

SANGAPPA SANGANABASAPPA M. & ORS.

v.

STATE OF KARNATAKA & ORS.
(Criminal Appeal No. 436 of 2006)

SEPTEMBER 13, 2010

[B. SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]

Penal Code, 1860:

s. 302/34 – Double murder – Seven persons prosecuted for commission of offences punishable u/s 302/149 – Acquittal by trial court – Conviction by High Court of 3 of the accused u/s 302/34 – HELD: High Court is perfectly justified in reversing the order of acquittal passed by trial court which totally misread the evidence of eye-witnesses – Trial court committed serious error in rejecting evidence of the eye-witnesses only on the basis that they were related to deceased – High Court rightly held that their evidence, read as a whole, ignoring minor contradictions and inconsistencies, inspires confidence – Evidence – Testimony of related witnesses.

The accused-appellants (A-1, A-2 and A-4) alongwith four others were prosecuted for commission of offences punishable u/ss. 148, 302 and 506(2) read with s.149 IPC. The prosecution case was that on 29.5.1995, when PW 10, the daughter of PW 8, was returning home, A-1 attempted to outrage her modesty, but she was rescued with the intervention of PWs 4 and 7. She complained of the incident to her uncle (deceased 'Ir'), who chastised A-1. Upon this, A-1 assaulted 'Ir''s son (PW 15) on 2.6.1999. PW-15 reported the incident to 'Ir', the same day, whereupon both 'Ir' and his brother 'K' (the other deceased) went to A-1 in order to inquire about the

A assault on PW 15. There all the accused armed with axes, 'jambiya' and stick, attacked 'Ir' and 'K'. A-1 inflicted 'jambiya' injury on the abdomen of 'Ir', while A -2 inflicted axe injury on his head. In the meantime, A-3, A-5 and A-6 were stated to have overpowered 'K' and A-1 inflicted 'jambiya' injury on his abdomen. A-4 also assaulted 'Ir' and shouted that he should be finished. Meanwhile, PW8 and PW 9, who followed 'Ir' and 'K' on coming to know that they were going to A-1, reached the place of incident and tried to intervene, but the accused threatened them with dire consequences. 'Ir' died at the spot and 'K' in the hospital. All the accused were acquitted by the trial court. However, the High Court convicted and sentenced A-1, A-2 and A-4 u/s.302 with the aid of s.34 IPC. Aggrieved, the three convicts filed the appeal.

D Dismissing the appeal, the Court,

HELD: 1.1 The High Court is perfectly justified in reversing the order of acquittal passed by the trial court which totally misread the evidence of eye-witnesses and disbelieved them on fanciful grounds. The trial court was carried away with the minor inconsistencies in the evidence of prosecution witnesses for rejecting the prosecution case. The trial court committed serious error in rejecting the evidence of PW-8 and PW-9 only on the basis that they are related to the deceased. Their relationship with the deceased *per se* would not be a ground to reject their evidence. It is true the evidence of interested witnesses has to be properly assessed and carefully scrutinized which the High Court did in exercise of its appellate jurisdiction. [Para 12-13] [472-C-E]

1.2 In order to ascertain as to who caused the death of 'Ir' and 'K', the sequence of events as is evident from the evidence of PW-8, PW-9, PW-10, PW-11 and PW-15 has to be properly evaluated. There is nothing unnatural that 'Ir' and his brother 'K' proceeded to the land of A-1

to question him as to why PW-15 was assaulted by him. There is enough material available on record to establish that there was deep rooted enmity between the appellants and the deceased. The origin of the whole sequence of events is the incident of 29.5.1995 when PW-10, the daughter of PW-8, was subjected to an attempt to outrage her modesty by A-1. This incident is followed by the incident of assault by A-1 on PW-15, the son of deceased 'Ir'. The events took place in quick succession. There is nothing on record to disbelieve the evidence of PW-15 as regards the incident that had taken place on the fateful day before noon which led to the assault on both the deceased in the afternoon. [Para 11] [469-F; 469-H; 470-A-B]

