

Bheemappa Vs. The State Of Karnataka,

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Court : Karnataka Dharwad

Decided On : Feb-14-2020

Judge : K.N.Phaneendra and Pradeep Singh Yerur

Appeal No. : CRL.A 100262/2016

Appellant : Bheemappa

Respondent : The State Of Karnataka,

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE14H DAY OF FEBRUARY 2020 PRESENT THE HONBLE MR. JUSTICE K.N. PHANEENDRA AND THE HONBLE MR. JUSTICE PRADEEP SINGH YERUR CRIMINAL APPEAL NO.100262/2016 BETWEEN: BHEEMAPPA S/O. SHIVAPPA MALLADAD, AGE43YEARS, OCC: COOLIE, R/O. KITTUR, TQ. & DIST. HAVERI, NOW RESIDING AT RANEBENNUR (NOW HE IS IN CENTRAL JAIL DHARWAD). .APPELLANT. (BY SRI. T.R.PATIL, ADVOCATE) AND: THE STATE OF KARNATAKA, BY RANEBENNUR TOWN POLICE, R/BY S.P.P. HIGH COURT OF KARNATAKA, BENCH DHARWAD. .RESPONDENT. (BY SRI. V.M.BANAKAR, ADDL. S.P.P.) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF CR.P.C., PRAYING TO SET ASIDE THE

JUDGMENT

AND :

2. :

ORDER

OF CONVICTION DATED 04.01.2016 PASSED IN S.C.NO.32/2012 BY THE HONBLE II ADDL. DISTRICT AND SESSIONS JUDGE, HAVERI, SITTING AT RANEBENNUR AND ACQUIT THE APPELLANT/ACCUSED OF THE OFFENCES WITH WHICH HE HAS BEEN CONVICTED AND SENTENCED. THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING, THIS DAY, K.N.PHANEENDRA, J., DELIVERED THE FOLLOWING:

JUDGMENT

The sole accused/appellant herein has called in question the Judgment of conviction and sentence passed by the II Addl. District and Sessions Judge, Haveri, sitting at Ranebennur in S.C.No.32/2012 dated 04.01.2016 in convicting the appellant for the offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of one year. :

3. :

2. The brief factual matrix of the case is that, the accused and the deceased by name Gangawwa are husband and wife. They are residing together along with their children at Ranebennur. It is the case of the prosecution that, the accused has been addicted to alcohol and he used to come to the house in fully drunken state everyday. He had been suspecting the fidelity and loyalty of the deceased Gangawwa. In this back ground, it is alleged that on 30.11.2011 in the night at about 10.00 p.m., the accused came to the house in fully drunken state and started quarrelling with his wife and he also made attempts to assault his son i.e. PW-10 by name Hanumantha. The deceased wanted to rescue him. In that context, the accused caught hold the deceased and dragged her out side the house and he pushed her on the road and dashed her head upon the cement road continuously by sitting upon her chest. In this context, she suffered bleeding :

4. : injuries on her head and thereafter she was shifted to the OM Multi Speciality Hospital, Ranebennur and after obtaining the first aid treatment she has been shifted to C.G.Hospital, Davanagere. But she succumbed to the injuries on 01.12.2011 at 2:35 a.m. The son of the accused by name Hanumantha has lodged a complaint on 01.12.2011 at about 13:00 hours. On the basis of which, the police have registered a case in Crime No.146/2011 for the offence punishable under Section 302 of IPC and investigated the matter and submitted the charge sheet. The accused was also arrested on 02.12.2011 and since then he is in judicial custody. The Trial Court after committal proceedings, framed charges against the accused for the offence punishable under Section 302 as the accused denied the charges and claimed to be tried and he was tried by the Sessions Court for the above said offence. :

5. :

3. The prosecution in all examined 26 witnesses i.e. PW-1 to PW-26 and got marked Exhibits P1 to P37 and got marked M.O.Nos.1 to 9 material objects. The accused was also examined under Section 313 of Cr.P.C, however the accused did not choose to lead any defence evidence on his side. The Trial Court after appreciation of the oral and documentary evidence concluded that, the prosecution has proved its case beyond reasonable doubt. Therefore, the Judgment of conviction and the sentence has been rendered by the Trial Court as noted supra.

