

CASE NO.:
Appeal (crl.) 444 of 2006

PETITIONER:
Samghaji Hariba Patil

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

This appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 arises out of a judgment and order dated 16th September, 2005 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.936 of 1999 whereby and whereunder an appeal preferred by the State of Karnataka against a judgment and order of acquittal passed by the trial court was allowed.

Appellant herein along with three others was accused of commission of an offence punishable under Sections 302, 307, 504 read with Section 34 of the Indian Penal Code (for short, 'IPC'). They were acquitted by the learned Trial Judge. On an appeal preferred by the State of Karnataka, the High Court set aside the said judgment and order, convicting the appellant herein for commission of an offence under Section 302 IPC. The High Court has further held all the accused to be guilty of commission of an offence under Section 307 IPC for causing injuries to P.W.2-Bhaganna. The accused Nos. 1 to 3 were also convicted for an offence punishable under Section 307 IPC for causing injuries to P.W.3, as also for causing injury to P.W.4. No separate sentence, however, was awarded for offences punishable under Section 504 read with Section 34 of the Indian Penal Code.

The deceased and the accused No.1 \026 Ningappa Bhaganna Padagaon belonged to the same village. Accused No.1 had no bullocks of his own. He allegedly borrowed the bullocks of Appellant. On 16.12.1997, while ploughing his own land, he allegedly started ploughing the land of the deceased to which he objected. P.W.2 \026 his son, Bhaganna, P.W.3 \026 his wife, Tangawwa and P.W.4 \026 his daughter, Mayavva, were said to be present at that place. The incidence, allegedly, took place at about 3.00 p.m. A quarrel ensued, whereupon all the four accused are said to have assaulted the deceased. Appellant is said to have assaulted him with a hammer. P.Ws.3 and 4 were also said to have been assaulted by the other accused with bamboo sticks. Seeing the assault Kusumavva, daughter of the deceased allegedly cried for help, whereupon, the accused persons are said to have left the sticks and hammer at the spot and ran away. Some alleged independent witnesses \026 P.W.14, Mallappa and P.W.15, Rawa Sab, were also said to be present at the spot. The distance between the place of occurrence and the police station which is situated in the town of Athani is said to be about 5 to 5= kms. P.W.5, allegedly, boarded a jeep, which was presumably being run as a taxi, went to the police station and informed about the incident to P.W.11-Nagaraj, a PSI attached to the said police station. No First Information Report was, however, lodged by him thence. The injured, allegedly, were lying unconscious for a period of about three hours. P.W.11 came to the spot and shifted all the injured persons to the Government hospital. Murugappa, the deceased, succumbed to his injuries

at about 5.15 p.m on the same day. The First Information Report in relation to the said incident thereafter was lodged by P.W.2.

Before the learned Trial Court, the prosecution examined 18 witnesses. The learned Trial Judge on cogent reasons opined that the prosecution had not been able to prove its case. The learned Judge noticed various discrepancies in recording its judgment of acquittal.

The High Court, on the other hand, relied upon the testimonies of the so-called eye witnesses and reversed the said judgment.

It is not disputed before us that Appellant did not have any land in the vicinity. There exists a dispute as to whether the land where allegedly the occurrence took place belonged to the deceased. It has been found by the learned Trial Judge, which finding has not been set aside by the High court, that the land said to be adjacent to that of the deceased was given on lease by the Tahsildar to one Bhima Murari Banadi, who was a successful bidder in an auction held for the said purpose. The accused No.1, admittedly, did not own any bullocks to plough his land. The dispute in regard to the land, if any, was between the deceased and accused No.1. The deceased is alleged to have given some land to him, who was claiming more.

P.W.2 was, allegedly, the first person to be assaulted by the accused No.1. The deceased came to his rescue and in the process was assaulted by iron hammer by Appellant, whereas the accused Nos. 1, 2 and 3 assaulted him with bamboo sticks. Both P.W.2's mother and sister, P.W.4 (C.W.9) were also allegedly assaulted. The incident is said to have been witnessed by some of the independent witnesses. There were many houses around the land in question. The Investigating Officer, however, did not find any house, leading to a comment from the learned Trial Judge that he might not have visited the place of occurrence at all. P.W.2 and other witnesses admitted that there were 30 to 40 houses surrounding the agricultural land where the incident allegedly occurred. It was admitted that the land is put on auction every year and for the years 1997-98, one Bhima Murari Banadi being the highest bidder in the auction, had been put in possession of the said land. The revenue records also prove the said fact. Admittedly, there were several agriculturists who had been cultivating their own lands.

The witness stated that the police came to the spot after three hours. It is difficult to believe that the injured had been lying on the spot so long, but P.W.2 did not call any other person whomsoever in the meanwhile. Who had brought the injured in the jeep, in which they were shifted, had not been disclosed. Who had taken them to the hospital had also not been disclosed. The deceased was declared dead at the Government hospital, whereas P.W.2 and other injured witnesses were treated at Sangli Hospital.

P.W.3 is the wife of the deceased. She, although, supported her case in regard to the assault but admitted that her husband had died at the Government hospital whereafter the police took them to Sangli hospital. She is said to be an injured witness but failed to identify the weapons of assault. It is of some interest to note that she had accepted that the police had tutored her in the morning of the day on which she deposed in the Court. According to her, the quarrel had been going on for 1½ hours and the people of the surrounding lands had seen the incident. She accepted that lathis and hammers are available in all the agricultural families. The weapons said to have been recovered were not found to be blood stained.