1.3 Since PWs 1 to 4 and 7 have been declared hostile, the entire prosecution story rests upon the evidence of PW-8 and PW-9 who fully supported the prosecution version of the incident that took place on 2.6.1995. The High Court upon re-appreciation of the evidence found that PW-8 and PW-9 consistently spoke with regard to the incident that had taken place on 2.6.1995 resulting in the death of two victims and, accordingly, believed and accepted their evidence in its totality. The High Court came to the conclusion that their evidence, if read as a whole, ignoring minor contradictions and inconsistencies, if any, inspires confidence. The High Court found fault with the trial court for rejecting the evidence of PW-8 and PW-9 on the sole ground that they are closely related to the deceased. [Para 8-9] [467-F; 468-C-E]

1.4 Mere fact that A-1 has been acquitted in the case regarding the attempt to outrage the modesty of PW-10, itself is of no consequence. The evidence of PW-10 receives a complete corroboration and support from the evidence of PW-11. This evidence is to be read along with

A the evidence of PW-8, who is not only an eye-witness to
the occurrence but also the first informant and has lodged
the FIR. It is in the evidence of PW-8 that after PW-15
complained of assault on him by A-1, both 'Ir' and 'K'
proceeded to the garden land of A-1 to question him
B about the incident of assault on PW-15. [Para 11] [471-C-
E]

1.5 There is nothing unnatural in PW-8 and PW-9
following 'Ir' and 'K' when they were proceeding to the
land of A-1. When both of them were at a distance of 10
C marus, from the land of A-1, they witnessed the actual
incident of assault on 'Ir' and 'K'. It is clearly and
categorically stated by PW-8 that A-1 attacked 'K' with
'jambiya' and as a result of which 'K' sustained injuries
on his abdomen and chest. It is also in the evidence of
D PW-8 that A-4 was armed with an axe and so also A-2
while A-1 was armed with 'jambiya'. The weapons were
identified by him in the court. It is specifically stated in
the course of his evidence that A-2 was holding an axe,
A-4 was holding another axe and A-1 was holding the
E 'jambiya' and all of them assaulted 'Ir' with axe, 'jambiya'
and stick. The evidence of PW-9, who is brother of PW-
8, is more or less same as of the evidence of PW-8. It is
in his evidence that 'Ir' received head injury and died on
the spot. When 'K' went to the rescue of 'Ir', he too was
F subjected to assault by the appellants. It is A-1 who had
assaulted 'K' with 'jambiya' and caused injury on his
abdomen. He vividly deposed as to which of the accused
was holding of what weapons which is in conformity with
what has been stated by PW-8. [Para 11] [470-E-H; 471-
G B-D]

1.6 The evidence of Doctors (PW-5 and PW-12)
completely supports the ocular evidence. The evidence
of PWs- 5, 8, 9, 10, 11 and 12 has been meticulously
analysed by the High Court. On going through the said
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evidence this Court is in complete agreement with the conclusions drawn by the High Court and the reasons assigned by it to believe the evidence of the said witnesses and, more particularly, the evidence of PW-8 and PW-9 who are the eye witnesses to the incident. [Para 12] [471-E-F]

1.7 The High Court rightly concurred with the view of the trial court in coming to the conclusion that it is not a case which would attract the provisions of ss.148 and 149 IPC. On the other hand, the evidence available on record suggests that it is only the appellants who committed assault on 'Ir' and 'K' with "jambiya" and axes and caused the fatal injuries to them. The participation of other appellants along with A-1 and common intention on their part is clearly evident from the evidence available on record. The High Court rightly convicted the appellants for the offence punishable u/s.302 with the aid of s.34 IPC. [Para 12] [471-F-H; 472-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 436 of 2006.

From the Judgment & Order dated 01.04.2005 of the High Court of Karnataka at Bangalore in Crl. A. No. 119 of 1999.

Ajay Kumar M., B. Subrahmanya Prasad, R.D. Upadhyay for the Appellants.

Sanjay R. Hegde, Ramesh Kr. Mishra, Krutin Joshi, Abhisekh Malviya for the Respondents.

