

CASE NO.:  
Appeal (crl.) 809 of 2002

PETITIONER:  
MUTHU

Vs.

RESPONDENT:  
STATE OF KARNATAKA

DATE OF JUDGMENT: 13/08/2002

BENCH:  
M.B. SHAH & BISHESHWAR PRASAD SINGH.

JUDGMENT:

Bisheshwar Prasad Singh, J.

Special leave granted.

By its judgment and order dated 12th June, 2001, the High Court of Karnataka at Bangalore in Criminal Appeal No.849 of 1998 affirmed the conviction and sentence of the appellant under section 302 IPC who had been convicted and sentenced by the IVth Additional Sessions Judge, Mayo Hall, Bangalore in case No.323 of 1997 under Section 302 IPC to undergo imprisonment for life and to pay a fine of Rs.5,000/-, and in default of payment of fine to undergo simple imprisonment for six months.

The case of the prosecution is that on 17th December, 1996 Smt. Sumathi, PW-10 along with her husband Mohan Nair (deceased) was proceeding to her house at about 9 p.m.. When they were between the new and old railway line at Benaganahalli, Mohan Nair (deceased) stopped to urinate and was doing so when the appellant Muthu came and questioned him as to why he was urinating there. Mohan Nair (deceased) retorted by saying that it was a public place. Upon this the appellant took out a knife and stabbed him thrice, and thereafter ran away. Mohan Nair was bleeding from his injuries and was immediately removed to the Bowring hospital by his wife Smt. Sumathi with the help of two constables who had reached soon after the occurrence. However, Mohan Nair (deceased) breathed his last at about 10.15 p.m. in the hospital. Smt. Sumathi, PW-10 went to the police station at Byappanahalli under Ulsoor circle and lodged a report at 2300 hrs. on 17.12.1996. Since she did not know the Kannada language, PW-16, Kurupa was called to the police station and she translated into Kannada the information given by the informant in Malayalam language.

PW-11, R. Nataraj, who was then the Station House Officer of the aforesaid police station recorded the statement of the informant, Smt. Sumathi, PW-10 after the same was translated by PW-16. The report was scribed by police constable, Lakshminarayanappa, PW-20.

R. Nataraj, PW-11, had earlier received a message on phone about the incident and had therefore deputed two constables to the place of occurrence, including police constable Devaraj, PW-14. Accordingly, the two constables went to the place of occurrence which was about 2-1/2 kilometers from the police station and reached the place of occurrence at 9.15 p.m.. They found the injured there with bleeding injuries. They brought him to the Bowring hospital at 10.15 p.m. but after examination the doctor declared him dead. They therefore returned to the police station at 11 p.m.

PW-14 has stated that PW-10, the informant and PW-16, Kurupa had accompanied them to the police station from the hospital. PW-11 after recording the information given by PW-10, Smt. Sumathi, further questioned PW-10 with the help of PW-16, Kurupa, since she did not understand the Kannada language. From the deposition of K.M. Jeetendranath, PW-21, it appears that he took up the investigation of the case on 18.12.1996. He recorded the statement of the witnesses, visited the scene of occurrence and took other steps which he was required to take as the Investigating Officer. According to him, on 17.01.1997, one month after the occurrence, the accused was produced before him by a police constable, PW-12, and was taken into custody and interrogated. The appellant made a voluntary statement Ex.P-20 and thereafter led them to his house and produced a knife MO.1 which was blood stained, from the roof of his house. The said knife was seized under panchanama Ex.P.15. The appellant then led them to a temple and pointed out the place where clothes were burnt. The ash and cloth pieces with metal button were seized under panchnama Ex.P.16. The Investigating Officer admitted that no test identification parade was held to identify the assailant. After investigation charge sheet was submitted against the appellant and he was put up for trial before the IVth Additional Sessions Judge, Bangalore.

