

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.135 OF 2005

Venkatesha

...Appellant

Versus

State of Karnataka

...Respondent

J U D G M E N T

T.S. THAKUR, J.

1. The appellant in this appeal by Special Leave was tried and convicted for offences punishable under Sections 302, 307, 427 read with Section 34 of the IPC and Section 3 of the Explosive Substances Act, 1908 read with Section 34 of the IPC by the XXI Additional City Civil & Sessions Judge, Bangalore. For the offence of murder punishable under Section 302 read with Section 34 of the IPC the appellant

was sentenced to undergo rigorous imprisonment for life and a fine of Rs.5,000/-, in default of payment whereof a further simple imprisonment for three months was awarded to the appellant. Similarly, for the offence punishable under Section 307 read with Section 34 IPC the appellant was sentenced to undergo five years' rigorous imprisonment and a fine of Rs.1000/-. In default of payment of fine the appellant was awarded a further simple imprisonment for a period of one month. For the offence punishable under Section 427 read with Section 34 IPC the appellant was awarded a sentence of one year's rigorous imprisonment while a sentence of ten years' rigorous imprisonment and a fine of Rs.2000/- was awarded to the appellant under Section 3 of the Explosive Substances Act read with Section 34 of the IPC. Criminal Appeal No.514/2000 filed by the appellant before the High Court against the judgment and order of the trial Court having failed the appellant has filed the present appeal to assail his conviction and the varying sentences awarded to him, for different offences mentioned above.

2. Prosecution case in brief is that in furtherance of a common intention to kill Muniraju (PW-14), Hanif (A-3) kept a tape recorder loaded with an explosive substance (bomb) at what was known as "Friends Hair Style" shop owned by Muniraju (PW-14) situated on the 6th Cross of Someshwaranagar in Bangalore. When the tape recorder was switched on by the deceased-Shankar, who was employed by Muniraju (PW-14) to work as a barber in the shop, the bomb planted in the same exploded causing injuries to the said Shankar that culminated in his death. Injuries were also caused to Krishna (PW-1) and Shivaram (PW-7), two others similarly employed to work in the shop. The use of the bomb, according to the prosecution, was with the intention and knowledge and under circumstances that if by that act it had caused the death of Krishna (PW-1) and Shivaram (PW-7) also the accused would have been guilty of murder.

3. After completion of investigation and filing of chargesheet but before committal of the case to the Sessions Court competent to try the same the committal

Court by its order dated 6th January, 1998 allowed an application filed on behalf of Hanif (A-3) under Section 306 of the Cr.P.C., granted pardon to him and treated him as an approver in the case. A-3 was accordingly examined at the trial as an Approver. Briefly stated the prosecution case and the genesis of the occurrence that led to the killing of deceased-Shankar and injuries to Krishna and Shivaram was as under:

4. G. Venkatesh Murthy (A-1) was married to Alamelu (PW-8), daughter of PW-10. While PW-8 was living with her husband A-1 at his Kanakapura house, there were frequent quarrels between the husband and wife. In an attempt to sort out the differences and restore conjugal harmony between the two, the parents of PW-8 accompanied by Muniraju (PW-14) visited the house of A-1 and his wife to advise them not to quarrel with each other. Despite the efforts made by the parents of PW-8 and Muniraju (PW-14) the relationship between the husband and wife had continued to remain sour forcing PW-8 to return to her parents' house. Matrimonial disharmony between the

couple eventually led the parties to report the matter to the police, in which connection Muniraju (PW-14) also played a role in support of the wife PW-8.

