

Vasu Hanamantappa Devaraddi Vs. The State of Karnataka

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Court : Karnataka Dharwad

Decided On : Sep-09-2015

Judge : Anand Byrareddy and S.Sujatha

Appeal No. : CRL.A 2516/2013

Appellant : Vasu Hanamantappa Devaraddi

Respondent : The State of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH R DATED THIS THE9H DAY OF SEPTEMBER 2015 PRESENT THE HONBLE MR JUSTICE ANAND BYRAREDDY AND THE HONBLE MRS. JUSTICE S.SUJATHA CRIMINAL APPEAL Nos.2516/2013 c/w 2517, 2518/2013 Crl.Appeal No.2516/2013 BETWEEN:

1. Vasu Hanamantappa Devaraddi Age:

47. years Occ: Conductor Resident of Yaragatti Taluk: Saundatti Dist: Belgaum.

2. Sheshappa Hanamantappa Devaraddi Age:

50. years, Occupation: Agriculture Resident of Yaragatti Taluk: Saundatti District: Belgaum. ..Appellants (By Shri K B Naik and Sri S S Yadrami and Shri V K Naik, Advocate) 2 And: The State of Karnataka Represented by Addl. State Public

Prosecutor High Court Circuit Bench Dharwad. (By Shri V M Banakar, SPP)
..Respondent This appeal is filed under Section 374(2) of Criminal Procedure Code seeking to set aside the conviction and sentence imposed by Presiding Officer, Fast Track Court, Saundatti in S.C.No.81/2001 by his judgment and sentence dated 07.12.2012 and 28.12.2012 respectively and acquit the appellants (Accused nos.1 &

5) of all the charges alleged against them. Crl.Appeal No.2517/2013 Between:

1. Krishnagouda Bhimangouda Patil Age:

43. years Occupation: Agriculture Resident of Yaragatti Taluk: Saundatti Belgaum District.

2. Raju Bhimangouda Patil Age:

40. years Occupation: Agriculture Resident of Yaragatti Taluk: Saundatti Belgaum District. .. Appellants 3 (By Shri K B Naik and Sri S S Yadrami and Shri V K Naik, Advocate) And: The State of Karnataka Represented by Addl. State Public Prosecutor High Court Circuit Bench Dharwad. (By Shri V M Banakar, SPP)
..Respondent This appeal is filed under Section 374(2) of Criminal Procedure Code seeking to set aside the conviction and sentence imposed by Presiding Officer, Fast Track Court, Saundatti in S.C.No.81/2001 by his judgment and sentence dated 07.12.2012 and 28.12.2012 respectively and acquit the appellants (Accused nos.1 &

5) of all the charges alleged against them. Crl.Appeal No.2518/2013 Between:
Ramesh Goudappa Devaraddi Age:

47. years Occupation: Agriculture Resident of Yaragatti Taluk Saundatti Belgaum District. ..Appellant (By Shri K B Naik and Sri S S Yadrami and Shri V K Naik, Advocate) 4 And: The State of Karnataka Represented by Addl. State Public Prosecutor High Court Circuit Bench Dharwad. (By Shri V M Banakar, SPP)
..Respondent This appeal is filed under Section 374(2) of Criminal Procedure Code seeking to set aside the conviction and sentence imposed by Presiding Officer, Fast Track Court, Saundatti in S.C.No.81/2001 by his judgment and

sentence dated 07.12.2012 and 28.12.2012 respectively and acquit the appellants (Accused nos.1 &

5) of all the charges alleged against them. These appeals coming on for hearing this day, Anand Byrareddy J., delivered the following:

JUDGMENT

Heard the learned counsel for the appellants and the learned Additional State Public Prosecutor.

2. These appeals are heard and disposed of by this common judgment as they are filed by the accused in the same case. 5 3. Criminal Appeal No.2516/13 is filed by accused nos.1 and 5. Criminal Appeal 2517/2013 is filed by accused nos.2 and 4. Criminal Appeal 2518/2013 is filed by accused no.3. All the accused were charged for offences punishable under Sections 143, 147, 148, 457, 302, 449, 460 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC for brevity). The case as presented by the prosecution was to the following effect: That the complainant was one Venkappa Murigeppa Devareddi of Yaragatti Village. It is alleged that he was residing along with his wife, son and his mother, Hanumavva. The complainant was one of three brothers. It transpires that the other brothers were not providing any maintenance to their mother and it was the complainant who was taking care of her. After their separation pursuant to a partition, the mother of the complainant and his sister had filed a suit for partition 6 against the other brothers and the complainant as well seeking allotment of shares in the suit properties. Hanumavva succeeded in obtaining 29% of the property in her favour. On 6.6.2000, the Tahsildar of Saundatti had delivered possession of the share of Hanumavva to her. This according to the complainant had enraged accused no.1 and similarly since Sundravva, had been granted a share and she inturn had sold the property that had fallen to the share of Hanumavva to one Krishnagouda Bhimanagouda Patil, Hanumavva had challenged the said sale and an order was passed directing Krishnagouda Bhimanagouda Patil to pay Rs.1.00 lakh each to Hanumavva and the complainant. This was yet another reason as to why Krishnagouda Bhimanagouda Patil was displeased with the deceased and the complainant. Yet another reason as claimed by the complainant, for the accused

