitted all the accused persons for the charges framed against them by the Judgment dated 17th March 2014. Aggrieved by the same, the State preferred this appeal.

6. We have heard learned Counsel for the parties.

7. Sri S. Rachaiah, learned High Court Government Pleader has vehemently contended that the judgment of acquittal passed by the Trial Court by disbelieving the evidence of the eye witnesses and the injured eye witness, is not correct. PW.1, an eye witness, who accompanied PW.2 on the date of the incident, also sustained injury and he has categorically stated the overt acts of all the accused persons and the same is corroborated by the injured PW.2 in his evidence. PWs.1 and 2 also identified the accused persons since they are already known to them. The weapon seized by the Police from the accused persons is also identified by them. The evidence of PWs.1 and 2 is corroborated with the evidence of PW.4 - doctor, who examined PW.2. The evidence of PW.5 - Scientific Officer shows he examined the blood stains found on the weapons as well as clothes of PW.2 and given FSL report - Ex.P12 and serology report - Ex.P14. There is nothing to disbelieve the evidence of PWs.1 and 2 and nothing has been elicited by the counsel for the accused in their cross-examination to disbelieve their evidence. The evidence of the Investigating Officer corroborated with the evidence of the injured eye witnesses as well as medical witnesses, thereby the prosecution was successful in proving the guilt of the accused. In spite of the sufficient material evidence placed on record, the Trial Court committed an error in disbelieving their evidence and discarded their evidence.

8. Learned HCGP also contended that the incident took place on the backdrop of the previous enmity between the two groups, where PW.2 objected accused persons for conducting meeting in the mosque and due to that enmity, the accused attacked PW.2 and caused injury. The wound certificate - Ex.P10 corroborated with the evidence of PW.2 as well as the evidence of the Investigating Officer, thereby the prosecution successfully proved the assault made on PW.2 by the accused persons. Therefore, the judgment of acquittal passed by the Trial Court has to be reversed by allowing the appeal.

9. Per contra, Sri Suyog Herele .E, learned counsel appearing for the accused has supported the judgment of acquittal passed by the Trial Court and contended that there are inconsistencies and contradictions in the evidence of PWs.1 and 2. There was delay in lodging the complaint about 1 hour even though the place of occurrence is within 100 meters from the Puttur Police Station. Further, there was a rain on the said night and there was disturbance in the electricity as per Ex.D2, the letter issued by the MESCOM authorities. That apart, the names of the accused persons are not

mentioned in Ex.P10 - wound certificate. If at all PW.1 was an eye witness to the incident, he could have mentioned the names of the assailants before the doctor who treated PW.2. That apart, the evidence of PW.1 and his presence cannot be acceptable and the same is doubtful. As per the complaint and evidence, PW.1 himself admitted PW.2, injured to the hospital. But Ex.P10

- Wound Certificate shows that one Abdul Khadar has accompanied injured, which goes against the evidence of PWs.1 and 2. The Investigating Officer has not examined Mr. Bhaskar, advocate, to whose office PWs.1 and 2 alleged to be went for preparing rental agreement. The Investigating Officer also not examined any of the witnesses who assembled near the spot immediately after the incident as contended by PW.1. Therefore, non- examination of those witnesses is fatal to the prosecution case. He further contended that PW.2 is a rowdy sheeter, who is having so many criminal cases against him and there may be some other enemy group, which might have attacked him and there is every chance of falsely implicating these accused. That apart, the opinion of the doctor suggests injury could be caused if the person falls on the stair case or hard surface. Considering all these aspects, the Trial Court rightly acquitted the accused and therefore, there is no reason to interfere by this Court in the appellate stage. Therefore, sought for dismissal of the appeal.

10. Upon hearing the arguments of learned counsel on both sides and on careful perusal of the records, it is necessary to have a cursory look at the evidence led by the prosecution before the Trial Court, which is as under:

PW.1 - Ahmad Bava, who is the complainant as well as the injured eye witness, has supported the prosecution case and has given evidence in support of the complaint filed as per Ex.P1. He identified the accused persons and also the weapon before the Court.

PW.2 - Ibrahim, who is the injured eye witness, has supported the case of the prosecution and given evidence on the same lines as that of the evidence given by PW.1.

PW.3 - K.P. Sirajuddin is the eye witness and relative of PW.1. His presence at the spot was not at all stated by PW.1. He also not accompanied PW.2 to the hospital. Therefore, his evidence cannot be believable.