5. The prosecution case is that A-1 carried the impression that his domestic troubles were largely because of the role played by PW-14. Its further case is that A-1 had threatened that he would finish PW-14 within a week. Venkatesha (A-2) appears to have joined him in extending that threat. These events are said to constitute the motive for the incident in question which was in reality intended to eliminate Muniraju (PW-14) but instead resulted in the death of the deceased-Shankar, in a sequence of events that may be summarised below:

6. On the 2nd of April, 1996, the fateful day, (PW-7) along with (PW-1) and (PW-5) and the deceased-Shankar opened the hair cutting saloon at about 6.00 a.m. in the morning as instructed by Muniraju (PW-14) who was going away to Chikka Tirupathi. Around 9.00 a.m. in the morning (PW-1) is alleged to have gone for breakfast to the house of PW-14. Shortly thereafter Hanif (A-3) came to the saloon to

have a shave. He brought along with him a cardboard box and kept the same on the table in the saloon. The deceased-Shankar attended to A-3 and gave him a shave while PW-5 and PW-7 were also present in the saloon and inquired about the contents of the cardboard box which he had brought with him and kept on the table in the saloon. Hanif (A-3) said that the box contained a tape recorder. He also told them that he did not know about the price and the same had been given to him by a friend. Hanif (A-3) left the shop after getting the shave leaving behind the cardboard box, saying that he would return to collect the same later.

7. Krishna (PW-1) in the meantime returned to the saloon after taking his breakfast, whereafter at about 11 or 11.30 a.m. in the morning (PW-5) left the shop to have his breakfast. Shortly after his departure from the shop the deceased-Shankar told PW-7 that he should switch on the tape recorder contained in the box. The deceased-Shankar accordingly opened the cardboard box left behind by A-3 and switched the same on. Smoke started coming out of

the box which exploded with a huge sound damaging the shop and several articles lying around. As a result of the blast the deceased-Shankar as well as PW-1 and PW-7 who were present in the shop sustained injuries. PW-1 and PW-7 were rushed to the NIMHANS hospital in an auto-rickshaw from where they were shifted to the Victoria hospital. Shankar-deceased was also rushed to the Victoria hospital in an ambulance but succumbed to the injuries sustained by him. Muniraju (PW-14) who was away from Bangalore rushed back after hearing about the bomb blast in his shop. A first information report about the occurrence was lodged by PW-1 that set the investigation rolling. In the course of investigation Hanif (A-3) offered to make a confession and was tendered pardon as already mentioned above and later examined as PW-2 at the trial.

8. It is in the above background that G. Venkatesh Murthy (A-1), son of Gopala, and the appellant-Venkatesha (A-2), son of Gurappa were tried for the offences referred to earlier, found guilty and sentenced by the Trial Court and

which conviction and sentence has been upheld by the High Court as noticed above.

9. When the matter came up before us on 14th March, 2012 learned counsel for the respondent-State placed on record a communication dated 13th March, 2012 stating that G. Venkatesh Murthy son of Gopala appellant in Criminal Appeal No.134 of 2005 has since been released prematurely on 15th August, 2006 in terms of order dated 14th August, 2006. Appellant-Venkatesha son of Gurappa in Criminal Appeal No.135 of 2005, however, continues in custody and has undergone 12 years' imprisonment. It was in the light of the said statement that Criminal Appeal No.134 of 2005 was dismissed as infructuous in the light of the subsequent development while Criminal Appeal No.135 of 2005 was set down for final hearing.

10. We have heard Ms. Tanuj Bagga Sharma, Advocate (Amicus Curiae) appearing for the appellant and counsel appearing for the State at some length who have taken us through the judgment and order under challenge and the material portion of the evidence adduced at the trial. Both

the courts below have found on a detailed appraisal of the evidence on record that the prosecution had successfully proved the charges framed against the appellant.

11. Dealing with the question of motive for the commission of offence, the trial Court held:

"24..... I have considered the evidence tendered by the witnesses before the court and looking to their oral evidence, I am of opinion that the prosecution has clearly established that the accused no.1 was quarrelling with PW-8 Alamelu and PW-14 Muniraju also used to advice A-1 and once he had been to the house of A-1 to lead a happy martial life with PW-8 Alamelu and the prosecution has also established that PW-14 Muniraju. PW-10, PW-4 and PW-11 and also A-1 and A-2 gathered in Kanakpura Police Station and in the Kanakpura Police Station, A-1 posed life threat to Muniraju on the ground that he is interfering in his family affairs and A-2 in support of A-1 also posed life threat to PW-14 Muniraju. Hence looking to the evidence of the above mentioned prosecution witness, I am of the opinion that the prosecution has established the alleged motive against A-1 and A-2."

