

[2010] 9 S.C.R. 205

BIRAPPA & ANR.

v.

STATE OF KARNATAKA
(Criminal Appeal No. 682 of 2006)

JULY 28, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

s.302 – Murder – Evidence of a single witness – Three accused prosecuted for murder – Conviction by trial court of A-1 and acquittal of the other two – High Court dismissing appeal of A-1 and allowing appeal of State qua A-2 and also convicting him in terms similar to A-1 – HELD: It is now well settled that where the prosecution story rests only on a single witness the evidence of such a witness must inspire full confidence – In the instant case, the conduct of PW.1 was clearly unnatural which makes his evidence extremely suspicious – As per the prosecution story he had seen his brother being cut up at about 6.00 p.m. at a place half a kilometer away from the village near a temple and in an area which was heavily populated and he had rushed home at 6.00 p.m. and then returned at 8.00 p.m. to look for his brother – In his evidence he did not utter a single word as to the places he had visited while in search or the inquiries he had made from the neighbourhood which had several shops and residential houses along a very busy road – Therefore, PW.1 was perhaps not an eye-witness and he lodged the FIR only after the dead body had been discovered – This explains the delay in lodging the FIR – It has come in the evidence of PW.1 that he had rushed to the police station at 9.00 a.m. – Curiously enough, however, the FIR was recorded at 2.00 p.m. – The High court has glossed over this glaring flaw by observing that it was a mistake on the part of the police officer to have recorded the FIR belatedly – However, the special

- A *report was delivered at 5.55 p.m. at the Magistrate's residence which was only half a kilometre away – Therefore, it appears that the FIR was recorded at about 5.30 or 5.45 p.m., that is, at the time when the dead body had been received in the hospital – CW.6, though cited as a witness, was not produced*
- B *as a PW – PW-11, the wife of the deceased, supported the prosecution story in the examination-in-chief but when she was called for further cross-examination after a few days she disowned her earlier statements – It is true that this witness was declared hostile, but this casts a doubt on the prosecution story – On a cumulative reading of these factors, the judgment of the High Court cannot be maintained – Accordingly, the conviction of the appellants is set aside – Evidence – Testimony of single witness.*

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 682 of 2006.

From the Judgment & Order dated 05.12.2005 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 123 of 2004 C/w Criminal Appeal No. 1332 of 2003.

E Rajesh Mahale for the Appellants.

Sanjay R. Hegde, Ramesh Kr. Mishra, K. Joshi for the Respondent.

F The following order of the Court was delivered

O R D E R

This appeal arises out of the following facts:

- G Gulappa deceased was the younger brother of Kareppa Gadad (PW.1) and Ramappa Gadad (CW-6). They resided separately in their garden near village Koonur, Jamkhandi Taluk. About four months prior to August 2002 Kareppa Rangappa Kote, the father of A.1 Birappa, was found dead in
- H a well in the village Koonur and it was not known as to whether

it was an accidental death or a murder, but rumour had it that he had been murdered by Gulappa, the deceased in the present matter. This rumour caused a great deal of ill will between Birappa, appellant No.1, and the deceased on which the appellant threatened that he would kill him one day. On 8th August 2002, which happened to be the Amavas day, the deceased went to the Kali Devi temple at about 4.00 p.m. to make his offerings and as he came out from the temple and sat down at a nearby tea shop to take tea he was attacked by Birappa, his cousin Kareppa A.2 and Muttappa A.3. Mutappa also made an exhortation than as it was Amavas day and a sacrifice had to be offered to the Goddess, Gulappa ought to be that sacrifice. This created a fear in the mind of Kareppa (PW.1) and Gulappa and they attempted to escape from the place by rushing towards the Hulyal road. They were however chased by the accused and whereas Kareppa caught hold of the deceased Birappa caused him several injuries. Kareppa (PW.1) ran for his life and informed his brother Ramappa about the accident and also the wife of Gulappa, Shivakka (PW.11). They also attempted to trace out the whereabouts of Gulappa during the night but remained unsuccessful and it was only at 9.00 a.m. the next morning that they found his dead body in the sugarcane field of one Derappa Shivaramatti. They also noticed that his neck has been virtually severed from the body. Kareppa (PW.1) thereafter went to the Jharkhandi police station and made a statement at about 2.00 p.m. before Malakappa Siddappa Malabagi (PW.12) and a case under Sec.302, Sec.201 and 109 read with Section 34 of the IPC was duly registered. The dead body was also dispatched for its -3- post-mortem and was received at the hospital at 5.45 p.m. on 9th August 2002. The accused A.1 and A.2 were arrested on the 10th August 2002 and on the completion of the investigation they were charged for offence punishable under Sections 302/ 201 and 109 read with Section 34 of the IPC and A.3 for the offences punishable under Sections 302 read with Section 109 of the IPC. The accused pleaded not guilty and were brought to trial.