having a grudge against Hanumavva was that the land of the complainant and one Ramesh Goudappa Devraddi were 7 adjoining lands and there was a neem tree on the boundary which the complainant wanted to cut down and Ramesh Goudappa Devraddi - accused no.3, had objected to the same and since it was brought to the notice of the elders of the village at a panchayath and thereafter even to the police who in turn had brought out an amicable settlement. This was another bugbear which rankled the accused in having committed the murder of Hanumavva. The manner in which the offence was said to have been committed, as stated by the complainant, was that on 11.9.2000 after having their dinner the complainant and his wife had retired to their bedroom which was adjoining the Padasala or the verendah of their house and his son - PW3, had in turn slept in another room adjoining the verendah; Whereas Hanumavva is said to have slept on a cot in the verendah. It was about 10.30 pm when they retired. It transpires that suddenly 8 the complainant and his wife heard Hanumavva shout Who are you, the bastard. On hearing the shout, the complainant and his wife are said to have come out of the room and switched on the light of the verendah to see accused no.1 standing near Hanumavva holding a jambia, which is a small hand knife, according to the dictionary. Further, it is alleged that accused no.1 had stabbed Hanumavva - the deceased who was lying on the cot with the jambia on her neck and she was profusely bleeding. The complainant is said to have further seen Krishnagouda Bhimanagouda Patil and Ramesh Goudappa Devaraddi standing guard at the backdoor of the house towards the north and the complainant on noticing this had shouted, what sin have you committed, you fellows. Saying so, he had called out to his son, by which time accused no.1 and Krishnagouda Bhimanagouda Patil - accused no.2 and Ramesh Goudappa Devaraddi - accused no.3 had run out through the door on the northern side leading to the 9 backyard of the house of the complainant and climbed the open staircase to get on the roof and are said to have jumped from the roof and escaped. At that point of time, the complainant and his son had chased them to the roof when they also saw the other accused nos.4 and 5 standing on the roof, who joined the other accused in fleeing. The complainant and his son are said to have given chase to the accused but, they could not catch them. It was stated that there was moonlight and the street lights were also on. Thereafter, they came to

inspect the damage done and it was found that Hanumavva was no more, as she had been stabbed repeatedly on the neck and she was profusely bleeding. The throat was completely slit. The complainant had informed the Yaragatti Outpost Police Station and the police are said to have arrived at the spot and conducted further investigation and registered a case for offence punishable as aforesaid 10 for the commission of murder of Hanumavva who was said to be 100 years old at that point of time. The Police had registered a case in Crime No.182/2000. The Circle Inspector, Saundatti had taken up further investigation and had gathered evidence against accused nos.1 to 5 and had filed a charge sheet before the Magistrate, Saundatti. The Magistrate in turn had taken cognizance of the offence against the accused had registered the charge sheet in a case in CC No.1092/2000 and since the offence alleged against the accused was under Section 302 read with Section 149 of IPC which was exclusively triable by a Court of Sessions, the Magistrate had in exercise of power under Section 209 of the code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C., for brevity) committed the case to the Court of Principal Sessions and District Judge, Belgaum. 11 The case thereafter was registered in S.C.No.81/00 and the case was then made over to the Fast Track Court, Saundatti for trial. The accused were enlarged on bail and after hearing the accused and the prosecution regarding the charges, the charges had been framed against the accused for offences punishable under Sections 143, 147, 148, 302, 449, 460 read with Section 149 of IPC. The accused had pleaded not guilty and claimed to be tried. The prosecution then tendered evidence of 18 witnesses and got marked Exs.P.1 to P.41 apart from material objects 1 to 17 and the statement of the accused was recorded under Section 313 of Cr.P.C. and the incriminating evidence tendered against them had been denied.

4. After hearing the arguments, the Court below had framed the following points for consideration:

(1) Whether the prosecution proves beyond all reasonable doubts that accused Nos.1 to 5 on 11.9.2000 at about 11.10 PM in the Padasala of the 12 of residential house complainant Venkappa situate in Radder Oni of Yaragatti Village, within the limits of Murgod P S were the members of an unlawful assembly, the common

object of which was to commit murder of the Hanamawwa, the mother of complainant, since there was long standing property dispute between accused and said Hanamavva and there by the offence punishable u/s 143 r/w sec 149 of IPC?. committed

(2) Whether the prosecution proves beyond all reasonable doubts that the accused No.1 to 5 on the alleged date time and place being the members of an unlawful assembly, in prosecution of the said common object of such assembly committed the offence of rioting and thereby committed the offence punishable u/s 147 r/w sec 149 of IPC?.

