

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 532 OF 2012

NARAYANA REDDY @ BABU

... Appellant

VERSUS

STATE OF KARNATAKA

... Respondent

O R D E R

Six persons were implicated in a trial for murder of one Govind Reddy. A complaint to this effect was lodged with the Koramangala Police Station by Srinivasa @ Raja (PW-1) on 12.04.1999 at about 10 P.M. stating that the Accused No. 1 (who is the appellant before us in this appeal) had stabbed Govind Reddy with knife (M.O.7) after 8.30 p.m. between 9.15 p.m. and 9.30 p.m. FIR to this effect was registered. In his later statements, PW-1 named Accused Nos. 2 to 6 also, who are the relatives of the appellant. The matter was investigated into and ultimately chargesheet was filed for offences punishable under Sections 143, 144, 145, 147, 148 and 302 read with Section 149 of the Indian Penal Code (IPC) against all the six accused persons.

Eight witnesses were examined by the prosecution. PW-1 and PW-2 (Prakash) claimed that they were the eye witnesses to the incident. PW-3 and PW-4 were Panch witnesses to the alleged recovery of the weapon. PW-5 was the junior engineer who had prepared the sketch by visiting along with the police

team to the place of occurrence where dead body of the deceased was found and recovered. PW-6 is the wife of the deceased. She is not an eye-witness but stated that she had come to the spot after she was informed about the murder of her husband by PW-1. PW-7 is the Doctor who had conducted the post mortem examination. PW-8 is the police officer who prepared the investigation report though he was not the investigating officer, as the investigating officer had died in the meantime. After the conclusion of the trial, statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein they denied the charges or evidence against them stating that the witnesses PW-1 and PW-2 had deposed falsely in the court.

After hearing the arguments, the trial court acquitted accused Nos. 3, 5 and 6 of all the charges framed but convicted accused Nos. 1 and 2 for the offence punishable under Section 302 read with Section 34 IPC and acquitted them of other charges. Accused No. 4 had died during the trial and, therefore, the trial against him has abated.

Being aggrieved by the judgment of the trial court, Accused Nos. 1 and 2 filed appeal before the High Court. The High Court vide its judgment dated 25.03.2010 acquitted Accused No. 2 and dismissed the appeal of the appellant herein. The appellant challenged the said verdict of the High Court by filing special leave petition in this Court being SLP(Criminal) No. 4721 of 2001 in which leave was

granted and it was converted into Criminal Appeal No. 2235/2011. This appeal was decided by this Court on 29.11.2010 by remitting the matter to the High Court for fresh consideration. In the meantime, the appellant was ordered to be released on bail. After the remittal of the case to the High Court, the High Court heard the same afresh and has maintained its earlier decision inasmuch as the appeal of the appellant was again dismissed by the High Court vide judgment dated 16.06.2011. It is this judgment which is impugned in the present appeal.

To state the case of the prosecution in brief, Accused No. 4 who died during the trial was the landlord of plot bearing Sy. No. 116/8 of erstwhile Koramangala Village in Bangalore City. Accused No. 4 and Accused No. 5 are the full brothers. The Bangalore Development Authority acquired the above land for the development of Bangalore City. There was a public road to the north of the said property. Accused No.4 and Accused No. 5 alleged to have erected a compound and encroached upon the said public road. PW-1 (Srinivasa@Raja) and others filed a petition before the Revenue Assistant Commissioner and got it demolished. Accused No. 4 filed civil suits before the City Civil Court, Bangalore City against PW-1 and others which are stil pending for adjudication before the respective Civil Courts. In spite of it, there were petty quarrels between the two groups in connection with the said path way as Accused No.4 used to

block the road by tying the cattle over the said road.

It was alleged that on 12.04.1999 at about 8.30 p.m., PW-1 was called by the deceased over telephone to lay a stone slab over the gutter in front of his house adjacent to the disputed road to enable him to take his two wheeler. Accordingly, PW-1 and the deceased have together laid a stone slab over the gutter. In the meanwhile, Accused No. 5 and 6 who were residing right opposite to the road came and asked PW-1 to remove the slab as it is not a public road and the same is their own property. They also abused PW-1 and the deceased in filthy language and threatened them with dire consequences. At this juncture, Accused No. 4 and his sons (Accused Nos. 1,2 and 3) came to the spot armed with deadly weapons like clubs, chopper and long, formed into an unlawful assembly and proclaimed to kill them if anybody dare to come forward.