4. We have heard the arguments of the learned counsel for the appellant and also the learned Addl. S.P.P.

5. The learned counsel for the appellant contended that, the Trial Court has not properly appreciated the oral and documentary evidence on :

6. : record, particularly not taken note of the hostility of the daughter and son of the accused who are the eyewitnesses to the incident. None of the other witnesses with regard to the recovery of the blood stained clothes at the instance of the accused has supported the case of the prosecution. Even if the entire evidence of the prosecution is accepted, it cannot be said that the prosecution has proved the

said case beyond reasonable doubt because of the hostility of the eyewitnesses to the incident. How actually the death has occurred is a mystery which has not been properly explained by the prosecution. Therefore, he contends that, the Judgment of conviction and sentence passed by the Trial Court is erroneous and against the factual aspects available in the case. Therefore, he pleaded for allowing of the appeal and consequently acquittal of the accused. :

7. :

6. The learned Addl. S.P.P. strenuously contends that, though the eyewitness particularly PW.5- Gayathri has initially supported the case of the prosecution, but she was cross-examined after a long lapse of 10 months. By that time, all the other witnesses including PW-10 i.e. the son of the deceased were won over by the accused because of the relationship between the accused and PW-10 and as well as PW-5. Therefore, their evidence though not available to the prosecution in the course of cross-examination, the above said circumstance has been taken very seriously by the Trial Court and the Trial Court has accepted the evidence of these witnesses coupled with the other evidence on record in order to draw the inference that the accused was the perpetrator of the crime. Therefore, the Trial Court after giving sufficient reasons arrived at a conclusion that the prosecution has proved its case beyond reasonable doubt. There is no room to interfere :

8. : with such reasoned order passed by the Trial Court. Therefore, he pleaded for dismissal of the appeal.

7. We have carefully re-appreciated the entire evidence on record. The prosecution in all has examined PWs.1 to 26. Some of the witnesses are not necessarily to be discussed in detail. Therefore, we would like to have the brief cursory look at the evidence of the prosecution witnesses. PW-1 : Manju and PW-2 : Devaraj, both of them have deposed that they were working in a Ginning Factory and in fact both of them were visiting the house of the deceased Gangawwa as she was preparing food for them. But they did not support the case of the prosecution to any extent, except stating that on that particular day, they received information with regard to the injuries being sustained by the deceased. Immediately they went and shifted the deceased to the :

9. : hospital. Though in the police statement they have stated about the motive i.e. the quarrel between the husband and wife i.e. the accused and the deceased and the accused was ill-treating and harassing her and particularly on that particular day, they received information from the children of the accused to the effect that the accused has committed murder of his wife. But they have not supported the case of the prosecution to the extent of the incriminating material stated by them before the police. The prosecution has treated them hostile and their said portion of the statement before the police were marked at Ex.P1 to P4. Therefore from these witnesses there is no material available in order to bring the motive factor on record. PW-3 : Tulasiprasad is the owner of the Bharat Ginning Factory. He has not at all supported the case of the prosecution to any extent even considering his examination-in-chief nothing is incriminating against :

10. : the accused. He has stated that, on that particular day of the incident he came to know that Gangawwa has suffered some problem therefore, he telephoned to Ambulance and thereafter she was shifted to Hospital and he came to know that she died in the hospital. PW-4 : Shantamma is no other than the mother of the deceased (mother-in-law of the accused). Of course she has supported the case of the prosecution, but she is not an eyewitness. She deposed that the accused was often quarrelling with his wife by suspecting her fidelity and there was exchange of even notices between husband and wife. The accused took the deceased along with him after conciliation. But in spite of that, he was not properly taking care of her. So far as the incident is concerned she never stated that she was present on that particular date, but she came to know about the incident as to how it happened from PW-5 : Gayatri. But in the course of cross-examination she disowned the :

11. : said portion of her evidence also. She was examined-in- chief on 22.03.2014, but cross-examined on 25.07.2015, nearly after lapse of more than 14 months. In the course of cross-examination, she virtually supported the accused stating that the accused was taking care of his wife. She personally does not know anything about the quarrel between the husband and wife and she only came to know about the incident from the Police alone as the police have given the entire information, she gave the statement before the police as per the directions given by the police.

PWs-5 & 10 are the star witnesses to the prosecution. PW-5 of course is no other than the daughter of the accused and the deceased. In the examination-in-chief she has fully supported the case of the prosecution. She has specifically stated about the conduct of the accused that he was often coming to the house with drunken state, assaulting and abusing her :

12. : in filthy language and always quarrelling with PW-10 and he was also assaulting PW-10. Referring to the date of incident she has deposed that on that day accused quarrelled with his wife, dragged her from the house, pulled her on the road. Thereafter also he dashed her head to the road and because of that she sustained bleeding injuries to the head. Thereafter, the injured was shifted to the hospital. But she died in the hospital. She was not cross-examined on the same day. Again she was subjected to cross-examination after long lapse of nearly 10 months. On 30.01.2015, when she was cross-examined, she has totally taken U turn to the prosecution case and denied all what she has stated in the examination-in-chief. She created an alternative story that she never stayed in the house of the accused and she was residing in her maternal aunts house and when she was there in the house of her maternal aunt in Byadagi she came to know about the death of her :