At the trial the prosecution sought to prove its case by examining several witnesses, but the prosecution mainly rested on the testimony of Smt. Sumathi PW-10, Anand PW- 4, Prakash PW-5 and Ashokan PW-6 who claimed to be eye witnesses. Corroboration was sought from the fact that the weapon of offence was recovered pursuant to a voluntary statement made by the appellant.

The learned amicus curiae appearing on behalf of the appellant submitted that though the evidence adduced by the prosecution at first flush appears to be impressive, a close scrutiny of the evidence would disclose the hollowness of the case of the prosecution. Unfortunately the Trial Court and the High Court, though they noticed the evidence on record, did not undertake a careful and critical scrutiny of the evidence. According to him a close examination of the evidence would disclose that the prosecution case is a concocted case and the appellant has been falsely implicated. The informant, PW-10, may have witnessed the occurrence but could not identify the assailant. To implicate the appellant, three witnesses of the locality were introduced as eye witnesses, but their evidence discloses that the version given by them is wholly inconsistent and does not inspire confidence. He further submitted that the manner in which the appellant was arrested one month after the occurrence, is also suspicious, and his making a disclosure statement leading to the recovery of the weapon of offence is absolutely unbelievable.

Counsel for the State supported the order of conviction and commended for our acceptance the evidence of PWS - 4, 5, 6 and 10. It has therefore become necessary for us to carefully examine

the evidence adduced by the prosecution and subject the same to a critical scrutiny to rule out any possibility of miscarriage of justice. In doing so we shall confine ourselves to the important witnesses upon whose testimony the prosecution case rests.

We shall first consider the evidence of the informant, Smt. Sumathi, PW- 10. According to the informant she lodged the FIR at 2300 hrs. on the day of occurrence. She admitted that she had never seen the appellant earlier and had seen him only at the time of occurrence. She has narrated the manner in which the assault took place in very much the same manner as she has stated in the FIR. According to her, after the appellant stabbed her husband she caught hold of the collar of the appellant and shouted for help. Initially three or four persons came, though later many persons had assembled. She could not recognize the persons who had come to her rescue but she asked them for help to take the injured to the hospital. She has categorically stated that when three or four persons came, the appellant was standing there holding the knife in his hand. The persons who came first tried to catch hold of him but the accused threw away the knife at the spot and ran away. Thereafter, the injured was brought to the hospital in an auto rickshaw assisted by two constables who reached the place of occurrence. She asserted that there was an electric light in front of the house of PW- 6 and therefore she could identify the assailant. She has then narrated how she went to the hospital and how her statement was recorded with the assistance of PW -16 who translated her statement from Malyalam to Kannada. She identified MO.1 as the knife with which the appellant had stabbed her husband. According to her, she was called to the police station 10 days after the incident and there she identified the accused. Later in cross examination she stated that 20 days after the incident she had gone to the police station where she found the accused inside the police station.

In cross examination she has asserted that she held the appellant by the collar of his shirt when some persons came to her rescue. Two of them tried to catch hold of him but the appellant ran away. No one chased the appellant. She had not given the description of the accused to the police, but she had seen his photograph displayed in the police station and she identified him.

Two things are worth noticing. Though the informant categorically stated that she did not know the appellant and had seen him for the first time at the time of the incident, in the FIR lodged by her the accused has been named as Muthu. The witness has nowhere stated that she came to know the name of the assailant from any of the persons who had assembled at the place of occurrence. She also made a very categorical statement that the assailant threw away the knife at the spot and ran away after two persons attempted to apprehend him.

PW 4, Anand was examined as an eye witness but was declared hostile. He stated that he had neither seen the accused at the place of occurrence nor had he seen him running away with a knife in his hand. According to this witness, he had seen the informant crying for help and also saw that her husband was lying injured. PW-5 and 6 namely, Prakash and Ashokan were also there, but he did not see the accused at the place of occurrence. The evidence of this witness is, therefore, not of much assistance to the prosecution.