It was alleged that PW-1 got scared and told the deceased to lodge complaint to the police. Both of them started proceeding in front of the house of Papaiah Reddy to go to the police station. The deceased was going ahead of PW-1 about 20 feet. While so proceeding, PW-1 slowed down to make a phone call to his another uncle by name Surendra Reddy about the incident. By then, the deceased started screaming calling 'Raja, Raja'. In turn, PW-1 turned back and saw Accused No. 1 assaulting the deceased with a long on his hand and abdomen. The deceased sustained bleeding injuries and

slumped on the mud road in front of the house of James Nirmal Raj. None came to the rescue of the deceased. There was severe bleeding from his stomach. Immediately, PW-1 ran towards the house of the deceased to inform the wife of the deceased. PW-1 returned to the place of assault with others and found Govind Reddy breathed his last. Thereafter, all of them went to the police station and PW-1 lodged the complaint to the police as per Ex.P-1 on 12.04.1999 at 10 p.m. against the four accused person and other including the petitioner for the offence under Sections 143, 144, 145, 147, 148, 302 read with Section 149 IPC.

It was alleged that PW-1 asserts in his complaint that the incident had taken place on 12.04.1999 between 9.15 p.m. and 9.30 p.m. and the motive for the commission of the offence was in connection with the civil disputes between the deceased and Accused No. 4.

From the aforesaid narration of the facts, how the trial proceeded and culminated into the conviction and thereafter from the results of the appeals, it is clear that out of the six accused persons, one died and other four stood acquitted. It is only the appellant who is convicted for committing the offence under Section 302 IPC. It may also be mentioned at this stage itself that though PW-2 (he is brother of PW-1) also deposed to the effect that he was an eye witness to the incident, the High Court disbelieved his testimony and discarded the same as unworthy of any credit.

It means that he is not considered as an eye witness to the incident. It may also be pertinent to mention at this stage itself that though the weapon of the crime, i.e., long knife (M.O.7) was allegedly recovered on the basis of disclosure statement made by the appellant, that discovery is also not believed by the courts below. The conviction against the appellant, thus, is recorded primarily on the basis of testimony of PW-1 who is believed to be the eye witness of the incident and the courts have gone by the proposition that once his testimony is to be believed, this ocular evidence may be singular now, which is sufficient to convict the appellant.

In view of the aforesaid circumstances, the endeavor of Mr. R. Basanth, learned senior counsel appearing for the appellant, was that no credence could have been given to the testimony of even PW-1 and there were various circumstances to show that he had deposed falsely and had implicated not only the appellant but his entire family out of vengeance or because of suspicion nurtured by him having regard to some previous animosity between the parties because of some civil disputes pending between the parties. In this behalf, he pointed out the following circumstances which according to him were sufficient to doubt the creditworthiness of PW1.

- (1) PW-1 claimed that he was the eye-witness to the incident and he had implicated not only the appellant but Accused Nos. 2 to 6 as well. His

version qua Accused Nos. 2 to 6 has not been believed by the courts below holding that these accused were falsely implicated. Mr. Basanth, learned senior counsel for the appellant, submitted that under the given circumstances, the testimony of the particular witness can be partly believed but the aforesaid circumstances, coupled with other circumstances, would show that the intention of PW-1 was to falsely implicate not only the appellant but his other family members also.

- (2) In taking this argument further, Mr. Basanth pointed out that PW-2 who was the brother of PW-1 was introduced as eye-witness and this attempt of the prosecution stood exposed as the testimony of PW-2 could not stand after he was cross examined and, therefore, even the courts disbelieved him.
- (3) There was a clear motive to implicate the appellant because of previous civil disputes between the parties which was accepted by PW-1 himself in cross examination.
- (4) Another very significant circumstance which was pointed out by Mr. Basanth was the evidence of the Doctor (PW-7) who had conducted the post mortem examination. The learned senior counsel pointed out that as per the prosecution, the appellant had

struck the deceased with a long knife (M.O.7) which according to PW-1 was in the hands of the appellant. In his statement, he very categorically stated that he had seen the said knife in the hands of the appellant with which he had stabbed the deceased. On the other hand, the Doctor in his deposition had categorically opined that the stab and incised wounds shown in the post mortem report cannot be caused by M.O.7 long knife.

- (5) It was pointed out that the aforesaid statement of PW-7 was recorded on 22.07.2005 and immediately after the aforesaid statement, further examination-in-chief of PW-7 was deferred at the request of the public prosecutor. He was, thereafter, recalled for further examination on 19.08.2005. However, even on that date, PW-7 categorically reiterated that the injuries mentioned in the post mortem report cannot be caused by M.O.7 long knife. The statement in this behalf along with opinion or other incidental aspect is as under:

"It is true that M.O.7 has got flat tip. It is true that the cutting edge of M.O.7 is not sharp. It is true that the width of the weapon is 4 cms. The injuries mentioned in P.M. report can not be caused by M.O.7. It is true that except injury No. 1, 4 and 12 other injuries are piercing injuries as it has no pointed tip, since it has

got flat tip it cannot pierce the skin of the body. The injuries mentioned in the P.M. report cannot be caused by M.O. 9 and 10 (clubs). It is true that M.O.s 9 and 10 are heavy blunt objects.

