**The State of Karnataka Vs. Rangaswamy**

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**SooperKanoon Citation** : sooperkanoon.com/1195421

**Court** : Karnataka

**Decided On :** Sep-09-2015

**Judge** : Mohan M. Shantanagoudar and Budihal R.B.

**Appeal No.** : CRL.A 226/2012

**Appellant** : The State of Karnataka

**Respondent** : Rangaswamy

**Judgement** :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE9H DAY OF SEPTEMBER, 2015 :PRESENT: R THE HONBLE MR.JUSTICE MOHAN M SHANTANAGOUDAR AND THE HON'BLE MR.JUSTICE BUDIHAL R.B CRIMINAL APPEAL NO.226/2012 ... APPELLANT BETWEEN: THE STATE OF KARNATAKA POLICE SUB INSPECTOR PATTANAYAKANAHALLI POLICE STATION SIRA TALUK (BY SRI CHETAN DESAI, HCGP) AND: RANGASWAMY S/O LATE GIRIYAPPA AGED26YEARS AGRICULTURIST R/O GOLLARAHALLI, SIRA TALUK TUMKUR DISTRICT (BY SRI SIJI MALAYIL, ADV. FOR M/S. SIJI MALAYIL ASSOCIATES SRI VAGEESH HIREMATH, AMICUS CURIAE) THIS CRIMINAL APPEAL IS FILED U/S3781) AND (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND

ORDER

OF ACQUITTAL DATED:

31. 10.11 PASSED BY THE PRL. SESSIONS IN S.C.NO.43/09- ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S.436 OF IPC. ... RESPONDENT JUDGE, TUMKUR2THIS CRIMINAL APPEAL COMING ON FOR HEARING THIS DAY MOHAN M SHANTANAGOUDAR DELIVERED THE FOLLOWING:-

## JUDGMENT

The judgment and order of acquittal dated 31.10.2011 passed by the Principal Sessions Judge, Tumkur in Sessions Case No.43/2009 is appealed by the State. By the impugned judgment, the Court below has acquitted the sole accused for the offence punishable under Section 436 of IPC.

2. The case of the prosecution in brief is that, at about 12.30 p.m. on 09.11.2008, when the first informant (PW.1) and his wife were attending to the agricultural work in their agricultural field, the friend of PW.1 Sri Thimmanna went and informed the first informant and his wife that the first informants hut is put on fire; immediately, the first informant and his wife and some villagers ran to the spot and found that their hut was burnt; the fire was extinguished by fire brigade 3 people; in the fire incident, house hold articles, food grains and cash of Rs.30,000/-, apart from gold ornaments were allegedly burnt. According to the first informant, he has sustained loss for a sum Rs.1,30,000/- in the said incident. The first informant having come to know that the accused Rangaswamy was standing behind his hut prior to the incident, suspected the role of the accused in the said incident and lodged the first information at 8.15 p.m. on 10.11.2008, before the Sub- Inspector of Police, Pattanayakanahalli Police Station, Sira Taluk, Tumkur as per Ex.P1. The first information report (Ex.P5) reached the jurisdictional Magistrate at about 2.00 p.m. on 11.11.2008. PW.11-Sub-Inspector of Police completed the investigation and laid the charge sheet against the sole accused.

3. In order to prove the case, the prosecution in all examined 11 witnesses and got marked 6 exhibits and one material object. On behalf of the defence, witnesses are not examined and documents were not marked. The 4 Court below on

evaluation of the material available on record acquitted the accused for the aforementioned offences.

4. Sri Chetan Desai, learned HCGP appearing for the appellant/State taking us through the material on record and judgment of the Court below submits that the Court below is not justified in disbelieving the versions of PWs.2, 4 and 9 who are the eyewitnesses to the incident while acquitting the accused for the offence for which he was charged; the evidence of these eyewitnesses is consistent, cogent and reliable; their presence on the spot cannot be denied inasmuch as their houses are also partially damaged in the fire incident; the reasons assigned by the Court below while acquitting accused are unacceptable; the Court below has not assigned valid reasons for coming to the conclusion; though PWs.2, 3 and 4 are relatives of PW1, their versions cannot be doubted merely on the said ground; on these among 5 other grounds; he prays for setting aside the judgment of the Court below.

