

CASE NO.:
Appeal (crl.) 805 of 2002

PETITIONER:
SHIVRAJ BAPURAY JADHAV AND ORS.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 15/07/2003

BENCH:
DORA1SWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 539

The following Order of the Court was delivered :

The above appeal has been filed against the judgment of a Division Bench of the High Court of Karnataka dated 27.05.2002 in Criminal Appeal No. 80 of 1997 where under the order of the learned Session Judge, acquitting the appellants, came to be set aside and the appellants were convicted for offences under Section 302 read with Section 34 IPC, in addition to accused No2 being convicted for an offence under Section 324 IPC and imposed the sentence of life imprisonment, with a fine of Rs. 2, 000 with usual default clause.

The case of the prosecution was that there were some misunderstandings and enmity between the family of the deceased and the accused on the question of sharing the ancestral residential house, that as the sequel to the same, on 27.05.1995, when the deceased Krishna Jadhav was returning to his house at about 11.00 PM, the inmates of the house of the deceased heard the barking of the dog of accused No.1 and when PW-1 came out to find out whether it was her husband, accused No.4 came out of her hut holding a stick and battery and started abusing the deceased. Thereafter, when the deceased told that he was not a thief entering the hut and why she had brought the torch and the stick, accused A-4 assaulted the deceased with a stick abusing him and she was followed by the other accused who were holding an axe, an iron pipe and sticks and all the accused started indiscriminately assaulting the deceased with the respective weapons in their hands as a result of which the deceased fell on the ground in front of the house of the accused and succumbed to the injuries on the spot. The sub-Inspector of Police, PW-12, on receiving a telephonic message at about 12.30 PM on the following day recorded the information about incident in question, visited the spot and after conducting an enquiry to ascertain the place of actual occurrence and visiting the same as well as collecting the other details returned to the police station, registered a Criminal Case being Crime No. 54 of 1995 at about 2.30 PM and submitted a FIR to the Jurisdictional Magistrate through PW-9 which reached the Magistrate at 1.00 PM. On receipt of the information of registration of the case by PW-13 the Circle Inspector of Police Athani, he proceeded to the Jurisdictional Police Station and took up further investigation. After completion of the investigation by recording statements and having the post mortem conducted, the charge was laid for offences under Sections 341, 302 and 324 read with Section 34 IPC and on committal by the Judicial Magistrate, the matter came up before the Court of learned 1st Additional Sessions Judge, Belgaum, during the course of trial PWS 1 to 14 were Examined in support of the prosecution case and documents, Exhs. P-1 to PI 8 were marked and M.Os. 1 to 16 were produced. For the defence, no oral or documentary evidence was let in. The accused were duly questioned under Section 313 Cr. P.C.

On completion of the trial and consideration of the materials on record, the learned Sessions Judge was of the view that the prosecution case, as disclosed by its witnesses, suffered several discrepancies and inconsistencies and the investigation conducted by PWS 12 and 13 also fell short of the required standard and norms and the prosecution failed to substantiate the charges levelled against the accused beyond reasonable doubt. In coming to such conclusion, it is seen from the Judgment of the learned Sessions Judge that the fact that occurrence took place two days before the new moon day and therefore his assumption that having regard to the darkness of the night, the eye-witnesses could not have really witnessed the occurrence weighed much in recording a finding of acquittal. Besides this, the learned Sessions Judge entertained doubts as to the real motive for the accused to commit the offence and a slender suggestion made for the defence about the possibility of somebody else inflicting the injuries on the deceased, seems to have created serious doubt in the mind of the learned Trial Judge about the involvement of the accused in the occurrence.