12. The High Court has affirmed the above finding on a re-appraisal of the evidence led at the trial. The High Court has added:

"It is to be seen therefore from the above materials placed on record by the prosecution that all was not well between the accused and PW-14 Muniraju at the relevant time of this incident. There were strained or bitter feelings between them. When the Prosecution has succeeded in showing that there was some sort of enmity, hatredness or hostility between the parties,

the inability on the part of the prosecution to further put on record the manner in which such hostility would have swelled up in the mind of the accused to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution."

13. There is nothing irrational or perverse in the findings recorded by the trial Court and the High Court on the question of motive for the commission of offence, which was intended to target Muniraju (PW-14) but claimed the life of Shankar who was totally innocent and an unintended victim of the crime. The depositions of M. Venkatesh (PW-4), Smt. Alamelu (PW-8), Smt. Venkatalakshamma (PW-10) and Ramachandru (PW-11) all support the prosecution case that the accused had an animus towards Muniraju (PW-14) and that the planting of the bomb, was actually intended to kill him, rather than Shankar the deceased. So also the fact that Hanif was deputed to carry the cardboard box to the shop of Muniraju (PW-14) and to leave the same there on the pretext that he would collect it from there later is proved by the depositions of the Approver-Hanif examined at the trial as PW-2 and the injured witnesses examined at the Trial.

14. It was contended on behalf of the appellant that an approver's evidence is unsafe for recording a finding of guilt against the accused unless the same is corroborated by other evidence in material particulars. This corroboration was not, according to the learned Amicus Curiae, forthcoming in the present case; which should, argued the learned counsel, entitle the appellant to an acquittal.

15. Section 133 of the Evidence Act, makes an accomplice a competent witness against the accused person and declares that a conviction shall not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, the established rule of practice evolved on the basis of human experience since times immemorial, is that it is unsafe to record a conviction on the testimony of an approver unless the same is corroborated in material particulars by some untainted and credible evidence. So consistent has been the commitment of the courts to that rule of practice, that the same is now treated as a rule of law. Courts, therefore, not only approach the evidence of an approver with caution, but

insist on corroboration of his version before resting a verdict of guilt against the accused, on the basis of such a deposition. The juristic basis for that requirement is the fact that the approver is by his own admission a criminal, which by itself makes him unworthy of an implicit reliance by the Court, unless it is satisfied about the truthfulness of his story by evidence that is independent and supportive of the version given by him. That the approver's testimony needs corroboration cannot, therefore, be doubted as a proposition of law. The question is whether any such corroboration is forthcoming from the evidence adduced by the prosecution in the present case.

16. Dealing with the question of corroboration of the deposition of Hanif, the Approver, both the Courts below have concurrently held that the same was available in abundance in the form of the depositions of Krishna (PW-1), Lamboo Venkatesh (PW-3), Venkatesh (PW-4), Shivaram (PW-7), Thyagaraja (PW-9), P.R. Jayaramu (PW-21) and Dr. Shivannagouda (PW-27). The trial Court has while dealing with the question of corroboration of the approver's version observed:

" So looking to the evidence of these three witnesses, the doctors who examined the deceased Shankar and also the injured PW-1 Krishna and PW-7 Shivaram, have clearly opined that the injuries they have mentioned in the PM report and also the injury certificate respectively can be caused by bomb blast. Even PW-21 stated in his evidence that articles 1-5 contained explosive substance. He has also stated that when the articles were sent to him, the seals were intact and he opened these seals and examined these articles 1-7. PW-21 denied the suggestion that if the glycerine reacts with the soap, it will produce nitroglycerine and he has also denied the suggestion that articles 1-5 are not the explosives. PW-27 doctor examined the dead body of the deceased Shankar alias Ravi, clearly stated in the re-examination that injury No.1 could be necessarily caused by bomb blast. In the cross examination of these three witnesses, nothing has been elicited from their mouth by the learned advocate for A-1 and A-2 so as to disbelieve their version that the injuries sustained by deceased Shankar, Krishna PW-1 and Shivaram PW-7 are because of the bomb blast."

