

CASE NO.:
Appeal (crl.) 851 of 2006

PETITIONER:
Venkategowda & Ors.

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 06/11/2006

BENCH:
A. K. Mathur & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

This appeal is preferred by Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) Govindaiah (A-5), Venkataramanaiah (A-6), Rajashekaraiah (A-7), Lakkegowda (A-8), Rama (A-9), Shivanna (A-10), Mahadeva (A-11), Ganghahanumaiah (A-12), Singraiah (A-13), Annaiah (A-14), Bettgowda (A-15), Chikkanna (A-16), Govindaiah (A-17), Rama (A-18), appellants herein, questioning the correctness of the final judgment and order dated 7.3.2006 made in Criminal Appeal No. 161/2000 on the file of the High Court of Karnataka at Bangalore. The appellants took their trial before the Additional District and Sessions Judge, Bangalore Rural District, Bangalore, in S.C. No. 97 of 1989 for offences under Sections 143, 147, 148, 324, 302 read with Section 149 of the Indian Penal Code (for short "the IPC") on the allegations that all of them formed themselves into an unlawful assembly to cause the death of Venkatesh, the deceased herein, and in prosecution of the same, they murdered the deceased and caused injuries to Rajanna (P.W.1) and Kenchaiah (P.W.3).

The trial court, after examining the prosecution evidence, observed that there was delay in lodging the FIR and noticing the contradictions and improvements between the ocular evidence of Rajanna (P.W.1), Moodalagiri (P.W.2), Kenchaiah (P.W.-3) and Lakshmana (P.W. 10) came to the conclusion that the prosecution had not established its case against the accused and consequently acquitted all the accused persons vide judgment and order dated 15.04.1999.

In an appeal filed against the said judgment of acquittal by the State before the High Court of Karnataka, the High Court, accepting the evidence of one injured witness and two eye-witnesses coupled with the medical evidence of the doctors, found all the appellants guilty of the offences under Sections 143, 148 and 326 IPC read with Section 149 IPC and sentenced each one of the appellants to undergo imprisonment for a period of five years and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo further rigorous imprisonment for one year. Out of the amount of fine, if realized, a sum of Rs.20,000/- each was ordered to be paid to the injured witnesses P.W.1 and P.W.3 and the balance amount of fine to Venkatappa (P.W.7), the father or the legal heirs of the deceased Venkatesh as compensation. No separate sentence, however, was awarded for the offences under Sections 143 and 148 of IPC.

Feeling aggrieved and dissatisfied against the judgment and order of the High Court, the appellants have filed the present appeal by way of special leave challenging their conviction and sentence imposed on them by the High Court.

Briefly stated the facts of the case are that the appellants are residents of Village Gangonahalli. The deceased Venkatesh, Rajanna (P.W.1), Kenchaiah (P.W. 3), Venkatappa (P.W.7) and Lakshmana (P.W.10) are residents of Village Basvanapalya. The distance between the said two villages is about 1.5 to 2 kilometres. Venketagowda (A-1) is the father-in-law of complainant Rajanna (P.W.1) and Venkatappa (P.W.7) is the father of the deceased.

The occurrence, in question, took place on 04.11.1986 at about 6.30 p.m. when Rajanna (P.W.1), Kenchaiah (P.W.3), Lakshmana (P.W. 10) and the deceased Venkatesh went to the Co-operative Society at Chowdanapalya and collected food grains from the ration shop. When they were returning to their village, they found Venkategowda (A-1) standing in front of his house armed with a chopper. A-1 had picked up a quarrel with the deceased Venkatesh, Rajanna (P.W.1), Kenchaiah (P.W. 3) and Lakshmana (P.W. 10) on the pretext as to why they had worked in the garden of Thimmappa Gowda inspite of they being asked not to do any job of Thimmappa Gowda. Govindappa (A-4) assaulted Rajanna (P.W.1) on his right hand with a spear whereas Govindaiah (A-5) assaulted him with a club on his back. Shivanna (A-3) assaulted the deceased Venkatesh with a club on his shoulder and Venkategowda (A-1) assaulted the deceased with a chopper on the left thigh whereas Muddegowda(A-2) assaulted the deceased with a chopper on the left arm and left ear. As a result of injuries, the deceased Venkatesh fell down on the ground. After commission of the offences, the appellants tried to assault Lakshmana (P.W.10) who escaped from their clutches and took shelter in the house of P.W. 12 and P.W. 14. Rajanna (P.W.1) and Kenchaiah (P.W. 3) were persuaded by Moodalagiri (P.W. 2) to go to their village leaving the deceased Venkatesh at the scene of occurrence in an injured condition.