(3) Whether the prosecution proves beyond all reasonable doubts that the accused No.1 to 5 on the alleged date time and place being the members of an unlawful assembly, in prosecution of the said common object of such assembly committed the offence of rioting and at that time the accused No.1 was armed with deadly weapon like Jambiya an thereby committed the offence punishable u/s 148 r/w sec 149 of IPC?. 13

(4) Whether the prosecution proves beyond all reasonable doubts that the accused No.1 to 5 on the alleged date time and place being the members of an unlawful assembly, in prosecution of the said common object of such assembly committed lurking hosue trespass bynight i.e., at 11.10 pm on the said date by entering into the building belonging to the complainant Venkappa, used as a human dwelling, in order the offence punishable or death imprisonment for life and there by committed an offence punishable u/s 457 r/w sec 149 of IPC?. to commit with

(5) Whether the prosecution lurking hosue proves beyond all reasonable doubts that the accused No.1 to 5 on the alleged date time and place being the members of an unlawful assembly, unlawful assembly, in prosecution of the said common object of such assembly committed trespass bynight i.e., at 11.10 pm on the said date by entering into the building belonging complainant Venkappa, used as a human dwelling, the offence in order punishable death or imprisonment for life and that out of the accused persons the accused No.1 at the time of committing such offence voluntarily caused death of said Hanamawwa and there by committed to

commit with the to 14 an offence punishable u/s 460 r/w sec 149 of IPC?.

(6) Whether the prosecution proves beyond all reasonable doubts that the accused No.1 to 5 on the alleged date time and place being the members of an unlawful assembly, in prosecution of the said common object of such assembly accused No.1 delivered blow by means of Jambiya on the neck of Hanamavva while she was sleeping on the cot in the Padasala of the house and did commit murder of the said Hanamavva intentionally and there by committed an offence punishable u/s 302 and accused Nos. 2 to 5 in prosecution of their common intention have committed the offence punishable u/s 302 r/w sec 149 of IPC?.

(7) What order?. The trial Court ultimately convicted the accused and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.30,000/- each, and in default to pay the fine amount, the accused were to undergo rigorous imprisonment for 5 years for the offence punishable under Section 302 read with Section 149 IPC. 15 The accused Nos.1 to 5 were sentenced to undergo rigorous imprisonment of 3 months and to pay a fine of Rs.500/- each, and in default to pay the fine amount, the accused shall further undergo Rigorous imprisonment for 1 month for the offence punishable under Section 143 read with Section 149 IPC. The accused Nos.1 to 5 are sentenced to undergo rigorous imprisonment for 1 year and to pay fine of Rs.300/- each, and in default to pay the fine amount, the accused shall undergo Rigorous Imprisonment for 2 months for the offence punishable under Section 147 read with Section 149 IPC. The accused Nos.1 to 5 are sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.500/- each, and in default to pay the fine amount, the accused shall undergo Rigorous imprisonment for 3 months for the offence punishable under Section 148 read with Section 149 IPC. 16 The accused Nos.1 to 5 are sentenced to undergo Rigorous imprisonment for 6 years and to pay a fine of Rs.5000/- each, and in default to pay the fine amount, the accused shall under go Rigorous imprisonment for 2 years for the offence punishable under Section 449 read with Section 149 IPC. The accused Nos.1 to 5 are sentenced to undergo rigorous imprisonment for 6 years and to pay a fine of Rs.5000/- each, and in default to pay the fine amount, the accused shall under go Rigorous imprisonment for 2 years for the offence punishable under Section 460 read with Section 149 IPC. The accused Nos.1 to 5

are sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.3000/- each, and in default to pay fine amount, the accused shall undergo Rigorous imprisonment for 6 months for the offence punishable under Section 457 read with Section 149 IPC. 17 The sentence were to run concurrently. The period of judicial custody of the accused was given set- off.