5. Since Sri Siji Malayil, learned advocate was not present in the Court to represent the respondent, the Court appointed Sri Vageesh Hiremath as Amicus Curiae. The Court supplied one set of paper book to learned Amicus Curiae. He has argued the matter. During the course of arguments, Sri.Siji Malayil, learned advocate also has appeared and he is also heard in the matter.

6. Learned Amicus-curiae and Sri Siji Malayil, drawing the attention of the Court to the evidence of PWs.2, 4 and 9 submit that, their versions are interested; they are all close relatives of PW.1; the village was divided into two groups of people; one group was headed by the accused and another group was headed by PW.1; number of civil disputes were pending between the accused and the first informant in Civil Court at Sira pertaining to the land bearing No.242/2; the prosecution witnesses have admitted that they intended 6 to file a criminal case against the accused, though number of civil litigations are pending between the parties; in the light of such material on record, and in view of unexplained delay in lodging the first information, as well as delay in dispatching the first information report to the jurisdictional Magistrate, the Court below is justified in acquitting the accused by giving benefit of doubt in favour of the accused.

7. At the outset, we find from the records that the draft charge is submitted by the Public Prosecutor before the trial Court, based on which, the trial Court has framed the charge. There is no procedure prescribed under the Code of Criminal Procedure seeking draft charge either from the defence or from the Public Prosecutor by the Court. It is for the Court to frame charge having regard to the material collected in the charge sheet/ final investigation report. It is the primary duty of the Court to frame the charge applying its judicious mind. The Court cannot simply rely upon the 7 draft charge submitted by either the defence or the Prosecutor. Chapter XVII of Code of Criminal Procedure deals with the subject The Charge. Section 211 states about the contents of charge; Section 212 specifies that the particulars relating to time of offence, place of offence and the person/persons involved in the crime are to be stated in charge; Section 213 mandates that the manner of committing offence is to be stated; under Section 216 the Court may alter charge; Section 218 further makes it clear that separate charges shall be framed for distinct offences. None of the provisions contained in Chapter XVII of the Code of Criminal Procedure, dealing with the charge, mandate either the defence or the Public Prosecutor to submit draft charge before the Court, based on which, the Court will frame charge. At this stage, Sri.Chetan Desai, learned Government Advocate drawing the attention of the Court to the judgments of this Court rendered in Venkataraju 8 and others Vs. The State of Karnataka by the Police of Rampura reported in ILR 2006 KAR3904and State of Karnataka Vs. Abdul Rasheem and others reported in ILR 2006 KAR2335submits that the aforementioned judgments require the defence as well as the Public Prosecutor to submit draft charges. We have already mentioned supra that procedure as prescribed under Chapter XVII of the Code of Criminal Procedure does not mandate either the defence or the prosecution to submit draft charge. It is also clear from Chapter XVII of the Code of Criminal Procedure that it is the duty of the trial Court to frame charge as per law, on going through the final investigation report and the material collected therein by the investigation officer by applying its mind judiciously. It is needless to observe that in case, if any confusion arises in the mind of the Court and in case, if the facts are very much complicated and in case, if many number of witnesses and many number of accused are involved in the incident in question, the Court may require assistance

of both the defence as well 9 as the prosecution while framing charge, in order to ward of any confusion in the mind of Court and in order to avoid any technical defect in the charge to be framed. Except in such exceptional circumstances as mentioned supra, in our considered opinion, it is the duty of the trial Court itself to frame charge on its own, without waiting for draft charge to be submitted either by the defence or by the prosecution. We find from our experience that in number of criminal matters the trial Courts have been adjourning the criminal cases merely because the draft charges are not submitted by the parties. Since it is not open for the trial Court to insist upon either the defence or the prosecution to submit the draft charge, the trial Court shall not wait for submission of draft charge (except in exceptional matters as mentioned Supra) and consequently, it is not open for the trial Court to adjourn the matters for the said reason. Speedy trial is the right of the accused. If criminal cases are adjourned for 10 months together expecting the draft charges to be submitted by the defence as well as the prosecution, such right of the accused relating to speedy trial would naturally be violated. The drafting of charges is guided and regulated by four rules: a) The Rule against ambiguity b) The Rule against duplicity c) The Rule against misjoinder of offenders d) The Rule against misjoinder of offences. The charge to which the accused is called upon to answer must be certain. Since it charges a person/accused of certain offences specifically and as the accused has to face the trial based on such charge, onerous responsibility is on the trial Court to frame the charge strictly in accordance with law. There cannot be any ambiguity. Therefore, it is not open for the trial Court to frame charge based on draft charges submitted by the defence or the prosecution. The Court has to apply its judicious mind independently to the facts 11 contained in the investigation report while framing charge/charges. In view of the above, we clarify that the observations made by the learned single Judge in the aforementioned judgments of Venkataraju and others Vs. The State of Karnataka by the Police of Rampura reported in ILR 2006 KAR3904and State of Karnataka Vs. Abdul Rasheem and Others reported in ILR 2006 KAR2335are incorrect and hence need not be followed. We reiterate that the trial Courts generally shall not seek draft charge either from the prosecution or from the defence. Only in exceptional circumstances wherein the facts are very much complicated, number of accused involved in the incident and number of witnesses

