

Ravi and Another Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-08-2015

Judge : Mohan M. Shantanagoudar & R.B. Budihal

Appeal No. : Criminal Appeal No. 579 of 2005

Appellant : Ravi and Another

Respondent : State of Karnataka

Judgement :

Mohan M. Shantanagoudar, J.

1. The judgment and order of conviction convicting accused 1 and 2-appellants herein dated 26-2-2005 passed by the Fast Track Court-II, Bangalore City in Sessions Case No. 743 of 2003 is called in question in this appeal by the convicted accused 1 and 2. It is relevant to note that by the very impugned judgment, accused 3 to 5 are acquitted. State has not filed any appeal against the order of acquittal passed against them. Hence the judgment and order of acquittal passed against accused 3 to 5 has attained finality.

2. Five accused were charged for the offences punishable under Sections 120-B, 148 and 302 read with Section 149 of Indian Penal Code, 1860. The Trial Court, as aforementioned, has convicted accused 1 and 2 and acquitted accused 3 to 5.

3. Case of the prosecution in brief is that the deceased Manja alias Koli Manja was the friend of all the five accused; they used to have money transaction among them; the deceased was running the chicken retail outlet under the name H.P. Chicken Centre situated at 8th Cross, Saraswathipuram, Nandini Layout, Bangalore; all the accused being the friends of the deceased used to frequently visit the shop of the deceased and talk with him; they used to frequently go outside together. P.W.9-Raghu after passing SSLC (X Std.) did not have any job in his village; with the help of his friend one Mr. Sandeep, he got the job in the shop of the deceased; since he developed faith in P.W.9, he had handed over the keys of the shop in favour of P.W.9; the shop was to be opened at 8.00 a.m. by P.W.9 and he used to close the shop between 10.30 p.m. and 11.00 p.m. every day; P.W.9 used to collect the sale proceeds and hand over the same to the deceased every night; P.W.9 used to have his food in the house of the deceased and he used to sleep in the house of the deceased every day; wife of the deceased was pregnant during the relevant point of time and hence, she had been to her parents place for the purpose of delivery of child. Consequently, the deceased and P.W.9 only were living in the house of the deceased.

On the date of the incident i.e., on 26-4-2003, the deceased and P.W.9 were in chicken shop upto 2.00 p.m., as usual, the deceased had left the shop at 2.00 p.m. for lunch to his house; accused 1 to 4 came on two scooters to the chicken shop and asked P.W.9 as to the whereabouts of the deceased; since P.W.9 told accused 1 to 4 that the deceased had gone to his house for taking lunch, they left the shop and went away. At about 7.00 p.m., on the same day, the deceased and P.W.9 were in the shop doing the business; at about 9 p.m., all the five accused came in autorickshaw, at that point of time. P.W.9 left the chicken shop and went near the tent house for bringing the water from the said place; P.W.9 used to go to the very place situated at tent house for bringing water for about 9-10 occasions every day for cleaning the dressed chicken, when he came back from the tent house with the water, he saw accused 1 and 2 assaulting the deceased with choppers (M.Os. 5 and 6) and at that point of time, accused 3 to 5 were standing mutely. The incident was over within five minutes. Immediately, all the accused fled away from the scene with the very autorickshaw with weapons. The victim fell down with the bleeding injuries in front of the chicken shop. Hundreds of people

gathered on the spot. On getting information, the police arrived at the scene. However, none of the person gathered there were ready to lodge the complaint against the accused P.W.9 lodged the complaint at about 11.15 p.m. on the very day before P.W.14-the PSI of Nandini Layour Police Station and based on which, Crime No. 118 of 2003 came to be registered for the offence punishable under Section 302 read with Section 34 of IPC P.W. 14 conducted part of the investigation. FIR was filed with the jurisdictional Magistrate at about 3.30 a.m. on 24-7-2003. The investigation was handed over the Inspector of Police (P.W.15) at about 11.30 a.m. on 27-4-2003. P.W.15 has completed the investigation and laid the charge-sheet.

4. In order to prove its case, the prosecution in all has examined 16 witnesses and got marked 27 exhibits and 15 material objects. On behalf of the defence, no witness is examined. The Trial Court, on evaluation of the material on record as aforementioned, convicted the accused 1 and 2 and acquitted accused 3 to 5.

