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ITEM No.101 COURT NO.5 SECTION II

S U P R E M E   C O U R T   O F   I N D I A
RECORD OF PROCEEDINGS

Crl.A.No. 1188/98

Babu & Ors. Appellants

VERSUS

State of Karnataka Respondent

(With appln. for permission to place addl.documents on record)

Date :28.11.2000. This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.T.THOMAS
HON'BLE MR. JUSTICE R.P.SETHI

For Appellant (s) Mr. K.Rajendra Chaudhary,Sr.Adv
Mr. Rakesh K. Sharma,adv.

For Respondent (s)
Mr. Sanjay R. Hegde,adv.
Mr.Satya Mitra,adv.

UPON hearing counsel Court made the following
ORDER

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.SP2
Hearing concluded.
The Appeal is disposed of.

.SP1

(Suman Wadhwa) (H.K.Bhatia)
PA to Addl.Regr. Court Master

Signed order is placed on the file.

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.PL55
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1188 OF 1998@@
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Babu & Ors. ... Appellants

vs.

State of Karnataka ... Respondent

ORDER@@
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Three appellants before us were arrayed alongwith two more additional accused before the Sessions Court for facing a charge of murder of one Lokesh on the night of 26.7.1993. The trial court acquitted all the five accused arrayed before it. When the State filed an appeal against all of them a Division Bench of the High Court confirmed the acquittal in favour of fourth and fifth persons arrayed, but reversed the order of acquittal as against the present three appellants who were ranked A1 to A3 respectively in the trial court. The Division Bench convicted them under Sec.302 and 341 read with Sec.34 of the Indian Penal Code and sentenced each of them to undergo rigourous imprisonment for life in respect of the principal offence. Hence they preferred this appeal as of right.

Lokesh was a tailor by profession. He was running a tailoring mart at Pandavapura (VN Mandya District, Karnataka). He fell in love with one Prabhavathi (PW.2). The love affair reached flash point and both of them contemplated solemnisation of marriage between them. (A.1-Babu and A.2-Sundra are the maternal uncles of Prabhavathi. A.3 Vasu is brother of Prabhavathi.) Those appellants did not approve the idea of Lokesh, a tailor marrying their niece Prabhavathi. But by-passing all the objections of the appellants Prabhavathi eloped with Lokesh on 9.5.1993 and got the marriage solemnised as between them at a place called Dharamsthala. On coming to know of this marriage the ire of the appellants towards the deceased became more aggravated. This is said to be the motive for the appellants to plan for the murder of the deceased.

The incident of murder happened, according to the prosecution, in the following manner: Just before deceased closed down his tailoring mart on the evening of 26.7.1993 his friends PW.1 - Mahalingam and PW.3 - Kumareshan visited the shop and had a chitchat with the deceased. After the shop was closed all the three set

out to reach home. When they reached the place of occurrence they were confronted by the just appellant (A.1-Babu) who came from the opposite side. On seeing the deceased, first accused Babu took out a knife and inflicted a stab injury on his abdomen. Suddenly, the assailant was caught hold by PW.3 - Kumareshan. At this stage A.2-Sundra and A.3-Vasu reached the spot and they caught PW.3 presumably for attempting to free their associate A.1 from the grip of PW.3. A.1-Babu extricated himself from the clutches of PW.3. In the meanwhile the deceased, having sustained a minor injury on his abdomen, started running away but he was chased by A.1 Babu and succeeded in catching him and stabbed him on the chest with a knife. It was a fatal blow. With that injury the deceased fell down. A.1-Babu then ran away from the scene followed by the other two

appellants.

Lokesh was then removed to the nearby hospital, but he succumbed to his injuries on the same night. At about 10.00 p.m. PW.1 lodged an F.I.R. with the Police Station. Investigation was taken up by PW.18-K.Sannegowda and appellants were arrested on 2.8.1993, and after completing it five persons were charge-sheeted including the appellants.

-4-

Though many witnesses were examined by the prosecution we are only concerned with two eye witnesses who are PW.1-Mahalingam and Pw.3-Kumareshan. We have narrated the prosecution story spoken to by those two witnesses. Even on a cursory look at the fabric of the prosecution story we find it extremely difficult to sustain the conviction of A.2-Sundra and A.3-Vasu with the help of Sec.34 of the IPC. The only role attributed to them is this:

They arrived at the scene at a time when A.1 was being caught hold of by PW.3. By then A.1 had already inflicted one stab injury on the deceased. A.2 and A.2 separated PW.3 and A.1 from each other, and thereafter A.1 alone chased the deceased. There is no indication any where in evidence that the chase was made on the instigation of the other two accused or that they did anything to facilitate the further acts committed by A.1.