5. It is that judgment which is under challenge in the present appeal.

6. The learned counsel Sri Yadrami appearing for all the accused would submit that the sequence of events as stated by the complainant are sought to be established through the direct eyewitness account of PWs 1, 3 and 4 viz., the complainant himself, his son and wife, respectively. The learned counsel would submit that according to the complainant, he was the first to reach her on his mothers shout from the verendah. He had come out of the room according, to his evidence, where he was sleeping with his wife and had seen accused no.1 standing near his mother with a jambia in his hand. It is pointed out that the complainant has given two versions in this regard. The 18 learned counsel would firstly draw attention to the complaint in which the complainant has stated that the accused no.1 was being stabbed by accused no.1 with a jambia. However, in the course of his evidence, he has stated that the accused no.1 was standing at her feet. Therefore, the variance in his statement is significant. In his complaint, he has stated that he has seen the accused actually stabbing his mother in the neck with a jambia. It would be an overt act actually witnessed by the complainant, whereas in the evidence he has categorically stated that he was standing at her feet. If he was standing at her feet, it was not possible to stab his mother with the jambia in the neck as it is a small but a sturdy hard knife. This is a significant variance which has not been explained by the prosecution and which cannot be brushed aside as being a minor inconsistency. 19 Secondly, it is pointed out that the accused are said to have gained entry into the house from the door on the northern side which opened into the backyard of the house. There was another door opening from the backyard into the public road. The accused had not used that door but had come over the roof and climbed down the open staircase leading to the open roof of the house of the complainant and then had entered the house by removing the latch on the door, from the outside. It is pointed out that this again

is a circumstance which cannot be readily accepted. The learned counsel would draw attention to the evidence of PW12 who was the witness to the scene of the offence who was examined by the prosecution to substantiate the layout of the house and the manner in which the offence may have been committed by the accused. According to the said witness, the door through which the accused had entered the house was 20 said to be provided with a latch which could not be opened from the outside. According to the said witness and therefore, the assertion of the complainant that the accused had entered the house by removing the latch from the outside through the door on the northern side of the house as indicated in the sketch at Ex.P.19 as well as the rough sketch at Exs.P.18 and P.28. Further, it is pointed out that the accused having unerringly gone to the cot where Hanumavva was sleeping and to have stabbed her after identifying her in the darkness is yet another circumstance which is doubtful as the complainant has stated that when he heard his mothers cry, he came out of the room where he was sleeping and switched on the light which means that no light was on, when the accused had entered the house. The accused having entered the house from the northern door by opening the latch from the outside, had found Hanumavva lying on the cot in total darkness 21 and had stabbed her which the learned counsel would submit, is not readily acceptable. The learned counsel would further submit that the motive alleged against the accused is further significant. The contention that accused no.1 and the others were enraged on account of Hanumavva and the sister of the complainant having filed a suit for partition and further Hanumavva having questioned the sale during the pendency of the suit and being awarded Rs.1.00 lakh; And further, the altercation over the neem tree on the boundary of the complainants land, all being reasons for the animosity harboured by the accused against Hanumavva and the complainant, is not acceptable for the reason that the suit for partition filed by Hanumavva and the complainants sister had never been contested by the father of accused nos.1 and 5 and they had remained exparte. The matter having been 22 taken up to the Supreme Court, was not by the father of accused nos.1 or 5 but by the other defendants. Further, it is pointed out that if there was no such contest, it cannot be said that there was such bad blood which prompted the accused several years after the suit had attained finality to commit the brutal murder of Hanumavva who was 100 years old. Further

the learned counsel would submit that the death of Hanumavva in no way benefited the accused at all and it would only benefit the complainant, in fact. The learned counsel would go to the extent of suggesting that the complainant himself was a man of poor antecedents. He was once convicted for murder and he had served life imprisonment on such conviction. He had 18 criminal cases pending against him in various Police Stations as on the date of the incident and he was a rowdy sheeter as evidenced from the material on record as per Ex.D.9. 23 It is further pointed out that there was inconsistency in the sequence of events as narrated by PW1 in his evidence and the evidence of PW3 - the son of the complainant. In that, PW3 has stated that he was sleeping in the pooja room and he had seen the accused through the window of the pooja room when his father had called out to him. However, it is pointed out by the learned counsel that the pooja room, as shown in the sketch, did not have a window at all. Hence, this is an inconsistency which again falsifies the evidence tendered by PW3. Further, PW3 is stated to have come out and stood in the verendah, whereas PW1 has stated that PW3 had come up on the roof along with him and his wife. And they had chased the accused but could not apprehend them. This is again a further inconsistency which cannot be readily accepted. 24 Therefore, the learned counsel would go to the extent of suggesting that the complainant who was a known rowdy and who had been convicted for murder, would not hesitate to kill his own mother since she was in the way of his inheriting all the properties and he was possibly impatient that his mother even after 100 years had not died and therefore, he had killed her in cold blood and sought to implicate the accused falsely. In this regard it is suggested that the mother - Hanumavva had already executed a will in favour of the complainants sons, including PW3, and he was possibly apprehensive that she might change her mind and therefore, has committed the murder and sought to falsely implicate the accused. Accused no.5 was the chairman of a local farmers co-operative society and he was highly respected in the village. He had no connection with the land of Hanumavva or her family. It was only on account of political rivalry between the 25 complainant and the said accused no.5 that he had been falsely implicated. Therefore, it is contended that there is no direct connection or motive that could be attributed, as suggested by the prosecution, at the instance of the complainant. The learned