PW.4 - Dr. S.R. Bhandari is the doctor who examined PW.2 in the hospital on 27.4.2010 and according to his evidence, he examined PW.2 at 10.20 p.m. and found 11 injuries and injury No.7 is grievous in nature and remaining are simple in nature. He has issued Ex.P10 - wound certificate and on examining Mos.5 to 10, the weapons sent by the Investigating Officer, he gave opinion as per Ex.P11.

PW.5 - Dr. Geetha Lakshmi is the Scientific Officer who examined the articles - Mos.1 to 5 and found human blood stains of 'O' group on the articles MOs.1 to 4. However, as per her evidence, the blood group could not be found in respect of blood stains on MO.5 - kathi alleged to have been seized by the Police on the basis of voluntary

statement of Accused and she issued the serology report - Ex.P14 and FSL report - Ex.P12.

PW.6 - K.P.Abdul Gafor is the witness of the meeting said to be held in the mosque, but he is not an eye witness to the incident.

PW.7 - K. Shrikanth is the Circle Inspector of Police who conducted the investigation in part and handed over further investigation to PW.14.

PW.8 - Lakshminarayana is the Police Constable, who apprehended Accused No.1 and produced before the Investigating Officer and gave report as per Ex.P15.

PW.9 - Yusuf , who said to be the witness for seizure panchanama for having seized Mo.5 - kathi at the instance of Accused No.1 under Ex.P17, turned hostile and not supported the prosecution case.

PW.10 - Nazeer is the panch witness to the seizure mahazars - Ex.P19 to P21 for having seized MOs.6 to 10. He also turned hostile and not supported the prosecution case. This witness also witnessed seizure of the pick up vehicle, which was alleged to have been used by the accused for commission of the offence.

PW.11 - Mahammed Riyaz, who is also panch witness to Ex.P19 to Ex.P21 turned hostile and not supported the prosecution case.

PW.12 - Ravikumar is the PSI who conducted further investigation and filed the charge sheet. According to his evidence, he has seized kathi from Accused No.4 under Ex.P18. He has identified MO.7 - weapon.

PW.13 - Shabeer is panch witness to the spot panchanama - Ex.P3 and the sketch prepared by the Investigating Officer as per Ex.P4. He is also witness to the seizure mahazars - Ex.P5 and Ex.P17. He also turned hostile and not supported the prosecution case.

PW.14 - Praveen Neelammanavar, who is one of the Investigating Officer conducted part of the investigation and handed over further investigation to PW.12.

11. Upon considering the material on record and the arguments advanced by the learned HCGP and the counsel for the accused, the point that arises for our consideration is:

"Whether the impugned judgment of acquittal passed by the Trial Court acquitting Accused Nos.1 to 8 for the offences punishable under Sections 143, 147, 148, 323, 326 and 307 r/w 149 of IPC, calls for interference by this Court, in the facts and circumstances of the case ?"

12. On perusal of the material placed on record, it is not in dispute that all the panch witnesses have turned hostile in respect of seizure of MOs.5 to 10 by the Investigating Officer under the panchanamas. The prosecution relies upon the evidence of PW.1 - complainant; PW.2 - injured eye witness; PW.4 - doctor, who examined PW.2; PW.5 - Scientific Officer; and the Investigating Officers. The complaint lodged by PW.1 as per Ex.P1 and the evidence of PW.1 show that PW.1 was called by PW.2 to an advocate office for attesting as a witness to the rental agreement and accordingly, he went to the advocate office alongwith PW.2 and due to rain, they were made to stop near the office and while returning at 10.20 p.m., the accused persons came and tried to assault PW.2 and when PW.1 tried to rescue PW.2, one of the accused assaulted him (PW.1) on the neck. Then, Accused Nos.1 to 8 assaulted PW.2 with the kathi and club and caused injury. Then, PW.1 raised alarm, as a result people started assembling at the spot and the accused persons ran away in the pick up van. Then, immediately PW.1 shifted PW.2 to the hospital and after admitting to the hospital, he went to the police station and lodged the complaint as per Ex.P1. PW.1 identified MOs.1 to 4 - clothes of PW.2 and also identified the accused before the Court. The evidence of PW.1 has been controverted by the accused in the cross- examination and further the distance between the police station and the hospital was also questioned in the evidence of PW.1 and he has given evidence by denying the suggestion made by the counsel for the accused.

