

CASE NO.:  
Appeal (crl.) 282 of 1995

PETITIONER:  
STATE OF KARNATAKA

RESPONDENT:  
PANCHAKSHARI GURUPADAYYA HIRAMATH

DATE OF JUDGMENT: 20/12/2002

BENCH:  
S. RAJENDRA BABU & P. VENKATARAMA REDDI

JUDGMENT:  
JUDGMENT

2002 Supp(5) SCR 705

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. The deceased Shankaraiah Hiremath, who was working as DSP, had succumbed to the incised injuries inflicted on him by a cutting weapon on the night of 25.4.1993 in his native village of Ugarkhurd, Belgaum District. The respondent herein who is the brother's son of the deceased was charged under Section 302 IPC of the murder of Shankaraiah. The trial court convicted the accused-respondent mainly on the basis of the evidence of PW3 who, according to the prosecution, was in the company of the deceased while taking walk on the fateful night. On appeal filed by the accused, the High Court set aside the conviction and acquitted the accused, giving the benefit of doubt to the accused. That is why the State of Karnataka has filed the present appeal.

According to the prosecution, there was a dispute between the deceased and his brother regarding certain lands in the village and the dispute was settled. However, about 15 days prior to the incident the deceased sent for the accused who is his brother's son when he heard that he was alienating the land which fell to the share of his brother. In that context there was a quarrel between them. Two or three days later, when the deceased sent the labourers to remove the weeds on the said land the accused objected and turned them away. The deceased then went to the field along with his son and questioned the accused for doing so. There again, a quarrel ensued. The deceased was in the habit of going for a walk along with his friend Sadashiv PW 3 who was the Secretary of local Cooperative Society during night time and returning home by about 10.30 p.m. They used to sit on a 'katta' in Jain Basti and chit chat. On the crucial night i.e. 25.4.1993, as usual, the deceased and Sadashiv went for a walk but the deceased did not return till 10.30 p.m. PW1 who was waiting for his father was apprehensive of the safety of his father and he along with PW 4 went along the road to find his father. They noticed the deceased and PW3 on the road opposite to the house of Balu Gondali where there was an electric light. At that juncture, the accused came from another road suddenly and attacked the deceased with a sickle on several parts of his body. After the assault, the accused went away from the scene. PWs 1,3 and 4 carried the victim upto the house of one Shankar Joshi which is in the vicinity of the house of deceased and he was placed on the 'katta' of Shankar Joshi's house. Thereafter, he was taken in a jeep to the dispensary at Ugarkhurd. The doctor advised them to take the injured to a major hospital at Miraj. On the way to Miraj, the deceased succumbed to the injuries at about 0.30 hrs. Thereafter, a complaint was lodged at the police station at Kagwad by the son of deceased-P.W.I which led to investigation and filing of charge sheet. PW7 who held the post-mortem examination over the dead body found three incised injuries and one wound over the left little finger. The 4th injury proved to be fatal, according to PW7. The description of the injury is as follows:

"4. 7cm x 2 cm incised wound over the anterior aspect of the left ear and neck. Extending from superior aspect of pinna of ear downwards and medially involving external meatus upto below the angle of mandible deeply involving sternocleidomastoid muscle parotid gland, fascial nerve, internal jugular vein, external jugular vein carotid artery, Crophar with chopped out bone of angle of mandible and mastoid process of 1 cm long each."

The doctor opined that the cause of death was shock and haemorrhage caused due to the injury to left carotid vessels mentioned. The injury No.4 was serious in nature and sufficient to cause death. PW7 further stated that the injuries could have been caused by a sickle.

The learned trial Judge placed heavy reliance on the evidence of PW 3. However, the trial Court disbelieved the version of PWs 1 and 4 who claimed to be eye-witnesses to the incident. The learned trial Judge also disbelieved the discovery of sickle at the instance of the accused and the seizure of blood stained clothes of the deceased. The High Court while agreeing with the trial Court that the version of PWs 1 and 4 cannot be accepted, doubted the version of PW 3 on the ground that prosecution has not explained certain important aspects of the case. We shall now proceed to discuss whether the lacunae pointed out by the High Court are fatal to the prosecution case.