13. : mother and afterwards only she came to Davanagere hospital and saw the dead body of the deceased. She emphatically stated that she was not at all present in the house of the accused at the time of the incident. She has also admitted that she has deposed before the Court and gave the statement before the police only on the basis of tutoring by her grandmother i.e. PW-4 and what she has stated in the examination-in-chief are all not correct and what she has stated in the cross- examination are only the true facts. She also admitted that, the PW-4 has told these witnesses to give such a statement before the Court. Therefore, she has deposed implicating the accused to the crime. What is evident from the evidence of the witness is that, though she has supported in the course of examination-in-chief she turned totally hostile to the prosecution in the cross-examination. It is not that the Court should not believe the evidence of the hostile :

14. : witness, but whatever she has stated in the examination-in-chief at least it should get corroborated and fortified by any other materials on record. Even ignoring the cross-examination, if there is sufficient evidence to corroborate her evidence in the examination-in-chief, then there is no legal impediment for the Court to record a Judgment of conviction. In this back ground, the court has to examine whether any other evidence is available in this case. PW-6 : Kotrappa, PW-7 : Chanddrappa and PW-9: Geeta are all witnesses to the inquest proceedings. In fact they also turned hostile to the prosecution. There is no significance so far as the inquest proceedings are concerned in this case. The I.O. has stated that he has conducted the inquest proceedings as per Ex.P-5. The death of the deceased is not at all in dispute. It is the case of the accused that, in the 313 statement he has stated that on that particular day he was sleeping inside :

15. : the house, he came to know about the incident that his wife was lying on the road by sustaining injuries. Then he went to the spot and shifted her to the hospital. Therefore, the death of the deceased and sustaining of the injuries by her is not at all in dispute. Therefore, there is no need to discard the evidence of these witnesses as the prosecution in fact has proved the death of the deceased due to sustaining injuries. PW-8 one Mr. Zakir Hussain is only a spot panch witness. Under Ex.P-6, the police have seized M.Os.1 & 2 from the spot. Ex.P-7 & Ex.P-8 are the photographs of the spot. M.O.1 is the blood stained mud and M.O.2 is the unstained mud recovered from the spot. This witness has supported the case of the prosecution. PW-10 is another star witness to the prosecution, who is no other than the son of the accused. He was examined after a long lapse of time. On 16.01.2015 the :

16. : date of his examination is relevant so far as this case is concerned. He has, in fact, totally turned hostile giving a death blow to the prosecution case. He has broken the back bone of the prosecution in not supporting the case, fully supporting his father. Perhaps may be the reason after the incident and after examination of PW-5 in examination-in-chief, the accused must have persuaded this witness to not only turn hostile, but also persuade PWs-4 and 5 to turn hostile in their cross-examination which has been done after a long lapse of time as we

have carefully observed. PW-10 though he has stated that the death of his mother occurred on the date of the incident, it is stated that he had been to work on that particular day, he came to know that his mother was laying on the road and sustaining injuries, then only he came to that particular spot and shifted his mother to the hospital. In the course of cross-examination, the prosecutor has suggested the whole story of the :

17. : prosecution as per the statement given by him under Ex.P-12 before the police, except eliciting the denials from his mouth, nothing worth has been elicited in order to believe this witness as a trustworthy and credible witness. Therefore, the prosecution though initially made attempts to establish the case, but gradually during the course of cross-examination of these witnesses lost control over the case and it tilted in favour of the accused. Of course, though the eyewitnesses turned hostile, the other circumstances at least should be so strong enough in order to unerringly hold that the prosecution has at least by means of circumstantial evidence established the case against the accused. Therefore, the evidence of other witnesses also to be looked in to by this Court. :

18. : PW-11 is also another panch witness to spot panchanama. There is no need to discuss once again as the prosecution has proved the spot panchanama Ex.P-6 and collection of M.Os.1 and 2 from the spot. PW-12 is the seizure panch witness to Ex.P-13 under which the police have recovered M.O.3 a burmuda nikker of the accused and a lungi and under Ex.P-15 a mobile. In fact, the PW-12 has turned totally hostile to the prosecution. He never supported that to the effect that the police have recovered the lungi and a burmuda nikker at the instance of the accused which are marked at M.O.Nos.3 & 4. Therefore, there is no substantial proof with regard to the recovery of these clothes at the instance of the accused except the evidence of the investigation officer. PW-14 one Manjunath, who has been examined, who established that he had given a mobile to the complainant at the time of incident, but he also turned hostile. :