counsel would submit that apart from the evidence of DWs 1,3 and 4, there is no other independent witness of the accused being involved in the offence or having been at the spot at the relevant point of time. The house of the appellant and the surrounding area is thickly built up and there are people occupying those houses. It was not very late in the night when the incident is said to have taken place as it was only between 10.30 -11.00 PM. It cannot be said that the entire village had gone to sleep. There is no evidence of any other witness having come to enquire about the commission of the offence or having seen the accused 26 fleeing from the spot. Hence, placing reliance only on the eyewitness account of PWs 1, 3 and 4, it cannot be said that the prosecution has succeeded in proving the charges levelled against the accused. Insofar as the medical evidence is concerned, it is pointed out that in the evidence of PW5 it is stated by the medical practitioner in the examination-in-chief itself that the jambia which was produced for his inspection in Court and on M.O.No.16 being shown to the witness, he has said I am of the opinion that the said weapon would not cause the injuries mentioned in the p.m.report. The weapon used in commission of offence required to be very sharp to cut not only the skin but internal vessels. The M.O.16 is not sharp enough to cut even the skin. Any sharp weapon like Jambiya and knife may cause the injury mentioned in p.m. report. Even a sharp blade or razor may cause such injuries. The information furnished by the police 27 the history has been disclosed as assault with Jambiya. In P.M. report I have mentioned knife, as there was no appropriate English word for vernacular Jambiya. The M.O.16 was not sent to me by I.O. for examination. It is evident from the above expert opinion that the weapon said to have been used in the commission of the offence was not even capable of cutting the skin. It could not have caused such serious injuries as were described in the post mortem report. The injuries described in the post mortem report reads thus: II. External Injuries Fractures Etc- Incised wound 9 cms x 4 cms on the front and left side of neck just below the cricoid cartilage sternocleidomastoid muscle on left side, clots present in the wound. On bisection, common carotid artery and internal jugular vein on the left side were cut. exposing Incised wound 3 cmsx1/4cmx1/2cm just below injury no.1, clots present in the wound. 28 Incised wound 2 cmsx1/4cmx1/4cm just below injury no.2, clots present in the wound. Hence, it is contended that if the weapon(MO16 produced and marked as a

material object was not capable of causing these injuries and when it was not sent for medical forensic examination, coupled with the fact that the said weapon was incapable of causing injuries, there is yet another suspicious circumstance which points to the weapon being mechanically produced as being the one used for the commission of the offence. This is evident from the fact that PW18- the Forensic Science Laboratory Expert has indicated in his register that 13 items were received for his analysis and inspection and later it has been shown as 16 items in Ex.P.38 which is in the FSL report it is indicated that 13 items were sent for inspection. Jambia i.e., MO16 in question was not among those 13 items. The said witness has later produced Exs.P.40 and 41 where it is 29 shown that there were 16 items in all and the jambia was item no.16. This would further indicate that there was mischief and an attempt at a cover up in including this jambia which was alleged to be the murder weapon. Hence, reliance being placed on the evidence of the complainant as to the jambia being used is not readily acceptable. The learned counsel would also submit that the reaction of the complainant on hearing his mother and having come out of the room and not having done anything further except shouting for his son and trying to run after the accused was also not the only reaction expected of him. For it is on record that he has stated that he had several enemies and was always on guard and he slept with weapons beside him. There is no indication of the complainant having come out with any weapon in hand and there is no indication of him trying to apprehend accused no.1 or the other accused if 30 accused no.1 was still standing over his mother when he came out of the room. It is also to be noticed that according to the learned counsel that MO16 was said to have been seized at the instance of accused no.1 and this was sought to be proved through the evidence of Panch witnesses - PWs 6 and PW7 who have not stood by their statements and were treated as hostile witnesses. Hence, it cannot be said that the seizure of the weapon at the instance of the accused has been proved. Yet another infirmity that is sought to be pointed out is that on telephonic information received from the complainant, the Circle Police Inspector having come to the spot had not thought it fit to register the complaint at the spot. On the other hand, a deed writer from Murgod was summoned and he along with the Circle Inspector got drafted the complaint by the deed writer which was registered at 1.10 PM though the police had 31 arrived at the spot at around