PW-5, Prakash claims to reside very near the place of occurrence. The railway track according to him is hardly 50 to 100 feet away from his house though it is not visible since there are two houses intervening. He claims to be a milkman. On the date

of occurrence he was having his meal outside his house when he heard the cries of a woman. He ran in that direction. While he was going to the place of occurrence he saw the appellant running towards him with a blood stained knife in his hand. His clothes were also blood stained. He questioned the accused who told him that he had stabbed one person and was running away. This witness did not try to catch him. According to this witness the accused lived in the same locality but he had no particular acquaintance with him. According to PW -5 when he reached the place of occurrence he found that the informant was crying naming the accused. At that time only the informant and PW -6 were there. PW -4 came later. This witness has stated that he went to the place of occurrence 10 minutes after he had heard the cries of a woman. He also made a statement, very damaging to the case of the prosecution. He stated that on the next morning, he went to the police station where his statement was recorded. He was shown the knife which he identified as the one which he saw in the hand of the appellant while running away. This witness has not supported the fact deposed to by the informant that those persons who first came to her tried to catch hold of the accused. Moreover, according to this witness the accused ran away with his knife, and did not throw away his knife, as stated by the informant.

The next eye witness is PW-6, Ashokan. He also claims to live in the locality where the offence was committed and knew the accused who was also a resident of the same locality. According to him, at about 8.30 p.m. when he was watching the television, he heard the cries of the informant. He put on the light and went towards the railway gate. He saw the accused running away towards his house holding a knife in his hand. He found one person lying injured. He saw PW -4 coming to the place of occurrence. The police came within 20 minutes and the injured was removed to the hospital in an auto rickshaw by the police. He admitted that he had no acquaintance with the accused but he had seen him earlier. He also stated that the injured was being held by the informant when he reached the place of occurrence. He did not try to apprehend the accused.

We may notice one other aspect of the matter namely, the recording of the FIR, at the instance of the informant whose statement was translated from Malyalam to Kannada by PW 16. PW -16, Kurupa has deposed that she was residing next to the house of the informant and asserted that on the date of the incident she had not seen the informant except in the police station. When she reached the police station the police were making enquiries from her. She admitted that she knew very little of Kannada language. She could not read or write the Kannada language, but the complaint was recorded and was read over to her. She denied the suggestion that she was called to the police station and her signature was taken on the report.

On the other hand, we have the deposition of Devaraj, PW-14, the police constable who was deputed to go the place of occurrence. He has deposed that PW -16, Kurupa accompanied them from the hospital to the police station. He denied the suggestion that Kurupa was not in the hospital. The deposition of this witness gives a different picture and it appears that Kurupa, PW -16 was already at the hospital and she accompanied the informant and the police constable to the police station. She was also known to the informant being her next door neighbour. There is no explanation as to how within such a short time she reached the hospital or the police station, as the case may be.

This is all the relevant evidence worth considering. If the evidence is critically scrutinized it will appear that there are many

inconsistencies in the deposition of the witnesses, and even the presence of PWs 5 and 6 is doubtful.