The Judgment of the Court was delivered by

B. SUDERSHAN REDDY, J. 1. The appellants – Sangappa Sanganabasappa Murakachatti, Yamanappa Rudrappa Murakachatti and Pundalik Sanganabasappa Murakachatti (A-1, A-2 & A-4 respectively) along with four others were tried in Sessions Case No. 169 of 1995 by the Principal Sessions Judge, Bijapur for offences punishable under

- A Sections 148, 302 and 506 (2) read with Section 149 of the Indian Penal Code (for short IPC). The learned Principal Sessions Judge, vide judgment dated 26th September, 1998 acquitted all the accused appellants of the aforesaid offences. The State of Karnataka preferred appeal under Section 378
- B (1) & (3) of the Code of Criminal Procedure against the order of acquittal before the High Court at Bangalore. A Division Bench of the High Court by the impugned judgment dated 1.4.2005, partly allowed the said appeal, setting aside the acquittal of the appellants herein and affirmed the acquittal in so far as the rest of the accused are concerned.
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2. Against the said judgment of the High Court, the appellants have preferred the present Criminal Appeal under Section 379 of the Code of Criminal Procedure, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal
- D Appellate Jurisdiction) Act, 1970.

3. In order to consider as to whether the impugned judgment convicting the appellants herein for the offence punishable under Section 302 read with Section 34 IPC suffers from any infirmities requiring our interference, it may be just and necessary to briefly notice the prosecution case.
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4. We shall refer to only such of the relevant facts and material evidence since the High Court has very meticulously analysed the entire evidence available on record by re-appreciating the same.
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5. On 29.5.1995 at about 5.00 or 6.00 P.M, when Ningamma (PW-10) who is none other than the daughter of Basappa (PW-8) was returning home from the fields along with her brother Sadashiva (PW-11), Sangappa (A-1) made an attempt to outrage her modesty, but she was, however, rescued with the intervention of Chandrappa (PW-7) and Bheemappa (PW-4). She went home and complained about the incident to the deceased Irappa who chastised Sangappa. On 2.6.1995 at about 11.00 a.m. in the morning when Laxman (PW-15) was
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in his fields looking after the sheep, Sangappa went there and assaulted Laxman with a stick over the issue of being chastised by his father – Irappa. Laxman on returning from the fields informed about the incident to his father – Irappa. Both Irappa and his brother Kenchappa (the other deceased) rushed to the garden land of Sangappa in order to enquire as to what transpired in the matter. That all the accused who were armed with deadly weapons questioned the propriety on the part of Irappa in coming to their place and making an inquiry about the incident of assault on his son. In the process Sangappa who was armed with jambiya inflicted injury on the abdomen of the deceased - Irappa and Yamanappa (A-2) inflicted injury over the head of the deceased with axe and in the meanwhile, the other accused Sangana Basappa (A-3), Rudrappa (A-5) and Smt. Bhagawwa (A-6) over powered the deceased - Kenchappa and assaulted him and at that point of time, Sangappa inflicted injury on the abdomen of deceased – Kenchappa. In the same process Pundalik (A-4) committed assault on Irappa and shouted that he should be finished. It is the case of the prosecution that even Pundalik, who was armed with axe, assaulted the deceased Irappa over his head. Basappa (PW-8) along with Siddappa (PW-9) and others tried to intervene in order to rescue the two deceased persons in vain as they were threatened by the accused with dire consequences. Basappa and Siddappa witnessed the incident as they were following the two deceased having come to know of the fact that the two deceased persons were proceeding to the garden land of Sangappa to inquire about the incident of assault on Laxman (PW-15). The incident in question had occurred at about 2.00 p.m. afternoon on 2.6.1995 in the garden land of Sangappa. It is at a distance of about 10 kms. from the police station. That immediately after the incident the first information had been lodged by Basappa (PW-8) with the SHO, Nagappa (PW-14) at the Kolhar Police Station. FIR was registered at about 3.30 p.m. Out of the two injured persons, Irappa died on the spot while the injured Kenchappa succumbed

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- A to the injuries in the hospital. Ramappa (PW-13), sub-Inspector of police took up the further investigation. Inquest proceedings over the dead body of deceased – Irappa were held on 3.6.1995 and statements of PW-3, PW-4, PW-7, PW-9, PW-10 and PW-11 were recorded. M.Os 1 to 4 were seized. In the
- B meanwhile, Investigation Officer received the intimation from the hospital about the death of injured Kenchappa and immediately proceeded to the hospital and held inquest over the body of the deceased – Kenchappa. The dead bodies of the two deceased were subjected to the post-mortem examination.