1. It transpires from the evidence of PW 3 and 9 (Panch witness) that there were blood stained marks at three or four places on the walls of Wagwade's and Tammanapathar's houses which are close to the scene of offence. The prosecution has not explained as to how these blood stained marks were found on the walls of the said houses. The High Court commented "it is not the case of the prosecution that the deceased swayed for some time on those two walls nor is the case of the prosecution that anybody who held the deceased were responsible for causing those marks. If this material is taken into account the version of eye-witness becomes doubtful."

In our view, the doubt entertained by the High Court in this behalf is not a reasonable doubt but a far fetched one. As the scene of offence as well as the house of Shankar Joshi where the victim's body was laid was too close to the said houses, there was every possibility of someone who touched or carried the deceased coming into contact with blood and thereafter touching the walls. From the mere fact that no one was able to pinpoint the particular person who rubbed his hands on the adjacent walls, it cannot be inferred that the entire prosecution case falls to the ground. In fact it is PW 3-the independent witness who showed the blood stained marks on the walls of Wagwade's and Thamanapatta's houses to the investigating officer. If PW 3 wanted to give a distorted version of the incident, he would have refrained from showing those blood stained marks to the police officers. In any case, the mere existence of few blood marks on the walls in close proximity to the scene of offence does not demolish the prosecution case.

2. Another aspect which according to the High Court casts a doubt on the prosecution case is the alleged existence of two complaints, one recorded by sub-Inspector of Police (PW 18) and the other a written complaint handed over by PW 1 to PW 18. On this aspect the High Court referred to the evidence of PW 4 who accompanied PW 1 to the police station to the effect that PW 1 narrated the incident to the PSI who started recording the same for about 15 minutes, whereas according to PW 18, he only received a written complaint (Ex.PI) from PW1. The said complaint which runs into six pages was written and signed by PW I himself as seen from his deposition. On that basis, the FIR was recorded. The sub-inspector of police PW 18 clarified that PW 1 did not lodge any oral complaint but he gave a written complaint and the same was written in the police station. He further stated that he was not present in the police station when the complaint was being written but PW 1 told him that it was written in the police station. True,

there is variation in the version given by PW 4 and PW 18 to some extent PW 4 deposed that he saw PW 18 recording the facts that were being stated by PW 1 for about 15 minutes and then he came out of the police station. He further deposed that PW 1 was in the police station till 4 A.M., that is to say for nearly two hours. However, from the deposition of PW 4, it does not follow nor can it be reasonably inferred that in the first instance, PW1 gave a different version of the incident to the police officer. It may be that in the first instance PW1 would have narrated the details of incident to PW 18 and he would have started noting the same for some time but that does not necessarily mean that there were two complaints. PW 4 was not in the company of PW 1 throughout. But, he was there only for a few minutes. It is not within his knowledge as to what happened thereafter. The fact remains and it is beyond dispute that the report was drafted by PW 1 himself and handed over to the PSI (PW 18) and there was sufficient time for him to write the report in the police station. It is not possible to infer from the deposition of PW 4 that the first report was withheld and another report with a different version was made out.

3. Another reason given by the High Court is that the discovery of M.O.3-sickle on the basis of the statement said to' have been made by the accused under Section 27 of the Evidence Act, cannot be relied upon for the reason that mere marking of the statement without mentioning the words stated by the accused will not satisfy the requirement of Section 27. Even the trial Court was not prepared to believe that the accused made a statement that he would point out the sickle and then led the witnesses to the place where it was allegedly hidden. The non-discovery of the weapon-sickle, in our view, does not go to discredit the evidence of PW 3.

We have gone through the deposition of PW 3, who is an independent witness. He would not like to involve the brother of the deceased wantonly. There are no material contradictions or inherent improbabilities in the evidence of PW 3. The trial court had rightly believed the evidence, but, the High Court was not inclined to place reliance on his evidence mainly in the light of two doubtful features pointed out by the High Court. We, have already adverted to them and come to the inevitable conclusion that they do not obliterate the clear account of the eye-witness, namely, PW 3. The judgment under appeal cannot, therefore, be sustained.

In the result the appeal is allowed setting aside the order of the High Court and by confirming the conviction and sentence recorded by the trial Court. The respondent shall be taken into custody to undergo the remaining period of sentence.