cited in the investigation report are very many, the Court may seek assistance of both the prosecutor as well as the defence advocate, with a view to frame the charge/charges properly and as required in law. 12 With the aforementioned observations, we proceed to decide the matter on merits.

8. PW.1 is the first informant, he lodged the first information as per Ex.P1 at 8.30 p.m. on 10.11.2008, though the incident has taken place on 12.30 p.m. on 09.11.2008. Thus, it is clear that the first information is lodged with delay of about 36 hours. He is not an eyewitness to the incident. However, he has deposed about loss caused to him in the fire incident. PWs.2, 4 and 9 are eyewitnesses to the incident. They have deposed about the complicity of the accused in the crime; PW.3 came to know about the complicity of the accused through her children which means she is a hearsay witness; PWs.5, 6, 7 and 8 are also hearsay witnesses, among them, PWs.7 and 8 have turned hostile to the prosecution case; PW.10 is a witness to spot panchanama (Ex.P2); PW.11 is the Sub-Inspector of Police who registered the crime, completed the investigation and laid the charge sheet. 13 9. The evidence of PWs.1, 2, 4 and 9 clearly reveals that all of them are closely related to each other; they formed one political group in the village and whereas the accused and his relatives formed another group in the village; number of civil disputes between the accused and PW.1 are pending before the Civil Court at Sira with regard to property bearing No.242/2; more than 10-12 civil litigations are pending between the parties; it is also clear from the evidence of PWs.2 and 9 that these eyewitnesses and their group intended to file a criminal case against the accused. PW.2 further admits that a criminal case is filed, though it is not made clear by PW.2 that a criminal case which is subsequently filed is the one on hand or not.

10. Learned Amicus-curiae, is justified in arguing that the admissions of PWs.2 & 9 that they intended to foist a criminal case against the accused have to be viewed seriously and adverse opinion needs to be drawn against the prosecution case. Such admission of 14 PWs.2 & 9 goes to the very root of the matter, inasmuch as it may be presumed that false first information may have been lodged against the accused because of prior rivalry, for generating this litigation.

11. Thus, it is prima-facie clear that PWs.2, 4 & 9 had thought of implicating the accused in a criminal case since some time. We also find that the Court below is justified in disbelieving the versions of the eyewitnesses inasmuch as their versions are interested versions. We hasten to add here itself that merely on the basis of interestedness, the Courts will not generally brush aside the evidence of eyewitnesses; but in the matter on hand, it is clear from the versions of the eyewitnesses that they intended to foist a criminal case against the accused and subsequently, a complaint is filed. Looking to the intention of the eyewitnesses since long time of foisting the criminal case against the accused, there is every likelihood that a false complaint might have been lodged against the accused. 15 12. As aforementioned, the incident has taken place on 12.30 p.m. on 09.11.2008 and the first information came to be lodged at about 8.15 p.m. on 10.11.2008 i.e. with delay of about 36 hours. It is also the case of the prosecution that PW.1 immediately after hearing the news reached to the spot and talked with PW.2 who is stated to be the eyewitness to the incident. Even, when PW.1 reached the spot, from the agricultural land, according to him, the hut was being burnt and he had talked with PW.2- Gangammma before lodging the first information. It is the specific version of PWs.2 & 4 that PW.1 rushed to the spot and talked with them immediately after the incident and PW.1 was informed about the role of the accused in the crime. If it is so, naturally in the first information Ex.P1, the first informant ought to have mentioned the specific role played by the accused of setting the hut ablaze. On the other hand, the first information is silent as to the overt acts of the accused relating to setting the hut ablaze. Per contra, Ex.P1 merely mentions that, the first informant merely 16 suspected the accused since he was standing near the hut during relevant point of time. Hence, it is clear that, even after 36 hours of the incident and even after talking with the eyewitnesses who are closely related to the first informant, the first informant did not know that it was the accused who set the hut ablaze. On the contrary, PW.1 even after 36 hours of the incident and on coming to know that the accused had set the hut ablaze, the first information is lodged against the accused only on suspicion. In view of the above, the Court below is justified in observing that PWs.2, 4 & 9 are not the eyewitnesses and that they intended to falsely implicate the accused because of the prior rivalry and civil disputes between the parties as well as