13. In order to testify the veracity of the complaint and the evidence of PW.1, certain aspects have to be considered. As per the evidence of PW.1, he had witnessed the incident in the street light and he himself admitted PW.2 to the hospital though he also sustained injury, and thereafter lodged the complaint. The evidence of PW.1 is not believable. If at all this witness had sustained injury in the incident, he ought to have produced the medical certificate in support of the same, but the same has not been produced. Further, according to his evidence, he himself got admitted PW.2 to the hospital, but Ex.P10 - wound certificate shows that PW.2 - Ibrahim came alongwith one Abdul Khadar and it was not mentioned in Ex.P10 the name of PW.1 as the person who accompanied and admitted PW.2 to the hospital. Further if PW.1 has really witnessed the incident in the street light and he is an eye witness, there is nothing prevented him to disclose the names of the accused before the doctor and then the doctor could have mentioned their names in Ex.P10. It is stated in Ex.P10 - wound certificate that the alleged assault occurred on 27.4.2010 near the fish market, Puttur with knife and iron rod by some group of people. The observations made by Dr.S.R. Bhandari - PW.4 in Ex.P10 falsify the evidence of PW.1 that he was an eye witness to the incident and he himself got admitted PW.2 to the hospital. Thus, the evidence of PW.1 is not believable.

14. Further, PWs.1 and 2 have categorically stated in their evidence that the incident occurred at 10.20 p.m. on 27.4.2010 and there was a street light at that time. It has also come in their evidence that there was heavy rain on the said night. Though the prosecution or the Investigating Officer not produced or not examined any of the MESCOM officers or the Engineers to show that there was no power cut to the street light at the time of the incident, but the accused produced the document Ex.D2, a letter obtained from the MESCOM authorities dated 4.7.2013 and it clearly discloses that on 27.4.2010, there was power cut between 8.35 p.m and 8.55 p.m. for 20 minutes and again, there was power cut from 8.55 p.m. to 10.25 p.m for 90 minutes and further there was power cut from 10.30 p.m. to 11.00 p.m. for 30 minutes. It clearly goes to show that at the time of alleged incident i.e., at 10.20 p.m., there was power cut and some unknown persons might have assaulted PW.2 and

the same corroborates with the history of incident mentioned in Ex.P10 - wound certificate. Therefore, PW.1 might not have mentioned the names of the assailants before the doctor. Further, PW.2 has stated in his evidence that the accused persons came and attacked him. The case of the accused was one of total denial. The Investigating Officer failed to examine Mr. Bhaskar, advocate in order to verify whether PWs.1 and 2 really went to the office of the advocate on the night of 27.4.2010 for the purpose of preparing rental agreement and they were together at the spot. If PW.1 really accompanied PW.2 to the hospital, question of mentioning the name of one Abdul Khadar in the wound certificate - Ex.P10 does not arise. That apart, the Investigating Officer not examined the said Abdul Khadar, who said to have accompanied PW.2 and his name appeared in Ex.P10.

15. That apart, as per the evidence of PW.14 - the Police Officer, initially on the first day, when he went to the Mahavir hospital, PW.2 was under treatment and he was unable to take his statement. Therefore, he has deputed constable for PW.2 and on the next day after preparing spot panchanama at 10.30 a.m., again he went to the hospital and recorded his statement. It is worth to mention, as per the evidence of PW.2, the Police came and recorded his statement, but the statement given by PW.2 before PW.14, which was marked as Ex.D1 was computerized statement. As per Ex.P10, PW.2 admitted to the hospital on 27.4.2010 and discharged on 14.5.2010. If PW.2 was in the hospital and taking treatment, the Investigating Officer examining and taking statement on the computer is unbelievable. It is not the case of the Investigating Officer - PW.14 that he took the computer and recorded the statement of PW.2 in the hospital. That apart, as per the evidence of PW.14 - the Police Officer, initially on the first day, when he went to the Mahavir hospital, PW.2 was under treatment and he was unable to take his statement and in that case, he could have obtained permission of the doctor regarding condition of the injured and recorded the statement of PW.2 in presence of the doctor and obtained signature of the doctor on the document. But nothing forthcoming in the statement recorded by PW.14 as per Ex.D1, a portion of the document marked by the defence during the cross- examination. Therefore, recording a very statement by PW.14 is also doubtful. It appears the Investigating Officer prepared the statement of PW.2 on the basis of the complaint made by PW.1, who is not an eye witness to the incident as his presence is already doubted at the place of incident.