Aggrieved against the acquittal by the learned Trial Judge, the State went on appeal against the Judgment dated 08.10.1996 in Sessions case No. 194 of 1995. As noticed earlier, the Division Bench of the High Court did not concur with the verdict of acquittal returned by the learned Trial Judge and instead, noticed the various infirmities in the reasoning of the Trial Court undermining not only the manner of appreciation of the evidence and the serious lapses which crept into such appreciation resulting in a verdict of acquittal. The High Court, was also of the view that findings of the Trial Court stood vitiated on account of perfunctory approach adopted and omission to consider properly the entire materials on record in their proper perspective. Secondly, the acquittal by the Trial Court came to be reversed and the accused -appellants convicted in view of several unwarranted assumptions made surmising facts, relevant for consideration. Hence this appeal. Ms. Anu Mohla, learned counsel appearing for the appellants has taken pains to meticulously invite our attention to the materials on record, the relevant findings recorded by learned Trial Judge as well as the manner of consideration undertaken by the High Court and the findings recorded in reversal to convict the accused in order to justify the stand on behalf of the appellants. Adopting the reasoning of the learned trial Judge, it was strenuously contended before us that having regard to the fact that it was two days prior to new moon day, it would have been impossible for P.Ws. 1,4,5 and 6 to have witnessed the occurrence as they claim, that there was no motive at all for the accused to indulge in such action to do away with the deceased and that the several inconsistencies and the shortfalls in the evidence noticed by the learned trial Judge, has been given a complete go-bye by the prosecution in reversing the order of acquittal and consequently the judgment of the High Court calls for interference in our hands. It was also contended that being an order of acquittal, the High Court could not have interfered in such a mechanical manner as it has been done in this case and on this ground also, the Judgment of the High Court is liable to be set aside. Grievance has been made also on the belated FIR and the lapse said to have been committed in forwarding the post mortem report to the competent authorities, to support the claim on behalf of the appellants that from the beginning there had been delays for gaining time at every stage for manipulation and improvement of the case and that this Court should restore the order of acquittal by setting aside the Judgment of the High Court per contra, the learned counsel appearing for the respondent-state, while inviting our attention to the salient features and evidence which obliged the High Court to interfere with the order of the learned Sessions Judge justified the course of action adopted by the High Court and contended that allowing the order of acquittal would have resulted grave injustice as well as miscarriage of justice and therefore no exception should be taken to the Judgment of the High Court.

We have carefully considered the submissions of learned counsel appearing on either side. In our view, the High Court, having regard to the

superficial manner in which the evidence has been discussed, analysed and considered in a perfunctory manner by the learned Sessions Judge, was very well justified in undertaking the re-consideration of the evidence in their proper perspective in order to ensure that no miscarriage of justice resulted in the matter. The submission that the occurrence was two days prior to the new moon day and, therefore, the ocular witnesses could not have witnessed the occurrence as they claimed to have, does not appeal to us for the reason that not only, as noticed by the High Court, the parties are used to live in the midst of nature and accustomed to live without light. The parties could have been identified easily not only from the voices but from the fact that they are known persons and close relatives and living in the neighbouring huts. Though the learned Trial Judge had noticed some of the discrepancies in the evidence, as rightly observed by the High Court, nothing substantial seems to turn out of the so called discrepancies which appear to be merely trivial, not undermining the credibility or truthfulness of the evidence spoken by witness or the case of the prosecution and as rightly noticed by the High Court, the defence could not succeed in bringing it to the notice of the court any single discrepancy on any material aspects of the case in the form of contradiction by marking it on behalf of the accused in the evidence of the eye-witness, which could be said to either belie or undermine the credibility of those witnesses who claimed to have witnessed the occurrence and deposed before the court. In a case which turns on direct evidence, the motive element does not play such an important role as to cast any doubt on the credibility of the prosecution witness even if there be any doubts raised in this regard. Factually, as against the material on record to indicate the misunderstandings and enmity between the deceased and accused, nothing worth credence could be brought on record for the defence to substantiate the slender suggestion of an alleged dispute between Jadhav family and the Magar family. Even that apart, in this case, ample materials were on record to show that the family of the accused and the deceased were not in good terms and had strained relationship over the partition affair which itself is more than sufficient to constitute the motive, as well.

The learned Judges in the High Court were positive in their conclusion that P.Ws. 1 and 6 could have easily witnessed the occurrence as claimed by them having regard to the fact that the incident seem to have occurred very near the residential area of the huts of the deceased and the accused and the presence of Pws. 1 & 6 at that time was normal and nothing strange. So far as the grievance as to the belated FIR is concerned, sufficient explanation was found to have been given. The place of incident is said to be situated in remote-area namely three kilometers away from the village itself and the village in turn itself is said to be situated in a remote area in Athani Taluk. In such circumstances, the explanation given that no one who was present at the time of occurrence could dare to leave the place in the dead of night to inform others or go to the police station seems to be plausible and reasonable and that only after the arrival of PW-7 another son of the deceased, at the place of incident they could send information to the police, normal and sufficiently explains the delay. Thus, the same could not be said to cast any shadow of doubt on the truthfulness of the case of the prosecution, on this account.

On an overall consideration of the Judgment of the learned Sessions Judge as well as that of the High Court, we could notice the patent errors in the Judgment of the learned Trial Judge pointed out by the High Court in the matter of appreciation of the evidence in not only rejecting valuable material without giving due weight or importance to the same but entertaining doubts and surmising much under the pretext of analyzing the probabilities of the case. Despite the cogent and convincing evidence on record a finding in favour of the accused seem to have been arrived at by the learned Trial Judge on an incomplete evaluation of the evidence resulting in total miscarriage of justice. This, in our view, justified the interference with the Judgment of acquittal rendered by the learned Sessions Judge, in the hands of the High Court.

For all the reasons stated above, we see no reason to interfere with the well-merited conclusions and Judgment of the division bench of the High Court. The appeal fails and shall stand dismissed.

JUDIS