17. The Trial Court has while appraising the deposition of Thyagaraja (PW-9) noticed the role played by the appellant and observed:

"18. PW.9 Thyagaraja deposed in his evidence in the examination-in-chief that he knows pw.3 Lamboo Venkatesh and during April, 1996, himself and A.2 Venkatesh had been to Anekal to call pw.3 Lamboo Venkatesh. At that time, pw.3 was not at all there in his house and while himself and A.2 were returning, they had meals at Dhaba at Bannerghatta and at that time, A.2 told him that himself and A.1 made arrangement for the bomb blast in the hair cutting saloon of CW.5 Muniraju and he also told that the person they had expected did not expire and also asked him not to disclose this fact to others. A.2 also told him that himself and A.1 intended to kill CW.5 Muniraju. He enquired with A.2 Venkatesh what is the enmity

between himself, A.1 and CW.5 Muniraju and A.2 also told him that CW.5 Muniraju is interfering in the matrimonial affairs of pw.8 Alamelu and A.1 Venkateshamurthy and he also told him that galata also took place one week prior to the incident at Kanakapura police station."

18. PW-3 – Lambu Venkatesh made a detailed deposition about A.1 to A.3 and the box changing its hands. The following had been noted by the Trial Court.

"... On enquiry, A.1 told that some person from Harohalli has to pay the amount and he wants to collect the money and asked him to accompany him. Thereafter A.1 took him on his TVS near his shop. Then A.1 opened the lock of his shop and opened the door and brought a box like article from his shop. Thereafter, A.1 took him to the bus-stand. At that time, A.2 Venkatesh was in the bus-stand. A.1 kept the said box in the bus-stand and asked him to wait near the same and went away saying that he has to meet some person. At about 7 or 7-15 a.m., A.1 and A.2 returned..."

19. The deposition of PW-3 in his cross-examination, is noted by the Trial Court in the following words:

"... During the journey A.1 and A.2 were not conversing with A.3. Even in the autorickshaw also, when they got down at the TB Hospital, they were not conversing with each other. A.1 and A.2 gave Rs.105/- and also the box into the hands of A.3 Hanif. After getting down from the autorickshaw, he handed over the box to A.1 Venkateshmurthy. Then A.1 and A.2 asked A.3 Hanif to keep Rs.100/- with him and to have the shave with Rs.5/- and also they have told that they will come within half an hour. A.1 and A.2 paid the amount and the box to A.3 at the grave yard. A.1 and A.2 took A.3 stating that they will show the shop. He enquired with

A.1 and A.2 that they have brought the taperecorder from Kanakapura and now it is not there and what is the matter. Then A.1 and A.2 told them that there in one bomb in that box and it is kept in the shop of his enemy and if anybody filed a case, they will look after the same. He enquired who is that enemy and then A.1 and A.2 told him that CW.5 Muniraju is their enemy."

20. The Trial Court has similarly dealt with the deposition of Lamboo Venkatesh (PW-3) and observed:

"... Even pw.3 Lambu Venkatesh also deposed in his evidence that he too accompanied A.1 and A.2 and Hanif to Bangalore along with the box in the saloon shop of PW.14 Muniraju and A.1 gave Hanif Rs.105/- and asked Hanif that after keeping the box in the shop, to have the shave and come back. Looking to the cross examination of both pw.2 and pw.3, so far as they coming to Bangalore from Kanakapura on 2-4-1996 and this Hanif taking the box into the shop, nothing has been elicited from the mouth of pw.2 and pw.3 by the learned counsel appearing for A.1 and A.2 so as to disbelieve their version.... But, it has come on record in the evidence of pw.2 and pw.3 that when they came back to Kanakapura after leaving the box in the shop of pw.14 Muniraju and when questioned at Kanakapura by pw.2 and pw.3, A.1 and A.2 confessed before them that they have kept the bomb in the said box to take the life of their enemy - pw.14 Muniraju and threatened them not to disclose this fact before anybody and if they disclosed the same, they will also be involved in this case.