16. The evidence of PW.2 also not believable as there was enmity between the accused persons and PW.2. It has also come in the evidence of PWs.1,2 and 6 that the accused persons were conducting some meeting in the mosque and PW.2 was objecting the same. Thus there was previous enmity between them. The case of the prosecution is accused assaulted complainant and PW.2. In view of the above, the possibility of falsely implicating the accused is also not ruled out. That apart, the evidence of PW.4 is not corroborated with the evidence of PWs.1 and

2. As we have already stated, the injury found on the body of PW.2 might be caused if a person falls from the stair case or hard object. That apart, non-mentioning the names of the assailants so also PW.1 in Ex.P10 creates doubt in respect of presence of PW.1. That apart, PW.2 is a rowdy sheeter and Ex.D3, the information obtained by Accused No.1 through Right to Information Act, shows that the information given by Puttur Town Police that case has been registered against PW.2 in Crime No.196/80 for the offences punishable under Sections 143, 148, 326, 307 r/w 149 of IPC and another case in Kumta Police Station and also he is having various cases in other places like

Mudigere, Shimoga and Chikkamagalur. PW.2 is a rowdy sheeter having so many enemies and those might have attacked him on the said night and in view of the previous enmity and quarrel between PW.2 and these accused persons, the possibility of falsely implicating the accused is not ruled out. Apart from that, the evidence of PW.5 - Scientific Officer shows that he examined the blood stains found on the weapons as well as clothes of PW.2 and given FSL report - Ex.P12 and serology report - Ex.P14. The article - kathi was seized from Accused No.1 by Investigating Officer in presence of the panch witness. As already stated above, seizure of MO.5 - kathi has not been proved by the prosecution with the help of the independent witness. That apart, MO.5 also sent to the FSL by the Investigating Officer along with Mos.1 to 4 - clothes of PW.2. Though there were some blood stains on MO.5, but Ex.P14 - serology report clearly shows the blood group could not be found in respect of the blood stains on MO.5, whereas the blood group of blood stains found on MOs.1 to 4 is 'O' group. This falsifies the evidence of the prosecution that accused No.1 assaulted PW.2 with MO.5 - knife, which was blood stained. Therefore, connecting Accused No.1 through blood stains and seizure of MO.5 is also not proved by the prosecution beyond reasonable doubt. It is well settled that normally the evidence of the injured witness shall not be discarded as faint. However, PWs.1 and 2 are interested persons and PWs.3 and 6 are their friends and relatives.

17. Taking into consideration the previous enmity and quarrel between PW.2 and these accused persons, the possibility of falsely implicating the accused is not ruled out and since there was darkness at the spot due to power failure as per Ex.D2, there is no chance of identifying the accused by PWs.1 and 2 and if at all they were identified, PWs.1 and 2, might have given the names of the assailants before the doctor and the same has not been given in the present case. Therefore, the Trial Court after considering all the aspects held the evidence of the prosecution is not sufficient to prove that the accused persons attempted to commit murder of PWs.1 and 2 and assaulted them with deadly weapons after forming an unlawful assembly and rightly acquitted Accused Nos.1 to 8 by giving benefit of doubt. By considering the entire material on record, there are inconsistencies and contradictions in the evidence of Pws.1,2,4 and 5 and the material documents - Ex.P10, Ex.P12 and Ex.P14. There are lot of discrepancies and improvements and omissions in their evidence and the documents in order to believe the story of the prosecution. Therefore, the Trial Court rightly extended the benefit of doubt in favour of the accused.

18. For the reasons stated above, we answer the point raised in this criminal appeal in the negative holding that the impugned judgment of acquittal passed by the Trial Court acquitting Accused Nos.1 to 8 for the offences punishable under sections 143, 147, 148, 323, 326 and 307 r/w 149 of IPC does not call for inference, in the facts and circumstances of the case.

19. In view of the above, the reasons assigned and the conclusion arrived at by the Trial Court are just and proper. We do not find any error to interfere with the reasoning assigned in the impugned judgment of acquittal passed by the Trial Court, in exercise of the appellate jurisdiction. Hence, the appeal is devoid of merits and liable to be dismissed.

Accordingly, the criminal appeal is dismissed.

Sd/-

JUDGE Sd/-

JUDGE Gss*