C 6. Dr. Ramappa (PW-5) is the Medical Officer, who held autopsy on the dead body of the deceased - Kenchappa and issued the post-mortem report (Ex. P-9). The following injuries on the dead body of Kenchappa were noticed:

- D 1. Sutured wound over upper abdomen 8" in length on right side of umbilicus 1" below 1" away from midline vertical direction
- E 2. Transverse sutured crocoid present on left side on anterior abdominal wall just below costal margin in the anterior axillary line.

F He opined that death was due to shock and haemorrhage as a result of the injury to vital organs and he was also of the opinion that such injuries could be caused with the weapon like jambiya.

G Dr. Yalagurdacharya (PW-12), is the Medical Officer, who conducted the post mortem examination on the dead body of the deceased - Irappa and found the following external injuries on the dead body of Irappa:

- H 1. Lacerated wound 4.5 cms. X 1.5 cms., on the scalp in the midline in the frontal area. Margins irregular and contused.
2. Lacerated wound on the left parietal area 2.5

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cms. Long 1.5 cms., wide since surrounding the wound is ecchymosed present swelling of the surrounding tissues. A

3. Elliptical stab wound (penetrating) on the left side of the chest, 7 cms, below left nipple 2.5 cms., long and 1.2 cms., wide at the cetredepth of the wound 12 cms. B

The post-mortem report in respect of deceased – Irappa is exhibit P-12. The Doctor opined that the death was due to perforating wound on the left side of the chest, causing perforating of the heart leading to haemorrhage, cardiac failure and death. He was of the opinion that the injury nos. 1 and 2 found on the dead body of Irappa could be caused by weapons like axe and club and injury no. 3 could be caused by means of a dagger. The report of the serologist (Ex. P-16) discloses that blood stains found on jambiya since disintegrated, origin could not be determined but the two axes were found to be stained with human blood. C D

7. The prosecution, in order to establish its case, had altogether examined 15 witnesses (PW-1 to PW-15) at the trial and placed on record Exhibits P-1 to P-17 and M.Os 1 to 16. E

8. Be it noted that PWs 1, 2, 3 and 4 did not support the case of the prosecution and hence they were declared hostile. Chandrappa (PW-7) had been examined to speak about the incident which took place on 29.5.1995 and also to the occurrence, which took place on 2.6.1995 but he did not support the prosecution case and was declared hostile. Basappa (PW-8) is the father of PW-10 and eye witness to the incident which took place on 2.6.1995, wherein two deceased Kenchappa and Irappa had been assaulted. He is also the first informant and lodged FIR. Siddappa (PW-9) is the younger brother of PW-8 as well as the two deceased persons Kenchappa and Irappa. He is also an eye witness to the occurrence, which took place on 2.6.1995. The entire F G H

A prosecution story rests upon the evidence of PW-8 and PW-9 who fully supported the prosecution version of the incident that took place on 2.6.1995 with which we are concerned in the present case. The sequence of events suggests that the origin leading to the fatal attack on the two deceased is traceable to the incident that took place on 29.5.1995 when Sangappa (A-1) had tried to outrage the modesty of PW-10. Sadashiva (PW-11) who is none other than the son of PW-8 speaks about the incident that took place on 29.5.1995 relating to the outrage of the modesty of PW-10.

