

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2437 OF 2009

SURESHA

...Appellant

Vs.

STATE OF KARNATAKA

...Respondent

J U D G M E N T

Sanjay Kishan Kaul, J.

1. The appellant was charged with the murder of Lingappa Poojari (deceased) under Section 302 of the Indian Penal Code. The complainant is Sheshappa Poojari (PW-1) who lived in a house near to the house of the deceased, along with his wife Neelamma (PW-4) and his daughter Sumathi (PW-3). The deceased was the cousin brother of Neelamma (PW-4). The appellant was a native of another village, who was staying near the place of the incident and was engaged in the work of toddy tapping. The allegation against the appellant is that he endeavoured to establish a relationship with Sumathi, who was about nineteen years of age and was engaged in rolling beedi leaves to make beedis. In furtherance of his endeavour, he used to visit the residence of Sumathi, which was objected to both by her father and the deceased. It is alleged that on this very issue an altercation had

earlier taken place in which the appellant is alleged to have threatened the deceased.

2. The incident relates to 11.00 p.m. on 25th June, 1999 as once again the appellant is alleged to have come to the house of Sumathi. As per the complaint, verbal arguments got aggravated and when the family members intervened to stop the quarrel, the appellant is alleged to have threatened the deceased that he would kill him to stop the quarrel forever and is alleged to have taken out the Tarkatti strapped to his waist into his hand and stabbed the deceased on his shoulder, chest, back side and ribs, 5-6 times, resulting in his instant collapse and thereafter, death. The complainant claims to have witnessed this incident at 11.15 p.m. on the same day and the appellant is alleged to have fled away from the spot, holding the Tarkatti in his hand. On being taken to the government hospital, the deceased was declared dead.

3. The appellant in his Section 313 Cr.P.C. statement denied all imputations and again stated that he was sleeping in the night and heard the shouting. When he got up, he found the deceased had suffered injuries and was thereafter taken to the hospital. The police is alleged to have taken him to the police station later on, the next morning, and have lodged a false case against him.

4. We now turn to the evidence of the prosecution and note the important aspects of PW-1/complainant having turned hostile in his cross-examination. While the earlier part of the story relayed by him, of the interaction among the

parties, was supported by him in his cross-examination, but insofar as the incident in question is concerned, a different narrative took place. He has stated that on the fateful day, there was a small function at Babu Poojari's house which his wife had gone to attend, where dinner was being hosted for the villagers. She returned at about 11.00 p.m., after which they went to sleep, when he heard a roaring voice. He woke up his wife and daughter and found the roaring voice coming from near the jackfruit tree, where the body of the deceased was lying. The deceased was stated to be lying with no clothes on his body, but only wearing his underwear. PW-1 called out to his neighbour Gangadhar. He further stated on oath that the police had told him to depose as per the record, as otherwise he would be jailed. In the cross-examination, he also stated that the appellant had developed friendship with his daughter, but not with any bad intention. He also deposed to pressure being put on him by the brothers of PW-2, wife of the deceased, and thus he had deposed falsely due to the fear of the police, as well as the younger brother of PW-2.

5. The surprising part is that the prosecution did not declare him hostile, nor further cross-examined him. This remained a major infirmity in the prosecution story. It has been held that when a witness is not declared hostile by the public prosecutor, and Section 154 of the Evidence Act is not resorted to, subsequent testimony of such witness

remains uncontroverted<sup>1</sup>.

6. We would also like to turn to the depositions of PW-2, PW-3 and PW-4 to test the proposition that even if the testimony of PW-1 was discarded, a consistent story has been made out as per the despositions of the three other eye witnesses. Unfortunately that is not the case.