5. Sri Jadhav, learned Senior Counsel appearing on behalf of the appellants, taking us through the entire material on record, more particularly to the evidence of P.Ws. 9, 12 to 15 and the contents of FIR, contends that the case as made out by the prosecution before the Court is completely artificial; P.W.9 is wholly an unreliable witness; P.W.9 was not on the spot during the relevant point of time and he was in the house and consequently, he has not seen the incident in question. He further submits that number of improvements have been made by the prosecution witnesses more particularly by P.W.9 before the Court; there was no reason for P.W.9 not to lodge the complaint at about 9.00 to 9.30 p.m. i.e., immediately after the incident; on the contrary, he went back to the house as if nothing has been happened to his employer; this conduct of P.W.9 in going back to the house when the dead body of his employer is falling on the road, completely makes the Court to suspect the evidence of P.W.9; since P.W.9 is untrustworthy, entire case of the prosecution should fail inasmuch as the entire case depends upon the sole testimony of P.W.9. He further draws the attention of the Court that the statement of P.W.9 was recorded by P.W.14 at about 11.30 p.m. on 26-4-2003 i.e. on the date of incident and such statement was duly signed by him. According to Mr. Jadhav, the said statement of P.W.9 made before P.W.14 at about 11.30

p.m. on 26-4-2003 is missing; Investigating Officer has consciously avoided to place the said documents before the Court. He further submits that the medical evidence does not tally with ocular testimony of the evidence of P.W.9. Lastly, he submits that P.W.9 informed P.W.13, the father of the deceased only in the morning of the next day of the incident, which again appears to be unnatural conduct of P.W.9. Among all these other grounds, he prays for acquittal of the accused.

Per contra, Sri Keshava Murthy, learned State Public Prosecutor-2 drawing the attention of the Court to the materials on record submits that there is no confusion in the mind of P.W.9 about the names and faces of the accused inasmuch as the accused used to visit the shop of the deceased every day and they were close friends of the deceased; the motive for the commission of offence is also spoken to by him; the aspect of motive is also deposed by P.Ws. 12 and 13, the parents of the deceased; since P.W.9 is a rustic villager, who was employed at Bangalore in chicken vending shop, he is not expected to depose meticulously all the aspects; P.W.9 has deposed about the incident in question almost meticulously; there are bound to be variations and minor discrepancies in the evidence of the witnesses, more particularly when the witnesses are examined after one or two years after the incident in question before Court: P.W.9 cannot be said to be the interested witness inasmuch as he has withstood in his cross-examination and no material is found against him to show that he was otherwise opposed to any of the accused; being an employee of the deceased, his presence on the spot is natural, in the cross-examination, P.W.9 has deposed that he could see the incident while he was coming back from the tent house with water. He further draws the attention of the Court that the tent house is just about 100 ft. away from the spot in question and P.W.9 was almost nearing the chicken shop with water. Since P.W.9 had feared about the incident of murder of his employer on the public road, he being the villager, must have tried to hide himself to save his life and thus, he must have gone to his room after the incident. According to him, the entire evidence on record will have to be read homogeneously and importance cannot be attached to a solitary admission which is minor in nature.

6. P.Ws.1, 7 and 8 are the eye-witnesses to the incident in question. P.W.1 is owner of the building and he was running the grocery shop during the relevant point of time. Grocery store of P.W.1 was adjoining the chicken shop of the deceased. P.W.7 was running a dental clinic in the same building wherein the chicken shop was situated. P.W.8 was also running plywood shop in the very building. All these witnesses unfortunately for the prosecution have turned hostile.

P.W.2 is the witness for Ex. P.1 under which the cloths of the deceased M.Os. 1 and 2 are seized.

P.W.3 is the witness for the mahazar-Ex. P.2 under which the autorickshaw and the choppers used for commission of the offence are seized. The choppers (M.Os. 5 and 6) were produced by accused 1 and 2.

P.W.4 is the doctor. He treated accused 2 since accused 2 had sustained certain injuries on his fingers. The said treatment has taken place at about 9.30 p.m. on the date of the incident.

P.W.5 is the witness for seizure of the cloths of accused 1 and 2 which were bloodstained. M.Os. 12 to 15 are the bloodstained cloths and Ex. P.3 is the seizure panchanama.

P.W.6 is the witness for panchanama-Ex.P.7 under which the bloodstained cloths of accused 3 and 4 are seized. However, those clothes are not marked in evidence.

P.W.10 is the witness for inquest panchanama-Ex.P.14.

P.W.11 is another witness for Ex.P.14.

P.Ws. 2 to 6, 10 and 11 have turned hostile to the case of prosecution. Their evidence is of no help to the case of prosecution.

P.Ws.12 and 13 are the mother and father of the deceased respectively. They depose about the relationship of the deceased with accused and about the motive for the commission of the offence.

P.W.14 is the Sub-Inspector of Police. He received the complaint lodged by P.W.9 as per Ex. P.12 and registered Crime No. 118 of 2003. He conducted part of the investigation.