12.00 midnight, on 11.9.2000. This delay in registering the complaint would indicate that the complainant has clearly framed the accused by his false accusations supported by the evidence of his wife and son. It is also pointed out that it is on record that on the basis of the oral statements of the complainant, the accused had been taken into custody at 12.00 midnight on the same day and had been taken to the police station under protest, and when the accused demanded that a complaint be registered against the complainant himself, since he was instrumental in killing his mother and that they were falsely implicated, which the police had refused to do so and this prompted the mother of accused no.1 to lodge a complaint with the Assistant Commissioner of Police which also did not evoke any response. No further action was taken on their complaint. This would demonstrate that there is serious doubt as to who was the murderer and it cannot certainly be the accused. A finger of suspicion is pointed at the complainant, who was in the best position to commit the murder and pretend that the door had been opened from outside, though PW12 has categorically stated that it cannot be opened from outside. There is one other circumstance which points to the complainant's suspicious conduct. When a photographer was taken to take a photograph of the door and the latch to demonstrate that it cannot be opened from the outside, the complainant has prevented photographs to be taken in spite of the intervention of the Sub-inspector and had refused permission to photograph the roof, door and the latch. This is again another suspicious circumstance. It is also seen from the evidence of PW.1 himself that a serious attempt was made by the accused and their counsel to take stock of the latch and the door and the manner in which it can be opened from outside which, the complainant vehemently protested and prevented them from entering the door and inspecting the door and the latch, which is elicited in the course of evidence of PW1 himself. The learned counsel would further submit that such grave infirmities being present in the case, the Court below having mechanically accepted the eyewitness account of the complainant, his wife and son in holding that the charges had been brought home against all the accused, though there is no evidence on record to show that they stood to gain from the murder of a old lady, aged 100. It is also stated that during the pendency of this proceeding, the complainant has died and is no more. The accused having been in custody for the

past three years would submit that gross injustice has been caused to the accused and that the conviction be set-aside and they be set at liberty in the light of a false case having been foisted on them. 34 7. On the other hand, the learned State Public Prosecutor would seek to justify the judgment of the Court below, and would take exception to the submissions of the learned counsel for the accused seeking to urge that the complainant himself has committed the murder of the deceased. It is pointed out that it is not the complainant who was on trial and in the absence of evidence, such accusations being made are wholly unwarranted. The accused having been convicted, it is for the counsel to seek to assert the case, if any, in respect of the accused and no aspersions can be cast on the complainant. Insofar as the evidence against the accused is concerned, particularly the evidence of PW.1, who was a direct eye witness to the assault by accused no.1 and the fact that the other accused had stood guard in order to enable accused no.1 to commit the murder, would make them equally liable for the offence and the evidence of 35 PW.1 supported by his wife and his son would amply bring home the charge of commission of murder. Insofar as the contention that the door on the northern side, through which the accused have entered the house of the complainant, could not be opened from outside, is not correct. Even PW2, though had initially stated that it cannot be opened from outside, has in his cross examination stated that it can be opened from outside. The evidence of the investigating officer and PW1 himself, is sufficient to demonstrate that door can be opened from outside. The further allegations that the complainant had not permitted photographs being taken or the counsel not being permitted to inspect the house is true. As it is not unusual for the complainant because the complainant was seriously offended by the accused seeking to enter his house and to his knowledge the photographer who had been nominated by the Court, 36 was not the photographer who was brought there and therefore, the complainant having taken objection cannot be held to be unusual. It cannot be construed as being in order to suppress or hide any matter. There is ample evidence on record by way of a rough sketch and the sketch drawn by an engineer which demonstrates the layout of the house and the investigating officer having tendered categorical evidence as to the door being capable of being opened from outside, would certainly establish the case of the prosecution that it is through the door on the

northern side from the backyard that the accused had entered the house. Insofar as the inconsistency sought to be claimed, as to the complainant having stated in his complaint that he saw accused no.1 stabbing his mother in the neck with the jambia and in the course of his evidence having stated that he was standing at the foot of the cot after having stabbed his mother with the jambia, the 37 same is a minor variation and cannot be characterised as being fatal to the case of the prosecution. The contention that there was no motive for the accused to have committed the murder of Hanumavva is also denied by the learned State Public Prosecutor and it is pointed out that there was a long standing dispute insofar as the neem tree on the boundary of the complainants land was concerned, with accused no.3 and the fact that the complainant was cultivating the land that had fallen to the share of Hanumavva and Sundravva was another bug bear which the accused could not tolerate and hence, it cannot be said that there was no motive to commit the murder. Further, it is contended that the statement by the medical practitioner that the jambia could not have caused the injuries that were found on the deceased is an opinion and cannot be the last word in holding that it was not the weapon that was used. On the other 38 hand, it had been sent for forensic examination and the Forensic Laboratory Report indicates that the blood stains found on the jambia were of the same blood group as the blood of Hanumavva and this amply demonstrates that it was the said weapon which was used in the commission of the offence. It is also pointed out in the Forensic Laboratory Report indicating that 13 items had been sent for inspection whereas 16 items were sent ultimately and that MO.16 was the jambia in question, need not be viewed with any suspicion. It is pointed out that there was an inadvertent typographical error committed in indicating only 13 items which has been subsequently corrected. The FSL report is by an independent authority, who would have no interest in bringing a false case against the accused and he has furnished the report. This need not be treated with suspicion as to the same being doctored or improved to the detriment of 39 the accused and nothing turns on the alleged discrepancy. The attack on the previous antecedents of the complainant to the effect that he was arrayed as an accused in a case of murder and that he is also a rowdy sheeter, it is contended that insofar as the conviction of murder is concerned, it was in the early 60s, when he was a young man and the fact that he was treated as a rowdy