On the following day, i.e. 5.11.1986, at about 10.00 a.m. Rajanna (P.W.1) went to Kudur Police Station and got the complaint (Exhibit P-1) written by a scribe near the Kudur Police Station. K.B. Jayaramappa (P.W. 20) who, at the relevant time, was the Station House Officer of the Police Station, registered a case Crime No. 177/1986 vide FIR (Exhibit P-30) against the appellants under Sections 143, 147, 148, 149 and 324 of the IPC. P.W.20 K.B. Jayaramappa went to the scene of occurrence at about 12.00 noon. He found Venkatesh lying with injuries on the footpath between the houses of Venkategowda (A-1) and Ganghahanumaiah (A-12). The Investigating Officer prepared the spot mahazar and searched the houses of the appellants to recover the weapons of offences but no recovery was effected therefrom.

Rajanna (P.W.1) and Kenchaiah (P.W.3) were medically examined by Dr. D. Rajanna (P.W.9) on 05.11.1986 at about 11.00 a.m. and he found simple injuries on their persons. On the same day, injured Venkatesh was examined by the Medical Officer of Nagavalli, who referred him to Tumkar Hospital where Dr. C.R. Rangaraju (P.W. 4), the Assistant Surgeon, medically examined him. Dr. C.R. Rangaraju (P.W. 4) found three injuries on the person of Venkatesh out of which compound fracture of the left femur lower end was grievous in nature while other injuries were simple in nature. The victim was shifted after two days to Victoria Hospital, Bangalore. Dr. Rangarajan (P.W.18) medically examined the victim at Victoria Hospital. Venkatesh died at Victoria Hospital on 04.02.1987 at 6.00 a.m. Dr. S.B. Patil (P.W.13) conducted post-mortem

on the dead-body of the deceased Venkatesh on 05.02.1987. According to the opinion of Dr. S.B. Patil (P.W.13), the cause of death of Venkatesh was due to respiratory failure as a result of consolidation of lungs secondary to fracture of thigh bone. The factum of death was intimated to the Police Station. On 04.02.1987, K.N. Mariyappa, who at the relevant time was working as Head Constable in Kudur Police Station, prepared a supplementary F.I.R. at 9.00 p.m. and converted the offence from Section 324, IPC, to Section 302, IPC, and thereafter FIR was sent to the Judicial Magistrate and other higher officials. On completion of the investigation, charge sheet was laid by the Police against the appellants.

The prosecution, in support of its case, examined as many as 20 witnesses and marked 32 exhibits. The appellants in their statements recorded under Section 313 of the Code of Criminal Procedure pleaded not guilty to the charges and claimed that they have been falsely implicated in the case because of political rivalry and animosity between the complainant party and the accused party.

The trial court acquitted the accused of all the charges. On appeal by the State of Karnataka, the appellants were convicted and sentenced as aforesaid. Hence, this appeal.

On behalf of the appellants, Shri Dinesh Dwivedi, learned senior counsel, contended that the trial court, on a proper appreciation of the evidence of injured witnesses, namely, Rajanna (P.W.1), Kenchaiah (P.W. 3) and the eyewitness Moodalagiri (P.W.2) has rightly come to the conclusion that because of prior enmity the appellants were falsely implicated in the case after due deliberation. Learned counsel contended that the FIR in this case had come into existence after due deliberation and there were discrepancies and improvements in the versions of Rajanna (P.W.1), Moodalagiri (P.W.2), and Kenchaiah (P.W.3), which were noticed by the trial court and these were found to be sufficient to doubt the correctness of the prosecution case. Therefore, according to the learned counsel, the trial court was justified in acquitting the appellants. He also contended that the High Court, on the same set of facts and on re-appreciation of the evidence without properly noticing the contradictions in the ocular evidence of the injured witnesses and one eyewitness, has erroneously convicted the appellants on flimsy grounds.