7. In the cross-examination of PW-2, she refers to the fact that she and the deceased did not have any children and that the deceased was interested in another marriage, to have children, but she was not interested. She however denied the suggestion that her husband wanted to marry Sumathi, though she concedes that the villagers were telling her that her deceased husband was desirous of marrying Sumathi. On the incident, she has stated Sumathi was still talking to the appellant and she (PW-2) was busy rolling beedis when the deceased came to the courtyard. Before the brawl started, the appellant was stated to be going ahead to the courtyard, with the deceased following him and the deceased continued to do so though he was asked to come back home by PW-2. Once the accused came to the courtyard, many blows are stated to have been inflicted on the deceased there itself when PW-1, PW-3 and PW-4 started shouting along with PW-2. She further states "my husband fell down there itself". It is also her deposition, in her cross-examination that when the brawl started, she asked Gangadhar for help, but he came only after the stabbing had taken

1. K.Anbazghan v. Supdt. of Police, (2004) 3 SCC 767

place. She further deposes that the deceased died fifteen minutes after infliction of the stab blows and that she had given water to her husband, though he spoke nothing. The Circle Inspector is stated to have come at 3 o'clock in the morning and enquired from her.

8. PW-3, Sumathi, apparently was receiving the attention of the deceased, and the allegation is, also, of the accused. She has deposed that a quarrel took place between the deceased and the accused under the "jackfruit tree". PW-2, PW-3 and her parents, PW-1 and PW-4 are stated to have followed them from the house. Near the jackfruit tree, the appellant is alleged to have taken out his sickle and stabbed the deceased 5-6 times, where the deceased fell down. Thus, in the examination-in-chief itself, there is inconsistency about the place of the incident and what transpired. In her cross-examination, she states that her father PW-1 had been intimidated by the younger brother of PW-2. She disowns any friendship with the appellant and further claims that neither PW-1, nor PW-4 had ever told her not to speak with the appellant. In the very next sentence she states to the contrary. She asserts that the deceased had an amicable relationship with her, as well as with her parents, and that whenever an opportunity arose, the deceased used to speak to her in the afternoon, evening and in the night. On the specific night of the incident, she claims that she was rolling beedis when the appellant came to her house and started talking to her from the courtyard,

without entering the house. The deceased arrived in the meantime and there was a quarrel between the appellant and the deceased but "initially nobody fell down". She deposes: "neither myself nor my father went outside". She further states that her mother's (PW-4) clothes got blood stains when the deceased suffered injuries. When the appellant came to the courtyard of their house, she also states that the sickle possessed by him was not visible. Even when the altercation was going on, it is her statement that she did not see the sickle with the appellant, and that no altercation occurred in the courtyard.

9. PW-4, the mother of Sumathi (PW-3), refers to the altercation, hearing loud shouting and subsequently running behind the accused and deceased. She claims to have seen the deceased lying on the ground and the appellant fleeing away. In her cross-examination, she has stated that, in the course of the brawl, both the accused and the deceased, ran away from the courtyard and they (PW-1, PW-2, PW-3 and PW-4) ran after them, with PW-1 first running after them, then PW-2, then her daughter and then she herself.

10. We have extracted from the depositions of these three witnesses only to point out the inconsistent stories of all of them, casting further doubt on the narrative as given by the prosecution.

11. PW-4 has deposed that in the course of the brawl, while these people were running away, she could not run and she was the last to reach the site, and that the appellant

was stabbing the deceased on the waist, with the first hit given on the lower portion of the right abdomen and the second blow inflicted on the left shoulder. Thus, while on the one hand during her examination she states that she saw the deceased lying there, on the other hand, during her cross-examination she states she saw those blows being inflicted on the waist. PW-3, on the other hand, stated that the first blow was inflicted on the right shoulder, when the deceased fell down.

12. These are the aforesaid inconsistencies which resulted in the Trial Court giving benefit of doubt to the appellant, and consequently acquitting him in terms of the judgment dated 16<sup>th</sup> September, 2000. PW-17 and PW-18 have deposed to the recovery of the weapon and blood stained clothes of the accused, which is stated to have happened at the behest of the appellant, with the blood group matching. This is an aspect emphasized by learned counsel for the respondent, and we would like to take note of the manner in which the Trial Court dealt with this aspect. The recovery has itself been found to be doubtful in terms of paragraph 26 of the judgment of the Trial Court, which reads as under:

"The theory of arrest as stated by the prosecution has been falsified by PW-1 Seshappa Poojary who has stated in his evidence that when the police had come on the next day for the panchnama of the place of incident the accused was present and he has shown the place to the Circle Inspector of Police. It becomes clear from this

that the accused was very much available on the next day afternoon at the place of incident when the I.O. had come for panchnama. This shows that the accused was arrested on 27.06.1999 cannot be accepted and the recovery about the properties at the instance of accused also throws doubt about the same."