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A The Trial Court relying primarily on the evidence of PW.1 as supported by medical evidence and the circumstances of the case convicted Birappa under Sec.302 whereas Kareppa A.2 and A.3 was acquitted on the ground that no overt act had been attributed to them.

B Two appeals were therefore filed before the High Court. The High Court dismissed the appeal of Birappa and allowed the State Appeal qua appellant No.2 Kareppa and also convicted and sentenced him to in terms similar to his co-appellant. The acquittal of Muttappa, the third accused, was
C however maintained. The present appeal has been filed under Section 380 of the Cr.P.C. directly in this Court.

Mr. Rajesh Mahale the learned counsel for the appellants has raised several arguments before us. He has pointed out
D that PW.1 was the only effective witness who had appeared for the prosecution and that it was apparent that he had not witnessed the incident and had been brought in much later and this was the reason why the FIR had been lodged after an inordinate delay. He has also pleaded that some support for
E the statement of PW.1 could have been found from the contemporaneous evidence of the wife of the deceased PW.11, but this lady had not supported the prosecution and had disowned her statement made to the police.

Mr. Sanjay Hegde the learned counsel for the State has,
F however supported the judgment of the High Court and has submitted that there was no reason to doubt the evidence of PW.1 and that his conduct inspired full confidence as he had rushed to the village, informed his brother and the wife of the deceased and had then returned to the place of incident, made
G a search for his brother the whole night and on discovering the dead body the next morning had lodged the FIR at about 2.00 p.m. It has accordingly been urged that there was no delay in lodging of the FIR and on the contrary its very promptitude strengthened the prosecution story.

H

We have considered the arguments advanced by the learned counsel for the appellants and for the State very carefully. It is now well settled that where the prosecution story rests only on a single witness the evidence of such a witness must inspire full confidence. We find however that the conduct of PW.1 was clearly unnatural which makes his evidence extremely suspicious. As per the prosecution story he had seen his brother being cut up at about 6.00 p.m. at a place half a kilometer away from the village near a temple and in an area which was heavily populated (as Konnur was a large village) and he had rushed home at 6.00 p.m. and then returned at 8.00 p.m. to look for his brother. PW.1 in his evidence did not utter a single word as to the places he had visited while in search or the inquiries he had made from the neighbourhood which had a Chemist shop, a tea shop, a liquor vend and several residential houses in the fields along a very busy road. We are therefore of the opinion that PW.1 was perhaps not an eye witness and he had lodged the FIR only after the dead body had been discovered. This perhaps explains the delay in the lodging of the FIR. It has come in the evidence of PW.1 that he had rushed to the police station at 9.00 a.m. Curiously enough however the FIR had been recorded at 2.00 p.m. The High court has glossed over this glaring flaw by observing that it was a mistake on the part of the police officer to have recorded the FIR belatedly. Some justification for this argument could perhaps have been found if the special report had been delivered within a reasonable time. It has however come in the evidence of PW.9, the police constable who had been deputed to deliver the special report to the Magistrate, that the distance between the police station and the Magistrate's residence where he had delivered the special report at 5.55 p.m. was only a half kilometer. We therefore find some substance in Mr. Mahale's argument that the FIR had indeed been recorded at about 5.30 or 5.45 p.m. that is at the time when the dead body had been received in the hospital.

It is significant also that some corroboration could have

A been found from the prosecution story had Ramappa (CW.6), the brother of the deceased supported the evidence of PW.1. CW.6 though cited as a witness was not produced as a PW. The wife of the deceased PW.11 Shivakka supported the prosecution story in the examination in chief but when she was
B called for further cross-examination after a few days she disowned her earlier statements saying :

C “I did not come to know as to how my husband died and who have committed the murder of my husband. Kareppa did not inform me as to who have committed the murder of may husband. Nobody informed me that accused have assaulted my husband.”

D It is true that this witness was declared hostile but in the light of the uncertain and shaky evidence we have no option but to treat this as the final blow to the prosecution story.

E On a cumulative reading of the aforesaid factors we are of the opinion that the judgment of the High Court cannot be maintained. Accordingly, we allow the appeal, set aside the conviction of the appellants and direct that the appellants, who are in custody, shall be released forthwith if not required in connection with any other case.

R.P.

Appeal allowed.