C 9. The High Court upon re-appreciation of the evidence found that PW-8 and PW-9 have consistently spoken to with regard to the incident that had taken place on 2.6.1995 resulting in the death of Irappa and Kenchappa and accordingly believed and accepted their evidence in its totality. The High Court came to the conclusion that if their evidence read as a whole, ignoring minor contradictions and inconsistencies, if any, inspires confidence. The High Court found fault with the trial court for rejecting the evidence of PW-8 and PW-9 on the sole ground that they are closely related to the deceased. The High Court took the view that the appellants herein are liable to be convicted for the offence punishable under Section 302 with the aid of Section 34 of IPC since they had inflicted the injuries with the deadly weapons like axe and jambiya on vital parts of the body of the two deceased persons which itself would show that all of them shared the intention to cause the death.

G 10. We have heard the learned counsel for the appellants as well as the learned counsel for the State. The learned counsel for the appellants strenuously contended that PW-8 and PW-9 are highly interested witnesses being close relatives of the deceased and it would be unsafe to convict the appellants based on the evidence of such highly interested witnesses. This aspect of the matter becomes relevant according to the learned counsel for the appellants in view of the fact that other eye witnesses did not support the case of the prosecution at all. The

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learned counsel for the State supported the impugned judgment and submitted that the evidence of two eye witnesses (PW-8 & PW-9) cannot be rejected on the simple ground of their relationship with the deceased. It is quite natural that being the kith and kin of the two deceased persons PW-8 and PW-9 have followed the deceased when they came to know that the deceased were proceeding to the land of Sangappa in order to inquire about the incident of assault on PW-15. Now we shall proceed to consider the submissions.

11. That the deceased Irappa and Kenchappa had died homicidal death is beyond the pale of any doubt. The evidence of two Medical Officers PW-5 and PW-12 and the contents of the post-mortem reports have not been seriously challenged by the defence. The deceased Irappa had died on the spot, whereas Kenchappa had succumbed to the injuries while undergoing treatment at the hospital on the next day of the incident. The evidence of the Medical Officers in clear and categorical terms establishes that both the deceased Irappa and Kenchappa succumbed to the injuries that were found on their bodies. Those injuries could have been caused with the sharp weapons like axe and jambiya. The only question that arises for our consideration is that is there any evidence available on record as to who caused the death of Irappa and Kenchappa? In this regard the sequence of events as is evident from the evidence of Basappa (PW-8), Siddappa (PW-9), Ningamma (PW-10), Sadashiva (PW-11) and Laxman (PW-15) has to be properly evaluated. The incident of assault resulting in the death of deceased Irappa and Kenchappa took place in the garden land of Sangappa around 2.00 p.m. on 2.6.1996. It is important to note this incident was preceded by an assault on Laxman (PW-15) when he was in his fields. PW-15 who is none other than the son of the deceased Irappa. There is nothing unnatural that Irappa and his brother Kenchappa proceeded to the land of Sangappa to question him as to why PW-15 was assaulted by him. There is enough material available on record to establish that there was deep rooted

- A enmity between the appellants and the deceased. The origin of the whole sequence of events lies as to what transpired on 29.5.1995 when PW-10 who is none other than the daughter of PW-8 was subjected to an attempt to outrage her modesty by Sangappa. This incident is followed by the incident of
- B assault on Laxman (PW-15) by Sangappa. The events took place in quick succession. There is nothing on record to disbelieve the evidence of PW-15 as regards the incident that had taken place on the fateful day before noon which led to the assault on both the deceased in the afternoon. Mere fact that
- C Sangappa has been acquitted in the case regarding the attempt to outrage the modesty of PW-10 itself is of no consequence. The evidence of PW-10 receives a complete corroboration and support from the evidence of PW-11. This evidence is to be read along with the evidence of PW-8 who
- D is not only an eye witness to the occurrence but also the first informant who lodged the FIR. It is in the evidence of PW-8 that after PW-15 complained of assault on him by Sangappa, both deceased persons Irappa and Kenchappa proceeded to the garden land of Sangappa to question him about the incident of assault on PW-15. There is nothing unnatural in PW-8
- E following both the deceased when they were proceeding to the land of Sangappa. PW-9 also accompanied PW-8. When both of them were at a distance of 10 marus, from the land of Sangappa, they witnessed the actual incident of assault on the deceased. It is clearly and categorically stated by PW-8 that
- F Sangappa attacked deceased Kenchappa with jambiya and as a result of which Kenchappa had sustained injuries on his abdomen and chest. It is also in the evidence of PW-8 that Pundalik (A-4) was armed with axe and so also Yamanappa (A-2) while Sangappa (A-1) was armed with jambiya. The
- G weapons were identified by him in the court. It is specifically stated in the course of his evidence that A-2 was holding axe, A-4 was holding the other axe and A-1 was holding the jambiya and all of them assaulted the deceased Irappa with axe, jambiya and stick. That so far as the deceased Kenchappa is concerned
- H it is stated by PW-8 that A-1 inflicted injury on the body of