(6) The incident occurred, as per PW-1, after 8.30 p.m. PW-1 accepted that the police station is hardly at a distance of 100 feet which is a 2 minutes walk. PW-1 further stated that immediately after the incident, he had gone to the house of the deceased where he informed PW-6 (wife of the deceased) about the incident and thereafter he went to the police station. However, the FIR was lodged only at 10 p.m. It was thus argued that there was sufficient time for PW-1 between the incident and the lodging of the report to cook up the story and during this period, he tried to rope in accused persons.

(7) It was also argued by Mr. Basanth that since the time of the incident was after 8.30 p.m., it was night/dark. According to him, there was no light and from distance, PW-1 could not have seen/identified the appellant. He submitted that though PW-1 tried to explain that he could see the accused persons as there was street light but, on the other hand, Junior Engineer (PW-5) who had prepared the sketch of the site and which is produced as Exhibit P6 does not show any lamppost

in that area. From this, it is sought to be argued that PW-1 was not narrating the facts correctly.

- (8) Another very significant aspect which needs to be noted, as pointed out by the learned senior counsel, was that when PW-1 rushed towards the house of the deceased and informed PW-6 about the incident, he stated that 'somebody had killed the deceased'. He did not name the accused persons. This was admitted by PW-6 in her statement. Further PW-1 himself stated in his deposition that when he went to the police station, there was Head Constable and he had told the Head Constable that 'somebody had killed the deceased' and did not name the accused persons. It is further stated that the Head Constable did not record his statement. Submission of Mr. Basanth was that all the aforesaid circumstances were pressed into service only to demonstrate that the testimony of PW-1 was not believable.

We find sufficient force and merit in these submissions of the learned senior counsel. As already pointed out above, the conviction is recorded on the basis of the testimony of PW-1. To recapitulate in brief the significant circumstances which are explained by Mr. Basanth, it is a case where the

incident happened after 8.30 p.m., i.e., between 9.15 and 9.30 p.m. and there was dark in that area. The prosecution has not been able to establish that there was sufficient light in which PW-1 could see the persons who had attacked the deceased. It is possible that PW-1 reached the spot immediately after the incident but was not there at the time of incident or if he was at a distance, he could not see who were the persons who had attacked the deceased. This becomes clear from the fact that when he disclosed the information about the murder of deceased to the deceased's wife, he did not name anybody and on the contrary said that somebody had killed. This is what is repeated by PW-1 himself when he went to the police station and disclosed to the Head Constable present there about the incident. Thereafter in the complaint made to S.H.O. [Exhibit P-1], he mentioned the name of the appellant only. He improved upon the statement and in his subsequent statement, he implicated five more persons, i.e., Accused Nos. 2 to 6. The prosecution story and, in particular, the testimony of PW-1, is totally untrustworthy when we examine the medical evidence that is the post mortem report which is produced and the opinion of the doctor who conducted the said post mortem examination thereupon. He has categorically stated that the wounds and injuries on the person of the deceased could not have been inflicted by knife (M.O.7) whereas as per PW-1, the appellant was having M.O.7 knife in his hands with which he attacked.

In the chain of these loopholes, what becomes important is that though recovery of M.O.7 is done at the disclosure statement allegedly made by the appellant, that has not been proved at all and, therefore, the prosecution did not rely thereupon.

We, thus, find that the entire prosecution allegation is shrouded in mystery which does not inspire any confidence. Even PW-1 cannot be believed and it appears that either out of suspicion or out of vengeance PW-1 had implicated the appellant along with the other accused persons. It is, thus, a case where the alleged guilt of the appellant is not proved beyond reasonable doubt.

Resultantly, we allow this appeal and set aside the conviction of the appellant. He shall be released forthwith unless he is wanted in some other case.

....., J.
[A.K. SIKRI]

....., J.
[R.K. AGRAWAL]

New Delhi;
May 12, 2016.

ITEM NO.104

COURT NO.12

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 532/2012

NARAYANA REDDY @ BABU

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With appln. (s) for bail, suspension of sentence and office report)

Date : 12/05/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. R. Basanth, Sr. Adv.
Mr. Shekhar G. Devasa, Adv.
Mr. Manish Tiwari, Adv.
Mr. Dinesh Kumar Garg, Adv.
Mr. Karthik Ashok, Adv.

For Respondent(s) Mr. V. N. Raghupathy, Adv.
Mr. Parikshit P. Angadi, Adv.
Mr. Lagnesh Mishra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed and the conviction of the appellant is set aside in terms of the signed order.

He shall be released forthwith unless he is wanted in some other case.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master

[Signed order is placed on the file.]