Shri Sanjay R. Hegde, the learned counsel for the respondent-State, however, supported the judgment of the High Court concerning the conviction of Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) by contending that there was no reason why the evidence of the injured witnesses and the eyewitness corroborated by the medical evidence should be rejected. It was his argument that the High Court, as a first Court of Appeal, has a duty to reconsider the evidence and correct the error committed by the trial court. He, however, fairly and in our view, rightly stated that the conviction of Venkataramanaiah (A-6), Rajashekaraiah (A-7), Lakkegowda (A-8), Rama (A-9), Shivanna (A-10), Mahadeva (A-11), Ganghahanumaiah (A-12), Singraiah (A-13), Annaiah (A-14), Bettegowda (A-15), Chikkanna (A-16), Govindaiah (A-17) and Rama (A-18) by the High Court cannot be justified for the lack of satisfactory and cogent evidence connecting them with the commission of the offences.

We have independently scrutinized the evidence of the material witnesses in the teeth of the rival contentions of the parties. On reprisal of the evidence of the injured witnesses Rajanna (P.W.1) and Kenchaiah (P.W.3) as also the evidence of eyewitness Moodalagiri (P.W.2), it is clear that the evidence on record fully establishes the case of the prosecution against

Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) although, there were certain discrepancies in the testimony of the injured witnesses and eyewitness in regard to the weapons of offence individually used by (A-1), (A-2), (A-3), (A-4) and (A-5) for inflicting injuries on the person of each of the injured witnesses (P.W.1) and (P.W.3) as also on the person of the deceased Venkatesh. The discrepancies, as pointed out by the learned counsel for the appellants, are minor and insignificant. The witnesses were examined in the court after a gap of almost ten years. The injured witnesses were cross-examined not on the very same day when their examinations-in-chief was conducted, but their evidence was recorded after a long gap of time. On examination of the evidence of Rajanna (P.W.1), we find that he was examined-in-chief on 26.11.1996, but his cross-examination continued and he was cross-examined again on 27.11.1997. Likewise, Kenchaiah (P.W.3) was examined-in-chief on 28.11.1996, but his cross-examination took place on 28.4.1997. Further evidence on record would show that the injured witnesses had been subjected to searching lengthy cross-examination and questions numbering more than hundred were being put to each witness. In such type of cross-examination by the defence, some improvements, contradictions, and omissions are bound to occur in their evidence, but they are not of serious nature and they cannot be treated as vital and significant contradictions so as to disbelieve and discard the substratum of the prosecution case. The evidence of the injured witnesses Rajanna (P.W.1), Kenchaiah (P.W.3) and eyewitness Moodalagiri (P.W.2) has been rightly appreciated and accepted by the High Court and we find no cogent and sound reason to differ from the reasoning and finding recorded by the High Court against Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) holding them guilty of the offences. There is no substance in the argument of the learned senior counsel for the appellants that the evidence of Rajanna (P.W.1), Moodalagiri (P.W.2) and Kenchaiah (P.W.3) should be levelled as the evidence of the interested witnesses. There was no basis for Rajanna (P.W.1), Moodalagiri (P.W.2) and Kenchaiah (P.W.3) to falsely implicate the appellants Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) in the present case. On the other hand, we find that the evidence of the injured and eyewitnesses is quite natural, convincing and trust-worthy. The learned senior counsel for the appellants then contended that there is an inordinate delay in lodging the complaint by Rajanna (P.W. 1) and registering the FIR in the Police Station. In support of this submission, reliance is placed on Peddireddy Subbareddi And Others v. State of Andhra Pradesh [AIR 1991 SC 1356] and Amar Singh v. Balwinder Singh And Others [(2003) 2 SCC 518]. We have examined the ratio of the said decisions.

In Peddireddy's case (Supra), this Court, on the scrutiny of the evidence, found that the testimony of sole witness was clouded with strong suspicion and as the FIR was lodged by a delay of 15 hours, and in such circumstances, the false implication of the accused in the said case could not be completely ruled out.

In Amar Singh's case (supra), it is held that there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. Further, it is observed that it necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this, a host of

circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration and that there is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR.