P.W.3 was the daughter of the deceased. She was examined on the same day when her mother was examined. Presumably they came to the court together. It is, therefore, difficult to accept that when her mother was tutored by the police, she was not. She stated that she had been watching and counting as to how many beatings were made by each of the accused, which is difficult to accept. According to her the police recorded her statement at her house after a period of 2 to 3 months of the incident. If that be so, her testimony cannot be relied upon.

P.W.5-Kusumawwa, is the wife of P.W.2. She was also examined in court on the same day. According to her, on hearing her cry for help, C.Ws. 11 and 12, who examined themselves as P.W.14 and P.W.15, came at the spot and on seeing them the accused persons went away in a bullock cart. According to her, the police came at 7.00 a.m. on the next day and conducted a spot Mahazar. She also stated that she had boarded a jeep from the outskirts of the village, wherefor she had to go on foot to the said place. She had, allegedly, paid a sum of Rs.3/- by way of fare. Strangely, no complaint had been lodged at her instance. According to her, she did not know the residents of the village, although, she was a native thereof.

P.W.7-Kareppa Maruti Kallur, was the Officer attached to Athani Police Station. Even he was not sure when the First Information Report was lodged. There are materials to show that it was recorded on 17th December, 1997, but he corrected the same that it was lodged on 16th December.

According to the prosecution, all the accused persons were found present in the village in a temple chit-chatting, wherefrom they were arrested. P.W.11 is the P.S.I., to whom P.W.5 made an oral statement that her in-laws had been assaulted. It was reported at 3.45 p.m. The deceased expired at 5.15 p.m. According to him, the statement of P.W.2 was recorded in the Government hospital. It was noticed by the High Court that he was treated at Sangli hospital. He did not say who were the assailants. Why no statement was recorded even after the police officer came to the spot, has not been disclosed. There is nothing to show that there has been a requisition to send the injured for further treatment to the Sangli hospital. P.Ws. 14 and 15, who were independent witnesses, did not support the case of the prosecution. They were declared hostile. Some suggestions only were put to them. They were not confronted with their earlier statement. P.W.17 is the Investing Officer. He accepted that the land in question did not belong to the deceased and according to him possession of the land was with the Government. He accepted habitation about 30 to 40 yards away from the place.

The doctor, who had prepared the injury report of P.W.2, was not a radiologist. X-rays of the injured were taken by some other radiologist, who had not been examined. The learned Trial Judge noticed that the post-mortem report was issued on 18.12.1997. X-ray reports had not been proved by the prosecution in accordance with law. It was also noticed by the learned Trial Judge that the Medical Officer had made a note in his letter referring the injured persons to General Hospital, Sangli. It was stated : "Please issue the final injury certificate to the Police and patient."

If the accused No.1 was not in possession of the lands in question, according to the learned Trial Judge, it would give rise to a doubt as to whether the genesis of the occurrence was correct. He has furthermore noticed that the independent witnesses, i.e., P.Ws. 14 and 15, although arrived at the spot, did not support the prosecution case, whereas according to P.Ws. 2 to 5, nobody had come and they did not meet anybody. As there were 30 to 40 houses nearby, it is improbable that nobody came to the place of occurrence. The learned trial judge furthermore noticed that there had been a serious inconsistency in the report of Investigation Officer to the effect that there was no house near the occurrence place, whereas according to P.Ws. 2 to 5 agricultural lands are surrounded by houses. Neither the prosecution has brought on record any material to show that there was a 5th person involved in crime and an iron bar was used. The presence of the 5th person and use of iron bar in causing injury, which was recorded by the doctor, the learned Judge has opined, was not explained by the prosecution. Even the requisition had not been proved. P.W.18, the doctor of Sangli Hospital did not produce the requisition addressed by P.W.1, who referred the injured persons to the said Hospital. He was known to the police as he had been involved in criminal cases from 1990. The prosecution has not

proved to show that accused No.1 did not own any cart or oxen and had borrowed bullocks from accused No.4, except the statement of P.W.2.

Mahazar report was also not legally proved. The learned Sessions Judge summed up his findings, stating :

".....To sum up this court holds that the evidence of P.Ws. 2 to 5 do not inspire confidence in this court to come to a conclusion that they are speaking truth before the court. The case of the prosecution found in Ex.P.7 ROR fortifies the view taken by this court. So this court is of considered view that the prosecution has failed to prove the charges framed against the accused. The contention of the learned Public Prosecutor that the evidence is sufficient to convict the accused is rejected. The contention of the advocate for the accused that a case which is fabricated is accepted, so this court holds that the accused are entitled for acquittal."

We have noticed hereinbefore that the High Court has taken a contrary view. Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible. Appellant had no axe to grind. The prosecution had not proved that he had any motive. He was only said to be the friend of accused No.1. If the accused had gone there with six others to assault the deceased and his family members, it is unlikely that appellant would take with him for the said purpose, a hammer to an agricultural field. The hammer is not ordinarily used for agricultural operations. Even if we assume that accused No.1 had been nurturing any grudge against the deceased, it is unlikely that Appellant would be involved therein.

For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained. It is set aside accordingly. The appeal is allowed. The appellant shall be set at liberty forthwith unless he is required in any other case.