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... But, as I have already discussed above, regarding the leaving of the box in the shop of pw.14 Muniraju and also regarding the extrajudicial confession made by A.1 and A.2, it is not only the evidence of the approver that is available on record, but the said facts have also been independently proved with the evidence of another witness pw.3 Lambu Venkatesh..."

21. The High Court has, upon a careful and detailed reappraisal of the evidence, concurred with the view taken by the trial Court and, in our view, rightly held that there was sufficient corroboration to the version of the Approver, both in the form of oral depositions of the witness as also forensic evidence, that clearly support the prosecution case that the injuries resulting in the death of Shankar were caused by an explosive substance planted by A-1 and A-2 to kill Muniraju (PW-14). The High Court has held:

"In the instant case, we are not satisfied with the submission that the conviction of the accused is solely based upon the testimony of the witness PW-2 and his deposition is not corroborated in material particulars. The direct as well as circumstantial evidence produced in the case is sufficient to connect the accused with the commission of the crime. It does not lead to any other inference than the one of their involvement in the crime."

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22. The High Court additionally notes the testimony of Puttaswamy (PW-25) who was a Police Inspector at CCB and who ultimately came to investigate the matter under orders of the DCP (Crime). In his testimony he has mentioned CW-15 and PW-20, who had identified A.1 and

A.2 as having bought gelatine sticks and detonators and the tape recorder respectively. The High Court noted:

"... As per the voluntary statement of Accused Nos.1 and 2, he had searched for one Honnegowda and he came to know that he is dead, but the colleague of Honnegowda by name Boregowda identified the accused and reported that accused had collected the gelatin sticks and electric detonator on the pretext of catching the fish at the pond. Accordingly he recorded the statement of the said Boregowda CW-15. After receiving the information that Honnegowda belongs to the village Bheemagondanahalli, he secured Muniyappa CW-16 who is the brother of Honnegowda and also one Srinivas CW-17 and recorded their statements and from their statements, it was transpired that Honnegowda is dead. The accused persons A1 and A2 took him and his staff near one Thattekare village and shown the spot as the one where they had experimented the gelatin stick and the electric detonator with the help of the battery.

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There the accused persons A1 and A2 took them to the shop of one Mahadeswar Radio and Musical Stores and identified one Madappa PW-20 as the proprietor of the said shop stating that they had purchased one tape recorder from PW-20 which was used in the commission of the crime in this case. The said fact he learnt from the proprietor of the shop viz., Madappa PW-20. He examined and recorded the statements of the said Madappa PW-20 in this regard."

23. The High Court further noted the testimony of PW-3, Lamboo Venkatesh :

"... Thereafter the Accused No.1 took him on his TVS moped near his shop. Then the Accused No.1 opened the lock of his shop and brought a box like article from inside his shop. Thereafter the Accused No.1 took him to the bus stand. At that time A2 Venkatesh was in the

bus stand. The Accused No.1 kept the said box in the bus stand and asked him to wait near the same and while so saying, he went therefrom saying that he has to meet some person. At about 7 or 7.15 a.m. both A1 and A2 returned back. At about the same time, the Accused No.3 also came there.

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The accused persons A1 and A2 gave Rs.105/- and also the box into the hands of A3 Haneef. After getting down from the auto, he had handed over the box to Accused No.1. Then Accused no.1 and Accused no.2 asked Accused no.3 Haneef to keep Rs.100/- with him and to have the shave with the help of Rs.5/- and they also told that they will come within half an hour. Accused no.1 and Accused no.2 paid the amount and gave the box to Accused no.3 at the graveyard... Then Accused no.1 and Accused no.2 took Accused no.3 stating that they will show the shop. After about half an hour Accused no.1 and Accused no.2 returned back and when he asked them about Accused no.3, they told him that he is getting the shave and he will come. He has further stated that he made enquiries with Accused no.1 and Accused no.2 that they have brought the tape recorder from Kanakapura and now that the same is not available with them and for that he was told by Accused no.1 and Accused no.2 that there was one bomb in that box and the same has been kept in the shop of their enemy and if anybody were to file the case, they will look to the same. He enquired as to who is that enemy and for that he was told by Accused no.1 and Accused no.2 that PW-14 is their enemy."