because of political disputes between two groups in the village.

13. All the eyewitnesses have admitted that there was political rivalry between the accused and PW.1. In the cross-examination of PW.9, he admits that in the election, a candidate contested from the group of PW.1 17 was defeated by the candidate contested from the group of the accused. These facts, as well as the versions of eyewitnesses relating to personal rivalry between the parties and the long standing civil disputes prevailing between the parties, might have lead the complainant and others for generating the tendency to implicate the accused falsely in a criminal case. We find on re-appreciating the evidence that, though the hut of P.W.1 was burnt and has suffered loss to certain extent, the material is not sufficient to conclude that accused was the cause for the fire incident.

14. Having regard to the totality of the facts and circumstances, we are of the opinion that the trial Court is justified in concluding that the accused should be given the benefit of doubt. Hence, we do not find any ground to interfere in the order of acquittal, in as much as, the view taken by the trial Court while acquitting the accused, is one of the possible views, under the facts and circumstances of the case. 18 15. Nevertheless, P.W.1/victim in the fire incident needs to be compensated to a certain extent. Though it is the version of P.W.1 that he sustained loss to the tune of Rs.1,30,000/- in the fire incident, the charge framed against the accused states that P.W.1 has sustained loss to an extent of Rs.90,000/-. P.Ws.2, 3 and 4 also have allegedly sustained loss to an extent of Rs.3,000/-, Rs.10,000/- and Rs.5,000/- respectively. But, we do not find any concrete material to hold that P.W.2, 3 and 4 have suffered loss in the fire incident. However, referring to the scene of offence panchanama Ex.P2 and the evidence on record, we are of the opinion that P.W.1 has sustained certain amount of loss because of the fire incident. His hut is burnt. Some of the goods inside the house also must have been burnt. Ashes were found on the spot after the incident.

16. Since the accused is acquitted, the only course open for the Court is to compensate P.W.1 under the Karnataka Victim Compensation Scheme, 2011 19 framed by the State Government by the notification dated 22.2.2012. P.W.1 is a victim, in as much as, he has suffered loss as a result of the fire incident in

question. He requires re-habilitation. The aforementioned scheme as amended specifies the maximum quantum of compensation at Rs.50,000/- for the purpose of re-habilitation of the victim who has suffered due to damage to the hut. We hope and trust that the Karnataka State Legal Services Authority shall decide the quantum of compensation to be awarded under the scheme, keeping in mind, the provisions of Section 357-A of Code of Criminal Procedure, 1973. However, we may mention that based on facts it appears P.W.1 might have sustained loss of about Rs.30,000/- in the incident. As his hut was burnt to ashes, certain amount of compensation may be paid to P.W.1 under the said scheme for the purposes of his rehabilitation. 20 17. The Victim Compensation Scheme, 2011 is published in the official gazette on 19.04.2012. Learned Government Advocate relying on the opinion given by the State Government to the Member Secretary, Karnataka Legal Services Authority submits that compensation cannot be granted to the victims who have suffered such in incidents prior to 19.4.2012. Such clarification or opinion of the State Government is unacceptable. Sub-Section (3) of Section 357-A of the Criminal Procedure Code reads thus: (3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

18. Aforementioned provision of Section 357-A of the Code of Criminal Procedure, 1973 makes it clear that, if the cases before the trial Court end in acquittal and if the victim has to be re-habilitated, the trial Court after 21 making an order of acquittal may make a recommendation for compensation to the Karnataka State Legal Services Authority.