P.W.15 is the Investigating Officer. He completed the investigation and laid the charge-sheet.

P.W.16 is the witness attached to Victoria Hospital and conducted the post-mortem examination over the dead body. Ex. P.25 is the post-mortem report.

7. P.W.9 is the eye-witness. As aforementioned, he was an employee working under the deceased. He has supported the case of the prosecution by deposing against accused 1 and 2 and proved about the incident in question. He has lodged complaint as per Ex. P.12 before P.W.14 at about 11.15 p.m. on the date of the incident. He is also the witness for the scene of offence Ex.P13. From the aforementioned, it is clear that P.Ws. 1 to 8, 10 and 11 have turned hostile to the case of prosecution. However, P.W.9 (sole eye-witness), P.Ws. 12 and 13 (parents of deceased) P.Ws. 14 and 15 (Police Officers) and P.W.16-Doctor who conducted autopsy on the dead body, have supported the case of the prosecution. From the aforementioned, it is clear that the case of the prosecution is mainly depends upon the ocular testimony of P.W.9.

8. We have already mentioned supra that P.W.9 has lodged the complaint as per Ex. P.12 at about 11.15 p.m. on 26-4-2003 before P.W.14. FIR discloses as to how he found the job in the shop of the deceased at Bengaluru; he used to take the entire responsibility of the chicken shop owned by the deceased from morning till night. The deceased did not come to the shop and consequently, it was P.W.9 who used to sell the chicken and collect the sale consideration. Everyday night, P.W.9 used to handover the sale proceeds in favour of the deceased. P.W.9 was being paid a sum of Rs. 1000/- per month as salary. P.W.9 used to sleep in the house of the deceased after having food on all occasions. It is further stated in the complaint-Ex.P.12 that all the accused are the friends of the deceased. However since one month prior to the incident, the deceased told that he does not want to continue friendship with the accused. At about 3.00 p.m., at 26-4-2003 (on the date of the incident), accused 1 to 4 had come to the shop of the deceased, but by

then, the deceased had left the shop for taking his food in his house. Thus, accused 1 to 4 went back from the shop. At about 9.00 p.m., when the deceased and P.W.9 were in the chicken shop, all the accused came in autorickshaw, at that point of time. P.W.9 went near the tent house for bringing water to the chicken shop; while he was coming back with water, he saw accused 1 and 2 assaulting the deceased with choppers on the road in front of the chicken shop, the electricity lights were on and the electricity bulbs were operating and the light was emanating from the said electrical bulbs fixed to the electric poles situated by the side of the road. Accused 3 to 5 were standing near the scene of offence; immediately after assaulting the deceased, all the accused 6 fled away from the scene in the very autorickshaw with the weapons. The victim fell down on the ground and died. All these factors are meticulously stated by the complainant-P.W.9 in his complaint-Ex.P.12.

9. The version as found in the complaint-Ex. P.12 is deposed by P.W.9 before the Court. As aforementioned, all the other eye-witnesses have turned hostile to the case of prosecution. P.W.9 is the sole eye-witness who supported the case of prosecution before the Court. Thus, we have scrutinized his evidence meticulously and carefully. P.W.9 has deposed that at about 9.00 p.m. on 26-4-2003, the deceased was murdered in front of H.P. Chicken Centre and he was murdered by accused 1 to 5. It is specifically deposed by him that accused 1 and 2 assaulted the deceased with choppers on his neck, head, hip and shoulder back etc. It is also deposed by him that accused 3 to 5 were standing behind simply watching the incident. It is specified by him that the choppers were of arm size; he was just about two feet away from the place of incident and the incident has taken place while he was bringing the water from the tent house; at the place where the incident took place, there was street light number of persons have witnessed the incident in question; he had seen accused 1 to 5 earlier to the incident inasmuch as they used to go near the chicken shop of the deceased and were meeting the deceased; the Police officials of Nandini Layout Police Station came to the spot and shifted the victim to Victoria Hospital in a van; after few minutes of the incident. P.W.9 closed the shop. He has identified the bloodstained clothes of the deceased as well as the material objects used for commission of the offence by accused 1 and 2. He has also deposed about lodging of the complaint as per

Ex.P.12. It is further specified by him that between 11.45 and 12.45 midnight intervening 26-4-2003 and 27-4-2003, the Inspector of Police conducted the spot mahazar; stained clothes were found at the spot; such bloodstained clothes were packed in a plastic container. He has deposed that the sample mud is collected by the Investigating Officer under Ex.P.13.

