RAMABORA @ RAMABORAIAH & ANR. A

v.

STATE OF KARNATAKA

(Criminal Appeal No.1697 of 2011)

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AUGUST 10, 2022

[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]

Penal Code,1860 – ss.143,144,148,147,448,302 and 149 – 22 accused formed unlawful assembly, armed with deadly weapon and trespassed into the house of victim-deceased and committed the murder of victim in furtherance of a common object – Sessions Court acquitted all the accused – High Court set aside the acquittal of appellants (A-1 and A-2) and held them guilty of the offence punishable u/s 302 IPC and sentenced them to imprisonment for life but the acquittal of all the other accused was confirmed by High Court – Held: High Court has not given more stronger and cogent reasons to set aside the acquittal – Further, the Judgment of High Court is not in accordance with the law on the scope of s.378 of Cr.PC. – Judgment of the High Court insofar as relates to the conviction of appellants set aside. C D E

Arvind Kumar @ Nemichand & Ors. v. State of Rajasthan **2021 SCC Online SC 1099;** *Ravi Sharma v. State (Government of NCT of Delhi) & Another* **2022 SCC Online SC 859 – referred to.**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1697 of 2011.

From the Judgment and Order dated 21.07.2008 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 1590 of 2001.

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Krishna Pal Singh, S. Quayyum, Ms. A. Aprajita, Harisha S. R., Advs. for the Appellants.

V. N. Raghupathy, Parikshit P. Angadi, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

1. Aggrieved by the conviction for an offence under Section 302 IPC and the sentence of imprisonment for life handed over to them by the High Court of Karnataka, reversing the order of acquittal passed by the Sessions Court, accused Nos.1 and 2 have come up with the above appeal.

2. We have heard the learned counsel for the appellants and the learned standing counsel for the State of Karnataka.

3. The appellants herein were prosecuted along with 20 other persons, before the II Additional District and Sessions Judge, Bangalore, for alleged offences under Sections 143, 144, 148, 147, 448 and 302 read with Section 149 IPC. By a judgment dated 8.8.2001, all the accused except those against whom the prosecution abated, were acquitted by the Sessions Court.

4. However on appeals filed by the State of Karnataka, a Division Bench of the High Court of Karnataka set aside the acquittal of the appellants herein (A-1 and A-2) and held them guilty of the offence punishable under Section 302 IPC and sentenced them to imprisonment for life. But the acquittal of all the other accused was confirmed by the High Court.

5. Aggrieved by the said judgment of reversal, accused Nos.1 and 2 have come up with the above appeal.

6. The case of the prosecution was that on 30.11.1997 at about 11 p.m., all the 22 accused formed themselves into an unlawful assembly and that armed with deadly weapons, they committed trespass by entering into the house of the deceased Siddaraju and committed the murder of the deceased in furtherance of a common object.

7. The motive for the murder according to the prosecution, was that when A-1 was passing through the house of the deceased, he heard the deceased hurling abuses in a foul and filthy language. Though the victim was purportedly abusing his own father, A-1 mistook as though he was being abused. Therefore, he picked up a quarrel with the deceased and thereafter went to the village, secured the other accused and went to the house of Siddaraju, broke open the door, pulled him out to the street and hacked him to death.

8. The case of the prosecution rested on the ocular testimony of PW-1 and PW-4 who were the mother and maternal uncle of the deceased. Though the father and sister of the deceased were also examined as PW-2 and PW-3, they were not treated as eye-witnesses on the ground that they had not seen the incidence.

9. Four Panch witnesses examined as PWs 5, 6, 7 and 8 did not support the case of the prosecution and were declared as hostile. PW-9, the mahazar witness also turned hostile. PW-10 was the doctor who conducted the post-mortem on the body of the deceased.

10. At this stage, it is relevant to note that PW-1, mother of the deceased, gave a complaint at 00.45 hrs on 1.12.1997, on the basis of which Exhibit P-8 FIR was registered. Thereafter, one Nagamma, wife of the deceased is said to have given another complaint which was marked as Exhibit P-9. On the basis of the said complaint, a second FIR was registered for more offences, including offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. But for reasons not known, this Nagamma was not examined as a witness, though cited as a witness in the charge sheet.

11. On the basis of the oral and documentary evidence, the Sessions Court recorded certain findings with regard to the appellants herein (A-1 & A-2) which are reproduced in the words of the Sessions Court itself, as follows:-

> "1. PW1 speaks about the presence of only six persons and they are A1, A2, A3, A11, A16 and A18. Whereas A14 speaks about the presence of only 7 persons viz.., A1, 2, 8, 11, 16 and 12. In this way PW1 speaks about the presence of 7 accused persons. The accused stated by these two witnesses are not exactly the same. Both the witnesses have spoken about only the presence of A1, A2, A11 and A16 and they had not spoken about the presence of others.
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> 2. The presence stated by PW1 and PW4 put together, are A1 to A3, A8, A11, A12, A16, A18 and A21. Hence, the presence of all other accused persons is not even stated by any of the witnesses and because of it there is no evidence against them.
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> 3. The very fact that PW1 is silent about the presence of A8, A12 and A21 whose presence is stated by PW4, goes to show that they were not present. Similarly the silence of PW4 about the

presence of A3 and A18 whose presence is spoken by PW1 goes to show that A3 and A18 could not have been present. Hence, it clearly goes to show that there is false implication.