sheeter is on account of his political activity and cases had been initiated against him out of political spite and nothing much can be made of the same. It is only in order to prejudice the mind of this Court that such allegations are made against the complainant and hence, would seek that the conviction and the sentence imposed on the accused be confirmed.

8. After carefully considering the rival contentions and on a close examination of the record, it is necessary to sift the evidence to examine whether the 40 court below was justified in arriving at its conclusions. As regards the motive alleged by the prosecution, on the footing that there was a suit for partition by the deceased Hanumavva and her daughter, in which Hanumavva succeeded and that she was given 29% of the family properties. Apart from this, during the pendency of the suit, one of the items of the property having been sold and Hanumavva having brought a suit in respect of the said sale and she being awarded Rs.1.00 lakh to be paid being yet another factor in the accused having a motive to commit her murder. And further, that a dispute as regards a neem tree on the boundary of the complainant's property being the third reason for the attack would have to be viewed with reference to the fact that the father of accused nos.1 and 5 never contested the suit filed by Hanumavva. And the matter had gone right up to the Supreme Court and since the father of the accused nos.1 and 5 had been placed *ex parte*, the suit was never contested and 41 the share of the property given to Hanumavva was given without demur and without remorse. There is no indication of any earlier altercation or argument over the extent of land that was given. Hence, to hold that the animosity had grown to such an extent that the accused have committed the murder of a 100 year old woman, is difficult to accept.

9. On the other hand, the complainant has admitted in his evidence that Hanumavva had executed a will in favour of his sons. The immediate beneficiaries of the death of Hanumavva were the complainant and his sons and not the accused. It is also pointed out that accused no.3 had nothing to do with the family of Hanumavva or the complainant and he was the chairman of a Farmers Co-operative Society and was well respected in the village. He was said to be a political rival of the complainant and the complainant had lost an election between accused no.3 and himself 42 and therefore, the complainant did have a grudge

and this was even the reason to have framed the accused. The presence of the accused at the scene of crime is said to have been seen not only by the complainant but also by his wife and son.

10. The next aspect is the actual commission of offence by the accused and the eye witness account of the witnesses. The evidence of the complainant is not consistent with his complaint. In the complaint, he has stated that he saw accused had repeatedly stabbed his mother Hanumavva with the jambia when he came out of the room and in his evidence he has stated that he saw accused no.1 standing at the foot of the cot on which his mother was lying and she was profusely bleeding from the injuries that had been caused. This is certainly a inconsistency which cannot be brushed aside as being a minor variation, as sought to be contended by the learned State Public Prosecutor. It is 43 very crucial to arrive at a finding that an overt act had been committed by the accused which was actually witnessed by the complainant. The complainant has further clarified in his evidence that since his mother was bleeding and since the accused was standing at the foot of the cot with a jambia in his hand, he had concluded that he had committed the murder and while this cannot be reconciled with the statement in the complaint that he had actually seen accused no.1 stabbing Hanumavva at which time he had cried out as to why they committed such a sin. While this was going on, according to the complainant accused nos.2 and 3 were standing guard at the door on the northern side through which they had entered the house and when he had chased accused nos.2 and 3 up the staircase to the roof and they are said to have jumped from the roof, and had fled away. He is said to have seen accused nos.4 and 5 44 standing on the roof before they fled away along with accused nos.1 to 3. Therefore, there is no overt act alleged against any other accused except accused no.1. The circumstance of all the accused together having committed the murder is not present. In that accused no.3 had nothing to do with the family of Hanumavva nor did he have anything to do with the complainant except that they were political rivals.

11. Further, insofar as the actual commission of the offence as stated by PW3, the son of the complainant. He has narrated that he saw accused nos.1 to 3 through the window of the room where he was sleeping. As seen from the sketch at

Ex.P.19, it is evident that there was no window to the room where he was sleeping, which is adjoining the verendah where Hanumavva was found dead and there is only a door to that room opening into the verendah. It is apparent that the door was closed at the time of the alleged 45 incident and he had come out after his father had called out. Hence, the evidence of the said witness is inconsistent. Further, he has also stated that when he came into the verendah, he saw the accused running away whereas the complainant has stated that viz., the complainant himself, his wife and PW3 had run up to the roof behind the accused and had seen them fleeing and had tried to apprehend them, but could not.