13. The prosecution filed an appeal against the Trial Court order before the High Court, and in terms of the impugned judgment of the High Court, the appellant has been convicted of a lesser offence, punishable under Section 304 Part-I of the IPC and sentenced to undergo imprisonment for a period of five years and also to pay a fine of Rs.5,000/-. The view of the High Court is that so long as direct evidence of the eye witnesses can be believed, even if the recovery of incriminating articles had not taken place, including the weapon of offence, it would make no difference. Credence is sought to be given to the testimonies of PW-3 and PW-4, but in our view, without analyzing the inconsistencies in their versions.

14. We have given our thought to the submissions of the learned counsel for the parties, and taken note of the aforesaid evidence on record.

15. We must also take note of the fact that we are dealing with the case where the Trial Court has acquitted the accused-appellant and the High Court has reversed the acquittal. If the view taken by the Trial Court was a possible view, then, in our view, there would have been no

occasion for the High Court to reverse the judgment of acquittal. Thus, if the Trial Court takes a reasonable view, interference by the Appellate Court is not justifiable unless there are really strong reasons for reversing the view<sup>2</sup>.

16. If we analyse this issue in the aforesaid conspectus, we are faced with the following important facts:

(i) PW-1's testimony, as the complaint, is the first story given to the police. He deposes in the same manner in his examination in chief, but completely turns turtle in the cross-examination. His deposition in the cross-examination was that he is not even an eye witness to the incident, but was actually sleeping along with his wife and daughter and only rushed to the spot on hearing shouts. He further deposed in his cross-examination to both the police and the brothers of the wife of the deceased putting pressure on him. The prosecution did not even deem it appropriate to get him declared hostile, or cross-examine him, a fundamental infirmity.

(ii) If the testimonies of PW-2, PW-3 and PW-4 are considered, even if the testimony of PW-1 is ignored, we find, as discussed above, different versions emerging about the place of the incident and as to what actually transpired. There is a grave doubt that these three persons were actually eye witnesses to the incident. We are not

2. Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217  
Ghurey Lal v. State of U.P., (2008) 10 SCC 450

ignoring the submission of the learned counsel for the appellant that the prosecution, having failed to declare PW-1 hostile, it is not as if the portion of his testimony where he turned hostile can be ignored, and it must be correlatable to the testimonies of PW-2 and PW-4. On that account, in any case, the testimonies fall apart, from what we have recorded aforesaid.

17. The aforesaid evidence does not give us confidence that the prosecution has been able to prove the case of the appellant beyond reasonable doubt, a view which has found favour with the Trial Court. That being the position, it can hardly be expected that we accept the impugned judgment which actually reverses the acquittal by the Trial Court. The view taken by the Trial Court is a plausible view and hardly calls for interference. In view of the aforesaid facts and circumstances, we are of the view that the impugned order cannot be sustained and consequently has to be set aside, and the judgment of the Trial Court is restored, giving the benefit of doubt to the appellant.

18. The appeal is accordingly allowed, leaving the parties to bear their own costs. The appellant being already on bail, the bail bonds shall stand cancelled.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[K.M. JOSEPH]

New Delhi;  
February 5, 2020.

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(s). 2437/2009

SURESHA

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

([ REMAIN ON BOARD ])

Date : 05-02-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE K.M. JOSEPHFor Appellant(s) Ms. Anitha Shenoy, Sr. Adv.  
Ms. K. V. Bharathi Upadhyaya, AOR  
Miss Sanjana Grace Thomas, Adv.For Respondent(s) Mr. Manendra Pal Gupta, Adv.  
Mr. V. N. Raghupathy, AORUPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the parties.

The appeal is allowed in terms of the signed  
Reportable judgment. The appellant being already on  
bail, the bail bonds shall stand cancelled.Pending application, if any, shall also stand  
disposed of.(ANITA MALHOTRA)  
COURT MASTER(ANITA RANI AHUJA)  
COURT MASTER

(Signed Reportable judgment is placed on the file.)