REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.203 OF 2005

State of Karnataka …Appellant

Versus

Shantappa Madivalappa Galapuji and Ors. ...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is by the State of Karnataka to the judgment of a Division Bench of the Karnataka High Court allowing the appeal filed by the respondents. Four respondents faced trial for alleged commission of offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and were sentenced by learned II Additional Sessions Judge, Belgaum. The High Court by the impugned judgment has set aside the conviction.

2. The prosecution version as unfolded during trial is as follows:

The complainant is the native of Biraladinni village in Basavanabagewadi Taluk in Bijapur District and he is residing at Bijapur. He owned landed and house properties. His father and younger brother are looking after the agriculture. The complainant though is residing in Bijapur, visits Biraladinni village once every week. He has got two younger sisters and one brother. Annapurna is one of the sisters. The marriage of Annapurna took place with Shantappa (A.1). The said Annapurna after the marriage went to the house of A.1 to lead marital life. She gave birth to three children. The brother of A.l who is A.2 is residing in Ainapur Village since 10 years and he is residing in Gubbimaddi land after erecting a hut. Along with him A.3 and A.4 are also residing. A.1 is addicted to bad vices

like drinking liquor and he always used to pick up quarrel with the complainant's sister i.e., Annapurna. About one year prior to the death of Annapurna, A.1 had brought the deceased Annapurna and her children to Beeraladinni and left them in her parents' place. About three months prior to the incident, A.1 had come to Beeraladdinni village and requested the complainant and his family members that he will take his wife and children and he will look after them properly. He also told them that he will take them to Ainapur Village. Then he took the deceased Annapurna and his son Suresh to Ainapur. On 31.12.1994 i.e., on Saturday as it was a holiday, the complainant had come to Beeraladinni Village. At about 8 p.m, on that day, one Siddappa of their village came to the complainant and told him that he had gone to Dhavalagi Village on that day and there A.2 had met him and told him that on 29.12.1994 at about 11 p.m., Annapurna had died. He has also told him that A1 was to be informed. After hearing this, the complainant, on the next morning, along with Siddappa went to Ainapur Village and went to the hut where the accused were residing and asked the accused as to how his sister had died and as the accused did not give any satisfactory answer, he asked his sister's son i.e., Suresh about the incident. He was about 9 years old then. Suresh told him that on that day i.e., on 29.12.1994 after taking food, his mother was making preparations to sleep. At about 11

p.m., his father P.1 picked up a quarrel stating that she is having illicit relations with somebody and also said that she should leave such habits. At that time, his mother Annapurna said that she has not acted like that. A.1 went inside the house and brought other accused and also brought a rope and after that all the accused made the deceased Annapurna lie on the ground and meanwhile A.3 and A.4 caught hold of her hands. A.2 held both the legs of the deceased and then A.1 tying the rope to the neck of the deceased pulled it and then the deceased died on the spot, Then A.1 took Suresh inside the house and threatened him not to tell the fact to anybody and thereafter, the dead body of the deceased was taken away and it was burnt. After hearing this from Suresh, the complainant went to Biraladdinni Village and informed the said fact to the parents and others and on the next day morning he went to the police station and filed his written complaint against the accused and the A.S.I, who was incharge of the police station, received the complaint and registered a case in Cr.No.2/95 under Sections 302, 201 read with Section 34 I.P.C. and then sent F.I.R. to the court and thereafter, took up further investigation and visited the scene of offence, drew panchanama of the scene of offence as shown by Suresh and thereafter three accused were arrested. After completion of investigation charge sheet was filed.

Since the accused persons pleaded innocence trial was held. The trial Court placed reliance on the evidence of the PWs and directed conviction. By the impugned judgment the High Court held that the prosecution version is not established and the evidence of the witnesses cannot be termed as credible.

3. In support of the appeal, learned counsel for the appellant-State submitted that the High Court has by a cryptic and non-reasoned order set aside the judgment of conviction. Since the judgment of acquittal was challenged, and none appeared for the respondents, Ms. Vibha Datta Makhija was appointed as Amicus Curiae. It is to be noted that there were 16 witnesses examined. PW-1 who was younger brother of the deceased spoke as to what PW-2 had narrated to him. PW-2 is a child witness who was the son of the deceased. He categorically stated the facts of incident and had identified the rope used during the incident. PW-3, the neighbour of the accused stated that he had attempted to bury the dead body as per the custom while the same was to be burnt. PW-4 stated that the accused told him that the deceased had died of heart attack. PW-7 is the person who informed PW-1 about the death of the deceased. He also spoke about PW-2 narrating the incident to him. PWs 10 and 11 spoke about frequent quarrels

between the deceased and A-1. The only reason which apparently weighed with the High Court to discard the evidence of PW-2 is that PW-1 was an Advocate and PW-2 was staying with him and therefore his evidence appeared to be tutored. It also noted about the delay in filing F.I.R.

4. The so called delay in lodging the FIR was also explained by PW-1. It is to be noted that out of 19 typed pages of the order, forming special leave petition 18 pages have been devoted to recital of the evidence of witnesses and thereafter there is an abrupt conclusion to discard the evidence of PW-2 on the presumption that he was tutored as his uncle PW-1 was an advocate. It is also observed that it is not known what the learned Additional Sessions Judge asked the child witness to test his knowledge. Unfortunately, the High Court failed to notice that the learned Additional Sessions Judge has referred to all relevant aspects in detail. It has been recorded that when the Court put preliminary questions to the child who appeared to be of tender age, it was revealed that the witness was capable of understanding the questions put to him and was capable of giving rational answers to those questions. He knew the difference between the truth and the falsehood and knew that only truth has to be deposed before the Court. He also knew the

consequences of deposing falsely. Therefore, the Court was of the opinion that the witness was competent to testify before the Court.

5. The position in law relating to the evidence of child witness has been dealt with by this Court in Nivrutti Pandurang Kokate and Ors. v. State of Maharashtra (2008 (12) SCC 565), and Golla Yelugu Govindu v. State of Andhra Pradesh (2008 (4) SCALE 569).

6. The Indian Evidence Act, 1872 (in short "the Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease — whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in *Wheeler* v. *United States (159 US 523)*. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such

evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. [See *Suryanarayana* v. *State of Karnataka (2001 (9) SCC 129*)]

7. In *Dattu Ramrao Sakhare* v. *State of Maharashtra [(1997) 5 SCC 341]* it was held as follows: (SCC p. 343, para 5):

> "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

> The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary

> because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

8. The above position was highlighted in Ratansingh Dalsukhbhai Nayak v. State of Gujarat (2004(1) SCC 64). Looked at from any angle the judgments of the trial court and the High Court do not suffer from any infirmity to warrant interference.

9. In view of the foregoing conclusions without even indicating as to how conclusions of the trial Court were in any manner deficient or insufficient, the High Court ought not to have, on abrupt conclusions, directed acquittal.

10. In the circumstances we deem it proper to set aside the impugned judgment and remand the matter to the High Court to consider the matter afresh and dispose of the appeal indicating reasons.

11. The appeal is allowed.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(ASOK KUMAR GANGULY)

New Delhi,
April 20, 2009