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Kenchappa with jambiya. It is true in cross-examination he admitted that the land belonging to one Sangappa and Ramagond is situated adjacent to the scene of incident and whereas his land is at the distance of about 2 to 3 kilometers from the scene of occurrence. It is also admitted by him that at the time of incident, the wife of adjacent land owner Sangappa was present in their land. It is true wife of Sangappa is not examined but that itself is not so fatal based on which evidence of PW-8 could be disbelieved. The evidence of Siddappa (PW-9) who is none other than the brother of PW-8 is more or less same as of the evidence of PW-8. It is in his evidence that deceased Irrappa received head injury and died on the spot. When Kenchappa went to the rescue of Irrappa, he too had been subjected to assault by the appellants. It is Sangappa who had assaulted Kenchappa with jambiya and caused injury on the abdomen. He vividly deposed as to which of the accused was holding of what weapons which is in conformity with what has been stated by PW-8.

12. The evidence of Doctors (PW-5 and PW-12) completely supports the ocular evidence. The evidence of PWs-5, 8, 9, 10, 11 and 12 has been meticulously analysed by the High Court as is clearly evident from the judgment. On going through the said evidence we are in complete agreement with the conclusions drawn by the High Court and the reasons assigned by it to believe the evidence of the said witnesses and more particularly the evidence of PW-8 and PW-9 who are the eye witnesses to the incident. The High Court rightly concurred with the view of the trial court in coming to the conclusion that it is not a case which would attract the provisions of Sections 148 and 149 of the IPC. On the other hand, the evidence available on record suggests that it is only the appellants who committed assault on Irrappa and Kenchappa with jambiya and axes and caused the fatal injuries to the two deceased persons Irrappa and Kenchappa. The participation of other appellants along with appellant no. 1 and common intention on their part is clearly evident from the

- A evidence available on record. The High Court rightly convicted the appellants for the offence punishable under Section 302 with the aid of Section 34 IPC. The High Court is absolutely right in coming to the conclusion that the appellants participated in the assault on the two deceased persons and inflicted fatal injuries on the vital parts of the bodies of both the deceased. The assault had been conjointly committed by all the appellants. The sequence of events and total circumstances if taken together into consideration it is clearly evident that the appellants shared common intention to commit the offence for which they are liable to be convicted. The High Court did not commit any error in convicting the appellants alone for the offence punishable under Section 302 with the aid of Section 34 IPC. The High Court is perfectly justified in reversing the order of acquittal passed by the trial court which totally misread the evidence of eye witnesses and disbelieved them on fanciful grounds. The trial court was carried away with the minor inconsistencies in the evidence of prosecution witnesses for rejecting the prosecution case. The trial court committed serious error in rejecting the evidence of PW-8 and PW-9 only on the basis that they are related to the deceased. Their relationship with the deceased *per se* would not be a ground to reject their evidence. It is true the evidence of interested witnesses has to be properly assessed and carefully scrutinized which the High Court did in exercise of its appellate jurisdiction.

- F 13. For all the aforesaid reasons we uphold the conviction as well as sentence for the offence punishable under Section 302 read with Section 34 IPC.

14. The appeal is, accordingly, dismissed.

R.P

Appeal dismissed.