19. The language of Section 357 Cr.PC at a glance may not suggest that any obligation is cast upon a Court to apply its mind to the question of compensation in every case. The word, may as found in Section 357(1) of Cr.PC primafacie means that the Court may order for the whole or any part of a fine recovered to be applied towards compensation. Section 357(3) of Cr.PC empowers the Court by stating that it may award compensation even in such cases where the sentence imposed does not include the fine. It is by now well settled that cases may arise where a

provision is mandatory despite the use of language that makes it discretionary as has been held by the Apex Court in the case of ANKUSH SHIVAJI GAIKWAD .vs. STATE OF MAHARASHTRA reported in (2013)6 SCC770 It is also observed by the Apex Court in the aforementioned 22 judgment that Section 357 Cr.PC confers a power coupled with a mandatory duty on the Court to apply its mind to the question of awarding compensation in every criminal case. While observing so, the Apex Court has kept in mind the background and context in which Section 357 Cr.C was introduced. The object of the said provision is to empower the Court to award compensation intended to reassure the victim that he or she is not a forgotten party in criminal justice system. The victim would remain forgotten if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether. It is borne out from the observations of the Court in the aforementioned judgment that if application of mind of the Court to the question of compensation in every case is not considered as mandatory, Section 357 of Cr.PC would be rendered a dead letter. The Court must disclose that it has applied its mind to the question in every criminal case. 23 Section 357A of Cr.PC is inserted by Act No.5 of 2009 w.e.f 31.12.2009. The said provision states that if the compensation awarded under Section 357 is not adequate for rehabilitation of the victim or his dependents who have suffered loss or injury as a result of the crime, the Court may make recommendation for compensation even where the cases end in acquittal or discharge. Even where the offender is not traced or identified, but the victim is identified and where no trial takes place, the victim or his dependents may make an application to the Legal Services Authority for award of compensation. The Legal Services Authority may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the Police Officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, in order to alleviate the suffering of the victim or any other interim relief as the appropriate authority deems fit also may be provided. In that regard, the State Government in coordination with the Central Government has 24 prepared a scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation. The intention of the provision appears to provide

specifically for the joint and several liability of the guilty persons and the Government and to set out the important factors to be taken into account in assessing the compensation. In that regard, the Victim Compensation Scheme is notified by the State Government. Having regard to the intention and the object with which the provisions of Sections 357 and 357A of Cr.PC are enacted, in our considered opinion, the benefit of the said provision should be given to all the pending matters, as on the date of the notification i.e., as on 31.12.2009. The appeal proceedings are nothing but continuation of trial proceedings. Therefore, it is open for the appellate Court to recommend for compensation even after acquittal of the accused in the appeal. The 25 trial of the criminal case and the disposal of the appeal may take two to three years. Merely because of such delay, the victim cannot suffer without any compensation. Therefore, in our considered opinion, the Karnataka Victim Compensation Scheme, 2011 as notified by the State Government under the beneficial provision i.e., Section 357(A) Cr.P.C. cannot be given effect only to the cases which arise after the date of publication of the notification, but it shall be given effect to the matters which were/are pending as on the date of notification i.e., on 31.12.2009 before the Courts of Law at various stages. Since the appeal is disposed of today by this order, the victim needs to be paid compensation as per the scheme. Accordingly, the following order is made: (i) (ii) The appeal stands dismissed and the judgment and order of acquittal passed by the trial Court dated 31.10.2011 stands confirmed. The Karnataka State Legal Services Authority will decide the compensation to P.W.1 (Sanneerappa) under the Karnataka awarded be to the 26 Victim Compensation Scheme, 2011 keeping in mind the provisions of Section 357-A of the Code of Criminal Procedure, 1973 and the observations made supra. (iii) Copy of this order shall be sent to the Secretary, Karnataka State Legal Services Authority for further action relating to payment of compensation.

20. We place on record the valuable assistance rendered by Sri.Vageesh Hiremath, learned Amicus Curiae. Hence, the registry is directed to pay Rs.7,000/- to the learned Amicus Curiae as honourarium. KSR/BKP Sd/- JUDGE Sd/- JUDGE