In the cross-examination, P.W.9 has deposed that he was working in the shop of the deceased since six months and earlier to that, he did not work in Bengaluru City; he was sleeping in the house of the deceased which was situated at Bhovi Palya; there are number of shops and houses near and around the place of incident; the tent house is situated on the left side of Nandini Layout Main Road; that the tap situated near the tent house is 10 ft. below the Nandini Layout Main Road and it is in the cellar portion of the tent house. He admitted that Nandini Layout Main Road is the public road and the number of vehicles and people were moving daily on the main road. He has denied the suggestion that the distance between the chicken shop and the tent house is about 100 feet which means that, according to him, the distance between the tent house and chicken shop is less than 100 feet. He has clarified in the cross-examination that he used to bring water from the tap of the tent house daily about ten times; he used to spend five minutes to go to the tent house and to bring water to the chicken shop. When he left the chicken shop to bring water on the date of incident at about 9.00 p.m., the accused had come near the chicken shop and the autorickshaw was stopped on the road in front of the cycle shop. The incident took place before the chicken shop within five minutes. He admitted that he had not gone to Victoria Hospital along the body of the victim, immediately after the incident. But the police took the deceased to Victoria Hospital and he had gone to Victoria Hospital on the next day morning. He reiterates that his statement is recorded on the spot by the police. However, he admits in the cross-examination that the Inspector of Police came to the house of deceased situated at Bhovi Palya and recorded his further statement and the said further statement was signed by him. He denies the suggestion that he had not seen the accused prior to the incident at any point of time. He has also denied the suggestion that he had been tutored by the Police Officers to depose against the accused before the Court. To the suggestion by the defence that the death has taken place within the chicken shop, the denial is the answer given by P.W.9. He

further denied the suggestion that he could not have seen the incident from the place where he was bringing the water from the tap. He reiterates that he knew the contents of Exs. P.1, P.12 and the contents therein are not concocted.

In the further cross-examination, P.W.9 has admitted that the Inspector of Police brought him from the house of the deceased to the spot at 11.30 p.m. and he was all alone in the house of the deceased during the said night. However, he was on the spot from 11.30 p.m. to 12.15 midnight. He was taken to Nandini Layout Police Station by the Inspector Nyame Gowda (P.W. 15). Thereafter, he went back to the house of the deceased and slept.

10. Insofar as the actual incident of assault by accused 1 and 2 on the deceased is concerned, P.W.9 has emphatically deposed about complicity of accused 1 and 2 in the crime. He has withstood in his cross-examination on that aspect of the matter. Even in the cross-examination, he has reiterated that only accused 1 and 2 have assaulted the deceased with choppers. He has also admitted that accused 3 to 5 were simply the on-lookers and they did not participate in the crime. Thus, the incident of assault by accused 1 and 2 has remained uncontroverted though P.W.9 was cross-examined at length by the defence on that aspect of the matter. The defence could not impeach the evidence of P.W.9 insofar as the assault by accused 1 and 2 is concerned.

11. Further, it is to be noted that P.W.9 has admitted certain suggestions made by the defence in his cross-examination that he went back to his house after the incident and was again brought back to the spot by the police. This appears to be unnatural conduct of P.W.9. P.W.9 being an employee of the deceased could not have gone to the house to stay therein till morning. But looking to the entire evidence on record, it is clear that when he was on the spot, the police officials of Nandini Layout Police Station came to the spot and recorded his statement as per Ex.P12. He admits that the contents found in Ex.P.12 are known to him and that the police have not created the said complaint. One stray admission by P.W.9 that, he had been to the house of the deceased and the police officials went to the house and took P.W.9 to the spot, will not tilt the balance in favour of the defence. The act of P.W.9 going to the house situated at Bhovi Palya is after the incident

but till such time, he was there on the spot. He has also deposed so before the Court which has remained unimpeached. The subsequent conduct of the accused which appears to be unnatural will not take away the effect of his deposition before the Court relating to the incident in question. The Court will have to separate the grain from the chaff. Only on the basis of the solitary unnatural conduct of accused 1 after the incident, it cannot be said that the whole evidence of P.W.9 needs to be disbelieved. We find that the evidence of P.W.9 is highly reliable.

12. It is by now well-settled that there is no rule or law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if it is unbelievable. The testimony of single witness if is straightforward, cogent, if believed, is sufficient to prove the prosecution case. The conviction can be made on the testimony of such single witness. There is no statutory requirement that a conviction cannot be made on the testimony of a single witness unless it is corroborated. The Court can accept the evidence of a single witness though uncorroborated and convict an accused except in cases where the nature of the testimony of the single witness is shaky. In such an event as a matter of prudence, corroboration may be insisted upon, as in the case of a child witness, an accomplice or any other of an analogous character. The aforementioned principles are kept in mind by us while assessing the testimony of the sole witness-P.W.9. We find that the evidence of P.W.9 is cogent and trustworthy under the facts and circumstances of the case.