4. The very fact that the eye witnesses do not speak about the presence of most of the accused persons goes to show that they have been falsely implicated. Hence, from the beginning the evidence of the prosecution is doubtful.

5. When we examined the evidence relating to what weapons were used, it clearly goes to show that it is only an exaggeration and none of the witnesses are speaking the truth and even their presence becomes doubtful.

6. Accordingly to the complaint, accused-1 assaulted deceased by 'bettukodali' on his head. A12 Ashwatha assaulted the deceased by club all over the body. All other accused persons assaulted him with stones and bricks. Hence, according to the complaint only one 'bettukodali' (axe), one club were used in addition to some stones and bricks. But in evidence MO-1 To MO-6 clubs and MO-7 to MO-9 chopper and sickle and axe are marked. Hence the number of weapons stated in the complaint is different while compared to the weapons produced and marked in evidence.

7. PW1 goes to the extent of saying that the accused had brought 'machu', sickle, axe, knife and clubs. In this way the weapons stated by PW1 are different when compared to the weapons stated in the complaint. PW1 is the complainant and because of it, she could not have stated such weapons which were not even stated in the complaint. This goes to show that the evidence of PW1 is full of exaggeration and that is not acceptable.

8. In the complaint the overt act done by accused-1 is that he assaulted with bettukodali on the head of the deceased. But PW1 states that A-1 assaulted with axe on the ear of the deceased and it was cut off. PW4 has stated that accused-1 assaulted by sickle. Hence, about the overt act done by accused-1, there is contradiction.

9. When we see that overt act done by accused-2 Thimma, there is contradicting version. In the complaint it is only stated that accused-2 broke open the lock of that house where Siddaraju

was kept and then it is the accused-1 who assaulted him on his head by axe and caused his death. But in evidence PW1 states that accused-2 had brought MO9 axe and assaulted him. He gave another version by stating that MO7 chopper was in the hand of accused-2 Thimma. PW4 states that accused-2 assaulted with axe. In this way about the overt act done by accused-2, there are different version and because of it their evidence is not acceptable.

10. PW1 states accused assaulted her also and she sustained bleeding injury on her head and she was assaulted with club by one Ashwatha and she took treatment of Government hospital Channapatna. In my opinion, this is only an exaggeration because, it is not stated in the complaint about assaulting her and there is no medical evidence to show that she was treated at Channapatana hospital.

11. The fact that the eye witnesses PW1 and PW4, does not speak about the presence of many of the accused persons as discussed above corroborates the inference that some of the accused persons are falsely implicated. Hence, all is not well in the prosecution case and it raises substantial doubt and the accused will be entitled to benefit of doubt."

12. On the basis of the above findings, the Sessions Court acquitted all the 22 accused except those against whom the charges abated. Therefore, the State filed two appeals, one of which was against 17 accused and the other against 2 accused. The appeal in Criminal Appeal No.1591 of 2001 was against the acquittal of A-7 and A-8 and the other appeal, Criminal Appeal No.1590 of 2001 was against the acquittal of A-1 to A-3, A-5, A-6, A-9 to A-16, A-18, A-19, A-21 and A-22.

13. The High Court dismissed the State's appeal Criminal Appeal No.1591 of 2001, thereby confirming the acquittal of A-7 and A-8. In the other appeal, namely, Criminal Appeal No.1590 of 2001, the High Court confirmed the acquittal of all the other accused except A-1 and A-2. In other words, this appeal was partly allowed and A-1 and A-2 were convicted only for the offences under Section 302 IPC.

14. As a matter of fact, the charges under Sections 143, 144, 148, 147 and 448 read with Section 149 were all gone even against A-1 and A-2 who are the appellants herein. A-1 and A-2 have been convicted by the High Court only for the offence under Section 302 IPC.

15. To come to the aforesaid conclusions, the High Court pointed out ***(i)*** the inconsistencies in the evidence of PW-1 and PW-4, insofar as the role played by all the accused other than A-1 and A-2; ***(ii)*** that the trial Court committed an error in acquitting all the 22 persons merely because PW-1 did not name all of them; ***(iii)*** that the principle "*falsus in uno falsus in ominbus*", cannot be invoked in cases of this nature; and ***(iv)*** that there was consistency in the evidence of PW-1 and PW-4 with regard to the participation of A1 and A2 in the commission of the offence.