After perusing the entire evidence on record in the present case, as noticed above, the incident took place on 04.11.1986 at about 6.30 p.m. in front of the house of Venkategowda (A-1) and the manner in which Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) had assaulted the injured witnesses and the deceased, the witnesses were frightened and they fled away from the scene of occurrence to save their lives, therefore, they did not lodge the complaint with the police on the same day. The injured witnesses have explained the delay in lodging the FIR and it was on the following day of the occurrence that Rajanna (P.W.1) along with Venkatappa (P.W.7) went to the Kudur Police Station, which is about 15 kms. from the place of occurrence and made the complaint to the police official. Having regard to the injuries inflicted on the body of the deceased as also on the person of the injured witnesses, it was but natural for Rajanna (P.W.1) and other witnesses not to venture to go straight to the Police Station and lodge the complaint with the police on the day of the occurrence and the fact that the witnesses left the deceased Venkatesh on the scene of occurrence itself would indicate the gravity of the situation. It is settled law that the delay in lodging the FIR will not be fatal in every case if the ocular version of the eyewitnesses is reliable and trustworthy. The prosecution has explained the reason of the delay and as the testimony of the injured witnesses was found credible by the High Court, the delay in lodging of the complaint and FIR will not be fatal to the prosecution case. The sequence of the events and the manner in which FIR has been lodged have been rightly taken into consideration by the High Court and we do not find any infirmity and perversity in the findings of the High Court accepting the explanation of the prosecution for lodging of F.I.R. on the next day of the incident. The submission of the learned senior counsel for the appellants that the prosecution case should be discarded and disbelieved on the ground of delay in lodging the FIR, does not merit acceptance. There is no material on record from which an inference can be drawn that the material witnesses have implicated appellants Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) in a false case. However, the evidence proved does not permit any inference to be drawn regarding participation of other appellants in the commission of the offences, therefore, the conviction of Venkataramanaiah (A-6), Rajashekaraiah (A-7), Lakkegowda (A-8), Rama (A-9), Shivanna (A-10), Mahadeva (A-11), Gangahanumaiah (A-12), Singraiah (A-13), Annaiah (A-14), Bettegowda (A-15), Chikkanna (A-16), Govindaiah (A-17) and Rama (A-18), as recorded by the High Court, is simply based on the inference drawn regarding their participation and existence of common intention on the basis of conjectures and surmises cannot be sustained. The established facts, however, conclusively prove the complicity of Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) in commission of the aforesaid offences.

Having given our careful consideration to the submissions made by the learned counsel for the parties, we are of the opinion that the judgment and order of the High Court suffers from no perversity and illegality to warrant our

interference to the extent of convicting Venkategowda (A-1), Muddegowda (A-2), Shivanna(A-3), Govindappa (A-4) and Govindaiah (A-5) for offences under Section 326 read with Section 149 IPC and Sections 143 and 148 of the IPC.

However, the conviction and sentences imposed upon Venkataramanaiah (A-6), Rajashekaraiah (A-7), Lakkegowda (A-8), Rama (A-9), Shivanna (A-10), Mahadeva (A-11), Ganghahanumaiah (A-12), Singraiah (A-13), Annaiah (A-14), Bettegowda (A-15), Chikkanna (A-16), Govindaiah (A-17), Rama (A-18) are set aside and they are acquitted of the charges levelled against them.

The residuary question is whether the sentence as imposed by the High Court upon Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) is harsh. Considering the background facts, namely, the incident took place on 4.11.1986, the nature of the injuries sustained by the deceased and the witnesses, the fact that Venkategowda (A-1), Muddegowda (A-2), Shivanna(A-3), Govindappa (A-4) and Govindaiah (A-5) have suffered physically, mentally and financially in prosecuting the legal battle in different courts for the past about 20 years, while maintaining their conviction under Section 326, IPC, read with Section 149, IPC, it might be appropriate to reduce the sentence of Venkategowda (A-1), Muddegowda (A-2), Shivanna (A-3), Govindappa (A-4) and Govindaiah (A-5) from five years rigorous imprisonment to one year rigorous imprisonment each and also to pay a fine of Rs. 5,000/- each instead of Rs. 10,000/- each as imposed by the High Court. In default of payment of fine, Venkategowda (A-1), Muddegowda (A-2), Shivanna(A-3), Govindappa (A-4) and Govindaiah (A-5) each shall further undergo 3 months rigorous imprisonment. Out of the amount of fine, if realized, a sum of Rs. 5,000/- each shall be paid to Rajanna (P.W.1) and Kenchaiah (P.W.3) injured witnesses and a sum of Rs.10,000/- shall be paid as compensation to Venkatappa (P.W.7) - the father or the legal heirs of the deceased Venkatesh.

The appeal is partly allowed to the extent indicated above. Venkataramanaiah (A-6), Rajashekaraiah (A-7), Lakkegowda (A-8), Rama (A-9), Shivanna (A-10), Mahadeva (A-11), Ganghahanumaiah (A-12), Singraiah (A-13), Annaiah (A-14), Bettegowda (A-15), Chikkanna (A-16), Govindaiah (A-17), Rama (A-18) are stated to be in jail undergoing imprisonment in this case. They shall be released forthwith by the jail authorities, if not required in any other case.