As we have earlier noticed the informant, PW 10, stated that she caught hold of the accused by his collar while crying for help. Initially two or three persons came and they also tried to apprehend the accused but he ran away throwing the knife at the spot. She has categorically stated that when the first three members of the public came to her rescue, the accused was still there as she had not permitted him to run away. It was only after those three persons came that he managed to escape throwing away the weapon of offence namely, the knife. From the evidence of PWs- 5 and 6, it is apparent that they along with PW -4 were the first three persons to arrive at the place of occurrence. PW-4 has not supported the case of the prosecution that he had seen the accused running away. However, PWs 5 and 6 have a different story to tell. They do not say that the informant had caught hold of the accused and that they tried to apprehend the accused on reaching the place of occurrence. Their version is that while they were rushing to the place of occurrence they had seen the accused running away with a knife in his hand. In fact, PW -5 claims that he had questioned the accused who was running away, and the accused replied by saying that he had stabbed someone and was fleeing. This part of the evidence of PW-5 appears to be incredible. What is significant is the fact that both the witnesses before reaching the place of occurrence saw the accused running away with a knife in his hand. When they reached the place of occurrence they found the informant holding the injured. On the other hand, the evidence of the informant is to the effect that the accused ran away when he was sought to be apprehended by the witnesses and he threw away the knife while running away. The evidence of the informant and the two witnesses PWs 5 and 6 are not reconcilable. The witnesses do not say that they had seen the informant and the accused when they reached the place of occurrence. If their evidence is believed that while coming to the place of occurrence they saw the accused running away with a knife in his hand, that does not accord with the version of the informant who stated that the accused had thrown away the knife at the place of occurrence and escaped. The version given by the informant is inconsistent with the version of PWs 5 and 6. Therefore, it is doubtful whether PWs 5 and 6 had reached the place of occurrence and seen the accused running away as claimed by them.

The factual position gets further confused on account of the fact that there is no evidence to prove that the knife was seized on the spot by the police. PW - 5 claims nonetheless that next morning when he went to the police station for recording of his statement, he was shown the knife which was the weapon of offence and he identified the same. This may indicate that the knife was in the custody of the police on 18-12-1996. On the other hand, we have the evidence of PW-18 as well as the Investigating Officer that on the voluntary statement of the accused made on 17.01.1997, a month later, the weapon of offence namely, the knife MO.1 was recovered from the house of the accused. That knife MO.1 was produced before the Court. It is not understandable how the knife which is said to have been thrown away at the place of occurrence, and shown to PW- 5 on the very next day of occurrence, was recovered from the house of the accused one month later on 17.01.1997. There is, therefore, considerable doubt as to whether the knife was really recovered as claimed by the prosecution.

How the name of the appellant came to be mentioned in the FIR is a mystery. The informant, PW- 10, has clearly and

categorically stated that she did not know the appellant and that she saw him for the first time only on the date of incident. She does not even claim that she came to know of his name from any other person, and yet in the FIR the accused has been named. From the deposition of PWS 5 and 6, it does not appear that they had disclosed the name of the accused to the informant, PW-10. It is interesting to note that even these witnesses in the course of their deposition have nowhere mentioned the name of the accused though they claimed to know him.

PW- 5 also stated that when he reached the place of occurrence, he found the informant weeping naming the accused. Obviously, PW- 5 was not speaking the truth, because if the informant did not know the accused and had seen him for the first time at the time of occurrence, there was no question of her naming the accused.

We, therefore, find that the evidence of PW- 10, the informant, is not consistent with the evidence of PWS 5 and 6. The naming of the accused in the FIR is a mystery because admittedly the informant, PW 10, did not know the name of the accused. The evidence of PW 5 does not inspire confidence and the evidence of PW 6 stands on no better footing. PWS 5 and 6, both claim to have seen the appellant running away with the knife in his hand, when according to the informant, PW-10, he had thrown away the knife and fled after these witnesses had arrived. The presence of PW-10, the informant, cannot be doubted. But at the same time one cannot lose sight of the fact that she did not know the name of the accused whom she had seen for the first time on that day. The accused was however not put up for test identification. Conscious of this lacuna in the prosecution case, it appears that PWS- 5 and 6 were introduced as eye witnesses.

The case of the prosecution is that about a month after the occurrence the appellant was arrested. PW- 21, the Investigating Officer, has stated that on 17.01.1997, the accused was produced before him by the police constables who were deputed for the purpose. On being interrogated, he volunteered a statement Ex.P.20, pursuant to which, the knife MO.1, which was blood stained, was recovered from the roof of his house. There is nothing in the deposition of this witness to indicate what steps were taken earlier to apprehend the accused, even though he had come to know that the accused was a resident of Benaganahalli. From the deposition of PW - 21, it appears, that only after a month he deputed three constables to apprehend the accused.