16. The crucial portion of the findings of the High Court for holding the appellants guilty of the offence under Section 302 IPC reads as follows:-

> "We find consistency in the evidence of PW-1 and PW-4 with regard to the participation of A1 and A2 in the commission of the offence. Both have deposed and have stated A1 and A2 broke open the door of the house, A1 dragged Siddaraju from the house, hacked him with a sickle on the face and thereafter A2 with axe assaulted on the head of the deceased. The same also finds a place in the complaint. As such, this part of evidence of PW-1 and PW-4 is reliable and Trial Court erroneously acquitted A1 and A2 when there was sufficient material on record to hold them guilty."

17. But the above findings of the High Court appear to be illogical. The primary charge of the prosecution was that all the 22 accused, formed themselves into an unlawful assembly with the common object of committing the murder of the deceased and that all of them being members of the unlawful assembly were armed with deadly weapons like clubs, bettu kudli, kodli etc. and that they committed the offence of rioting, trespass and murder. All these charges have now been held not proved against all the accused including A-1 and A-2 and the only offence held proved against A-1 and A-2 is the one under Section 302 IPC. We do not know how, in the facts and circumstances of the case, the conviction of only 2 out of the 22 accused can be sustained and that too only for the offence under Section 302 when the allegation of unlawful assembly, common object, trespass, rioting etc. are held not proved against all of them. The State has not come up with any appeal against the acquittal of all the other accused.

18. Moreover, there was also no explanation as to why there were two First Information Reports. According to PW-13, the Sub-Inspector

of Police, he received the oral complaint of PW-1 at 00.45 hrs. on 01.12.1997 and he claims to have recorded the complaint, registered the same as Crime No.182/1997 and sent the same to the Court. This FIR was marked as Exhibit P-8.

19. According to the same witness PW-13, the wife of the deceased by name Nagamma gave a written complaint at the hospital. It was marked as Exhibit P-9. PW-13 claimed that thereafter he registered a second FIR by including the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This FIR was marked as Exhibit P-7. PW-13 further claimed that the further investigation of the second FIR was entrusted to the CPI, as the same related to serious offences.

20. The CPI was examined as PW-14. In his cross-examination he did not make a whisper as to what happened to the second FIR. All that he stated was that he took the statement of Nagamma (wife of the deceased who gave the second complaint) only at the time of inquest proceedings from 7:00 a.m. to 10 a.m.

21. As stated earlier, Nagamma was cited as one of the witnesses in the Charge-Sheet, but she was not examined as a witness during trial. The High Court has recorded that her whereabouts were not known and that, therefore, she could not be examined. Such an explanation is not found in the testimony of PW-14

22. It is true that the principle "*falsus in uno falsus in omnibus*" may not have unadulterated application to criminal jurisprudence. The Courts have always preferred to do what Hamsa, the mythological Swan, is believed to do, namely, to separate milk and water from a mixture of the two[1]. In ***Arvind Kumar @ Nemichand & Ors. vs. State of Rajasthan***[2], M.M. Sundresh J. speaking for the bench crystallized this principle as follows:

> "**49**. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence

[1] The idiom "sifting the chaff from the grain" has become very old and worn out and requires replacement

[2] 2021 SCC Online SC 1099

A unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

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23. Therefore, the High Court was right on first principles that the evidence of PW-1 and PW-4 cannot be rejected by invoking the theory of *falsus in uno falsus in omnibus.*

C 24. But when there are glaring contradictions between the testimony of even these two witnesses on the type of material object used and even on the role of A-2, the very foundation of the case of the prosecution stood shaken.

25. As a matter of fact, the Trial Court took note of the absence of evidence relating to the injuries suffered by PW-1. Nothing was stated D by PW-1 in the FIR, about the injuries on her body, but she spoke about it in her evidence. Even the same was not corroborated by medical evidence. This is why the Trial Court disbelieved the evidence of PW-1 and PW-4.

26. To overturn such a verdict of acquittal, handed over by the E Sessions Court after disbelieving PW-1 and PW-4, the High Court should have come up with more stronger and cogent reasons than what has been recorded. The law on the scope of Section 378 of the Cr.P.C., is too well settled. Very recently this Court traced the law in ***Ravi Sharma vs. State (Government of NCT of Delhi) & Another***[3]. The impugned judgment of the High Court is not in accordance with the law on the F point.

27. In such circumstances, we are of the considered view that the conviction of the appellants herein by the High Court cannot be sustained. Therefore, the appeal is allowed and the impugned judgment of the High Court insofar as it relates to the conviction of appellants is G set aside. The appellants shall be released forthwith, unless they are suffering incarceration in connection with any other case. No costs.

Ankit Gyan Appeal allowed.
(Assisted by : Aarsh Choudhary, LCRA)

[3] 2022 SCC Online SC 859