13. Furthermore, the evidence of P.W.9 is supported by the medical evidence. Though it is argued by Sri Jadhav, learned Senior Counsel that the medical evidence does not support the ocular testimony of P.W.9, the said contention cannot be accepted. The incident has taken place at about 9.00 p.m. under the electric pole wherein sufficient electricity light was available. P.W.9 was standing near the scene of offence. He has withstood in his cross-examination to depose about the complicity of accused 1 and 2 that they assaulted the deceased with choppers on neck, arms, back of head, etc. The post-mortem report-Ex.P.25 reveals that the deceased had sustained as many as seven injuries almost all on the upper portion of the body including the head. It is the specific evidence of P.W.9 that accused 1 and 2 who assaulted the deceased with choppers were

standing behind deceased. Thus the assaults were made on the upper portion of the body. The chopped wounds found on the dead body are relatable to the weapons used. It is opined by the doctor that the death is due to traumatic shock as a result of facial, neck and the head injuries caused by heavy weapons like the choppers during the assault. Hence it is amply clear that the ocular testimony of P.W.9 is fully corroborated by the medical evidence.

14. Moreover, the Investigating Officer has recovered the choppers M.Os. 5 and 6 used for the commission of offence. They were referred to the Forensic Science Lab for examination. Along with the weapons, the bloodstained clothes of the deceased as well as bloodstained clothes of accused 1 and 2 were sent to Forensic Science Laboratory report is at Ex.P.27. The same reveals that the bloodstains were found on the body, on the choppers as well as on the cloths of accused 1 and 2. If really the accused were innocent and had not came to the scene of offence and participated in the crime, there was no reason as to why their clothes should be bloodstained. It is an additional circumstance which corroborates the testimony of P.W.9. It is no doubt true that the witnesses for recovery mahazar have turned hostile. However, having regard to the totality of the facts and circumstances of the case, we do not have any reason to disbelieve the version of the Investigation Officer coupled with the recovery panchanamas at Exs. P.2 and P.3. There is not even suggestion made to P.Ws. 14 and 15 (Investigating Officers) that they are biased against in the matter on hand. In the absence of any material that the Police Officers are having interest in the family of the deceased, we are of the opinion that their evidence relating to the recovery of choppers as well as the bloodstained clothes of the deceased needs to be believed particularly when the police officers are the responsible Government servants.

15. Be that as it may. Further, the case of the prosecution is supported by the evidence of P.Ws. 12 and 13 (parents of the deceased). Both these witnesses have deposed that the accused used to demand money from the deceased, but the deceased had refused to pay money to the accused and in that regard, the accused were having grudge against the deceased. It is empathetically deposed by the said witnesses that accused were at inimical terms with the deceased. Even

P.W.9 in his complaint has stated that the deceased used to tell him that he does not want to continue friendship with the accused inasmuch as they were undesirable people. With this motive, the incident has taken place. We do not find any reason to disbelieve the version of the parents of the deceased on the aspect of the motive.

16. On reconsidering the evidence on record, more particularly of P.W.9, we are of the opinion that the discrepancies pointed out by the defence are not so vital which can affect the credibility of the evidence of the witnesses, more particularly of P.W.9. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate otherwise acceptable evidence. Different witnesses react differently under the different situations, whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

While observing so, we have relied upon the judgment of the Apex Court in the case of Leela Ram (dead) through Duli Chand v State of Haryana and Another AIR 1999 SC 3717: 2000 SCC (Cri.) 222: (1999) 9 SCC 525. In this matter also, though the conduct of P.W.9 in going to the house after the incident appears to be artificial, it seems, he has done so because of fear. He has not come forward with courage to lodge the complaint. He has tried to hide himself in order to save his life. He, being a villager and had just then come to Bengaluru for work, might not have sufficient courage to go out immediately to save the life of the victim. Only on the said ground, the evidence of P.W.9 cannot be disbelieved particularly when we find the entire evidence of P.W.9 wholly reliable and trustworthy. While assessing

the evidence of P.W.9, we have also kept in mind that he is an employee of the deceased and hence, we have scrutinized his evidence more carefully. Even on such scrutiny, we find that his evidence is trustworthy. Hence, his evidence cannot be rejected only on the ground of so-called interestedness.

17. Looking to the totality of the facts and circumstances of the case, we conclude that the prosecution has proved its case beyond reasonable doubt as against accused 1 and 2. Hence, no interference is called for. Appeal fails and the same stands dismissed.

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