An order of acquittal made by the trial court in favour of A.2 and A.3 has been reversed merely on the above role ascribed to them by the prosecution. Its hard consequence was that those two were convicted of

-5-

the offence under Sec.302 with the aid of Sec.34 of the IPC. No court could have possibly convicted those two accused on the fact situation in this case. We are distressed that the conviction against them was passed in such a situation by reversing the acquittal ordered by the trial court.

But the position regarding A.1-Babu is totally different. The role attributed to him is very serious. At the sight of the deceased, A.1 whipped out his knife and inflicted a stab injury on the stomach and later when A.1 was freed from the clutches of PW.3, he chased the running away deceased and intercepted him and again stabbed him, this time the assailant inflicted the fatal stab on him. If this version of the prosecution is true then A.1 cannot possibly escape from the conviction for the offence under Sec.302 of IPC.

The above version had been spoken to by PW.1 and PW.3 with all the vivid details. They were cross-examined at length in the trial court. The Sessions Judge expressed the comment that they were highly interested witnesses and hence their evidence was not reliable. In what manner they are interested as against the accused in the case is not understandable to

-6-

us. If their friendship with the deceased was taken as the ground for being dubbed as interested witness, we cannot approve the same. Their friendship with the deceased was the cause of their presence at the shop of the deceased on the night. That apart, it was not shown by the defence as to what interest those two witnesses had for bringing the appellants to conviction in this case. Hence the remark made by the trial court that those two witnesses were interested witnesses has to be disapproved.

Another reason highlighted by the Sessions Judge was this: According to PW.3 Kumreshan when deceased was brought to the hospital police reached the hospital and he saw PW.1 making a statement to the police. Learned Sessions Judge pointed out that if that be so the FIR recorded at 10.00 p.m. on the same night at the police station at the instance of PW.1 should be looked upon with suspicion. The above reasoning of the Sessions Judge is unworthy of any merit. Even if PW.3 had seen some policemen at the hospital that need not be a sequal to the police receiving any information about the case.

Police an go to the Government hospital for a variety of reasons and even if PW.1 talked to one of them how could that be a reason for holding that FIR would not have been lodged at the police station before the Station House Officer? We have no doubt that the High Court has correctly dissented f rom the above reasoning.

The third reasoning advanced by the Sessions Judge, for, jettisoning the testimony of the two eye witnesses is that PW.12-Doctor (who conducted the autopsy) noted semi-digested food materials in the stomach of the dead body. Why should those two eye witnesses be disbelieved if the deceased had taken some food before those two witnesses reached his tailoring mart? The time for evacuation of fully digested food materials from the stomach into the small intestine would vary from person to person and also depending upon food materials consumed, apart from many other gastrological factors. The mere fact that semi-digested food materials were found in the stomach of the deceased cannot rule out the possibility of the deceased taking food before the arrival of PW.1 and 2 at the tailoring mart. Even that apart, what is there to show that they

would not have taken some food when they were in the tailoring mart itself, or that the deceased alone would have taken it during that time. Whatever that be, the reasoning built up on the strength of presence of semi-digested food materials in the stomach of the deceased is too fragile for the Sessions Court to reject the testimony of two eye witnesses.

The last attempt made by Mr. K.Rajendra Chaudhary, learned senior counsel for the appellants to cast some doubt on the testimony of those two witnesses was by suggesting that deceased would have carried with him the money collected during the day and the key of

the shop but those were not found with the deceased at the time of the incident. We are not impressed by the said contention also. Firstly, no question had been put to PW.2-Prabhavathi as to the practice which deceased might have been following while returning home. Secondly there is no reliable material to show that deceased had not possessed those two things at the time of the occurrence. Hence the above argument is too insufficient for us to throw the testimony of the two eye witnesses overboard.

The above discussion would lead us to the conclusion that the High Court has meritoriously interfered with the order of acquittal passed on the first accused and convicted him of the offence under Sec.302 IPC.

In the result we allow this appeal in favour of A.2-Sundra and A.3-Vasu and set aside the conviction and sentence passed on them and we acquit them and direct them to be released forthwith from the jail unless they are required in any other case. However we confirm the conviction and sentence passed on A.1 and dismiss the appeal as against him. This appeal is disposed of accordingly.

.SP1

.........................J.
(K.T. Thomas)

New Delhi;
November 28, 2000.

........................J.
(R.P.Sethi)