One of the constables deputed to apprehend the accused was PW- 12, Siddaiah. According to him, the description of the accused was not given to them by the Investigating Officer but he told them the name of the accused whom they knew from before. He, therefore, went with the other two constables at about 1 p.m. near the railway under bridge and found the accused sitting under a tree. They apprehended the accused and brought him to the police station. It is really surprising why no effort was made earlier to apprehend the accused and he was apprehended only one month later. The manner in which he was apprehended indicates that he was not absconding. There is no explanation for this inaction on the part of the investigating agency.

We also entertain serious doubt as to whether the weapon of offence was recovered in the manner deposed to by the Investigating Officer. We have already noticed that there is considerable inconsistency in the evidence of the witnesses as to whether the accused ran away with the knife, or threw his knife at

the spot. There is no evidence to establish that the knife was recovered from the place of occurrence, and yet PW 5 has deposed that he had been shown the knife on 18.12.1996, a day after the occurrence, in the police station and that he had identified the same. If the knife had been thrown away at the place of occurrence as deposed to by PW 10, the informant, and the knife was seen by PW 5 in the police station on the next day, there was no question of recovery of the knife on the basis of the voluntary statement said to have been made by the accused after his arrest on 17.01.1997. The evidence on record is contradictory and we are not satisfied that the knife was recovered from the house of the appellant on 17.01.1997 with blood stains on it. It is difficult to believe that the appellant would not have cleaned the knife so as to remove the blood stains particularly when he had ample opportunity of doing so.

Lastly, we may notice that the case of the prosecution is that the accused was arrested on 17.01.1997. The informant, however, in the course of her deposition has stated that 10 days after the occurrence she had been called to the police station where she had seen the accused. At another place in the course of her deposition, she stated that she had seen the accused in the police station 20 days after the occurrence. It is difficult to reconcile the statement of the informant with the case of the prosecution that the accused was arrested on 17.01.1997, a month after the occurrence.

Having appreciated the evidence on record, we find it difficult to sustain the order of conviction. The informant, PW-10, did not know the name of the appellant and yet his name finds place in the FIR even though PWs 5 and 6 do not claim to have told her the name of the appellant. The evidence of PWs 5 and 6 who claim to have reached the place of occurrence soon after the incident is not consistent with the testimony of the informant, PW 10. According to PW 10, she was holding the accused by his collar when these witnesses arrived and only after they attempted to apprehend him, did the accused manage to escape throwing away the knife at the spot. The evidence of PWs 5 and 6, on the other hand, is that they had seen the accused running away with a knife in his hand while they were proceeding to the place of occurrence. If the evidence of PWs 5 and 6 is excluded, on the basis of the testimony of PW- 10 a conviction cannot be recorded because the accused was not put up in a test identification parade for identification by the informant. In the facts and circumstances of this case, we do not consider it safe to rely on the identification of the accused by the informant in Court. As far as the recovery of the weapon of offence is concerned the evidence on record is contradictory. If one accepts the testimony of PW 10, it must be held that the knife was thrown away near the place of occurrence, and that it was shown to PW 5 on the next day of occurrence. If the Investigating Officer is to be believed the knife was recovered on 17.01.1997, a month later, pursuant to the voluntary statement made by the appellant. As regards the arrest of the appellant also, the prosecution case regarding his arrest on 17.01.1997 is contradicted by the informant who saw him in the police station much earlier.

In this state of the evidence on record, we do not find it safe to convict the appellant. Accordingly, we give to the appellant the benefit of doubt and acquit him of the charge levelled against him. This appeal is accordingly allowed. The appellant shall be released forthwith unless required in connection with any other case.

We record our appreciation of the valuable assistance rendered by Ms. Madhur Dadlani, Amicus Curiae.

JUDIS