24. The High Court accepted the testimony of PW-3 and noted that:

"It is to be seen therefore that PW-3 Lamboo Venkatesh is a relative of both A-1 and A-2 and he has no axe to grind against them. No doubt, he is also a relative of PW-14. But it appears that they were not on visiting terms to each others houses frequently. Be that as it may be. There is no reason for PW-3 to falsely implicate the Accused in such ghastly crime, more so,

when he happened to be their relative. Therefore, we find no good reason to discard the evidence of PW-3. The circumstances brought out in the evidence of PW-3 Lamboo Venkatesh would substantially support the evidence of PW-2 in the case. ... There is nothing to disbelieve the version of PW-3 given in Court and he has absolutely no reason to depose falsely against the accused."

25. The medical evidence adduced at the trial and the nature of the injuries caused is also supportive of the prosecution version that the deceased died on account of an explosion. The medical evidence comprising the deposition of Dr. Shivannagouda (PW-27) has described the injuries sustained by the deceased as under:

"1) Extensive laceration over front of lower part of the abdomen and front of both thighs, measuring 40 cm x 35 cm. x muscle deep, exposing lacerated muscles, vessels and nerves, covered by burnt pieces of plastic wires and metal pieces.

2) Multiple abrasions, and lacerations over front of trunk, inner aspect of right axilla, right arm and forearm and lower part of chin, inner aspect of left arm and outer aspect of left forearm. Abrasions measuring 4 cm. x 2 cm. to 1 cm. x 0.5 cm and lacerations ranging from 3 cms x 2 cms and muscle deep to 1 cm x 0.5 cms skin deep.

On dissections of the dead body, I did not find any internal injuries."

26. So, also the injuries sustained by injured witnesses PWs 1, 5 and 7 were, according to the medical evidence,

caused because of the explosion. Dr. Shivannagouda (PW-27) has testified to that effect and specifically stated so.

27. Not only that, the forensic evidence led by the prosecution in the instant case also shows that there was an explosion. This is evident from the report of the Sri P.R. Jayaramu (PW-21), Scientific Officer in the FSL at Bangalore. The relevant portion whereof is to the following effect:

".... Article no.1 contained metal pieces, 2 pin plug with wire pieces and a piece of magnet spring. Article no.2 contained metal piece condenser and 10 debris of a suspected transistor/cassette player. Article no.3 contained yellow coloured torn polythene piece, light green rexin seat cover, a torn cloth piece and a torn old printed story book, a piece of cord wire with 2 pin plug and broken metal pieces and small piece of debris collected from the crime spot. Article no.4 contained one blood stained torn half sleeved shirt and a light green coloured torn old pant of an injured person. Article no.5 contained one multi coloured torn shirt of an injured person. Article no.6 contained a cotton swab of the wound of the deceased Shankar. Article no.7 contained one sealed small bottle said to contain foreign material recovered from the wound of the injured person. After opening all these above mentioned articles, he examined them and found the presence of nitro glycerine, nitro cellulose and ammonium nitrate. That is to say, the presence of nitro glycerine, nitro cellulose and ammonium nitrate were detected in article nos. 1 to 5 and it is highly explosive..."

28. There is, in our opinion, no perversity or miscarriage of justice arising out of appreciation of evidence by the trial Court or the High Court to warrant interference. In the result this appeal fails and is hereby dismissed.

.....J.
(T.S. Thakur)

.....J.
(Gyan Sudha Misra)

New Delhi
January 8, 2013