12. Yet another curious circumstance is that the incident is said to have occurred between 10.30 PM and 11 PM. It was not very late in the night, for people in the neighbourhood to have retired for the night and since the area was well built up, it was certain that there were several people around. No witnesses have been examined either to state that they heard any sound or they saw the accused flee. Though an attempt has been made by the prosecution to examine PW.6 and PW.9 in this regard, both have not supported the case of 46 the prosecution. In matters such as this, it would have been expected to have several witnesses speak about the conduct and the acts of the accused, if they had gained entry into the house of the complainant and murdered Hanumavva and then had fled over the roof with the complainant and his son raising an alarm, it would have been possible for several people to witness the scene, atleast of the accused fleeing and the complainant and his son chasing them. In the absence of any such evidence, which would throw light on the actual sequence of events that are sought to be projected by the prosecution. The sequence of events are in doubt. It is also significant that PWs 3 and 4 were not charge sheet witnesses, but they were added later which indicates that since the prosecution wanted to bolster its case they have been included as an after thought. 47 It is also curious that PW4 who is said to have come out running with the complainant to witness the assault by accused no.1 on Hanumavva, has not spoken about any such assault. It is not also in evidence that accused no.1 or the other accused were frequent visitors to the house of the complainant to be aware of the door through which they said to have entered. And that they were aware of the door being capable of being opened by moving the latch, from outside. Further it is unusual that they also had

knowledge that Hanumavva would be sleeping in the padasala on the cot, to come up to her and commit her murder. It was not the case of the prosecution that there was bright light by which the accused could move straight to the cot where Hanumavva was sleeping to murder her. But it is in the evidence of the complainant that on coming out of the room after hearing the cry of his mother, he had switched on the light. Hence, it is 48 evident that there was no light when the accused entered the house. This is yet another circumstance which raises suspicion as to the manner in which the offence has been committed. Further, the weapon itself though produced in evidence as MO16 and said to be the weapon with which Hanumavva was killed, has been examined by a medical practitioner in the course of evidence and the extracted portion hereinabove, would clearly indicate that the doctor was of the firm opinion that the jambia was not capable of even cutting the skin let alone the cartilage and other parts of the neck. Having regard to the deep injury where the throat was completely slit, the opinion of the doctor would have to be taken seriously. The mere fact that the blood found on the jambia matched the blood group of the deceased, by itself would not establish that it was indeed the weapon used to cause the injuries. The seizure of the weapon said to 49 have been made at the instance of the accused no.1 sought to be evidenced through panch witnesses PW.7 and PW.8 also does not survive, for the reason that those two witnesses had turned hostile. Hence, the seizure itself is not proved. The weapon is also not identified by PW.3 and PW.4.

13. The learned counsel for the appellant has stated that at the trial, the jambia was actually confronted to the investigating officer and the counsel who was cross examining him had bent it into a U shape, in his enthusiasm to show that it could be bent and the learned counsel would submit that a jambia is a stout hand knife with a strong handle and cannot be bent. It is sharp edged on both sides and is not capable of being bent into a U shape. Hence, the jambia shown to be the weapon used in the commission of offence itself would show that it was mechanically produced by 50 the police for want of the actual weapon which was apparently not traced.

14. Though it is not possible to arrive at a finding insofar as the allegations made against the complainant himself and the suspicion sought to be cast both as to his

antecedents and the possibility that he might have committed the murder of his mother for his benefit, when it is not warranted nor is the Court inclined to enter into such an area, which is totally off bounds. It is not the complainant who was on trial and it would be unjust to venture into any such contemplation though it does appear that he had a reputation of being a rough person. This by itself would not enable this Court to accept the allegations made and the suspicions that are hurled at the complainant. In any event, the prosecution cannot be said to have established its case beyond all reasonable doubt having regard to the 51 several discrepancies and inconsistencies that are highlighted.

15. In that view of the matter, we are of the opinion that the Court below was not justified in arriving at its finding and convicting the accused and sentencing them to the extreme punishment of life imprisonment when the role of the other accused viz., accused nos.2 to 5 was of being of mere bystanders and without any established motive whatsoever.

16. Therefore, the appeals are allowed setting aside the conviction and sentence imposed on the accused in S.C.No.81/2001 by the Presiding Officer, Fast Track Court, Saundatti, dated 07.12.2012 and 28.12.2012, they shall be set at liberty. The operative portion of this judgment shall be transmitted to the jail authorities in order that accused no.1 who is in custody may be released. The bail bonds furnished by the 52 accused shall stand cancelled. The fine amounts, if any, deposited by the accused shall be refunded. Sd/- JUDGE Sd/- JUDGE Brn

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