19. : Likewise PW-15 Vinayak has also stated about giving of the mobile to the complainant, but he also turned hostile. Their statements before the police have been marked as Ex.P15 & Ex.P.16. Even otherwise the prosecution has not made

any attempts to connect the recovery of this mobile with that of the crime. There is no significance so far as the evidence of these witnesses are concerned. PW-16 Uchchengavva is no other than the elder sister of the deceased. For the reasons best known to her, she also turned hostile. It is also notable point that PW-16 was also examined on 25.07.2015 after examination of PW-10 and cross-examination of PWs.4 & 5. This indicates that as other witnesses particularly eyewitnesses were already persuaded there is no fun in expecting this witness to support the case of the prosecution as she is also a very close relative of the deceased. :

20. : PW-17 is the Doctor who first treated the deceased in OM Hospital and he informed the police about the treatment given to the injured. It is stated that on that particular day, she had suffered serious injuries and she was directed to be shifted to Bapuji Hospital at Davanagere. Nothing worth is elicited in the examination-in-chief or the cross-examination, because it does not incriminate the accused there is no history elicited from the mouth of this witness in order to inculcate the accused in any manner. PW-18 : Maltesha is the another seizure panch under which M.O.4 lungi was recovered at the instance of the accused. He has also not supported the case of the prosecution. PW-19 : Parameshwarappa is a head constable and a formal witness who carried the incriminating :

21. : articles M.O.Nos.1 to 9 to the FSL and he submitted a report as per Ex.P-22. PW-20 : Basavaraj is another constable who in fact guarded the dead body and shifted the dead body to the hospital for post-mortem examination. PW-21 : Dayananda is the Assistant Executive Engineer in HESCOM who has given the report as per Ex.P-27 stating the availability of power supply at that particular time and place of the incident. PW-22 : Mr. Koteppa is the PWD Engineer who has prepared the sketch of scene of offence as per Ex.P- 28. PW-23 : Muttappa is the Investigating Officer who has conducted thorough investigation and has filed charge sheet. :

22. : PW-24 : K.B.C.Sogi, who had conducted the autopsy on the dead body of the deceased and gave the post-mortem examination report as per Ex.P-33. There is no need for this court to go in detail with regard to the post-mortem examination report as per the admission of the accused himself that his wife has sustained

injuries to the head, she shifted to the hospital and she died in the hospital. Doctor also opined in Ex.P-33 that the deceased died due to multiple head injuries sustained. Therefore, the death of the deceased even according to the admission of all the witness and the accused which is corroborated by the P.M. report i.e. Ex.P-33 is not in dispute that the deceased died due to head injuries. PW-25 : Radha is the Scientific Officer who has given the report as per Ex.P-34 and P-35. It is stated by her that, she has examined M.O.Nos.1 to 9 which were sent for examination, all those which were found to be :

23. : human blood particularly belonged to the B-group blood. Therefore, it clarifies the situation that the blood stains found on the clothes of the deceased and also blood stains which were lifted by the police during the course of spot panchanama and the blood stains on the clothes of the accused who were proved to be the B-group blood which tallied with the blood group of the deceased. But as we have narrated that absolutely there is no evidence with regard to the recovery of the clothes at the instance of the accused as the witnesses have not supported the case of the prosecution and they turned hostile. PW-26 : Muttanagouda is the Assistant Sub- Inspector who has received the complaint and registered a crime and discharged the FIR to the jurisdictional Magistrate as per Ex.P-36. :

24. :

8. On over all reanalyses of the entire evidence on record, it is crystal clear that the accused was able to persuade the eyewitnesses particularly PWs-4 and 5 after their examination-in-chief and only after fully persuading PW-10 and after the examination of PW-10 he preferred to cross-examine PW-4 & 5 who were also made to turn hostile during the course of their cross- examination. But the fact remains that, no witness have supported the case of the prosecution though initially PWs-4 & 5 have supported the case during their examination-in-chief. The Court cannot bifurcate the cross-examination and chief-examination in order to ascertain whether the case of the prosecution is proved or not. It is the evidence which comprising of both cross-examination and re-examination. The Court has to give full importance to the entire evidence on record. Though painfully we may say because of the long gap given by the Court for cross-examination of PWs.4 & 5 :

25. : that enabled the accused to take advantage of the same and persuade his son i.e. PW-10 to come on his side to support him. Perhaps that may be the reason that PW- 10 who was the eyewitness to the incident turned totally hostile to the prosecution and in fact the other witnesses i.e. PW-4 and PW-5 were also won over by the accused to turn hostile. Whether the accused has won over them or whatever may be the reasons, but the fact remains that no evidence is available to the prosecution in order to draw an inference that the accused is the perpetrator of the crime.

9. On appreciation of the entire evidence we find that there is no substantial evidence to convict the accused person. But we have to say something here with regard to the granting of unnecessarily unreasonable time for cross-examination of the witnesses by the Court. It is beneficial to rely upon a decision of the Apex Court in this regard in the case of :

26. : Vinod Kumar Vs. State of Punjab reported in 2015 (3) SCC220 wherein certain guidelines have been laid down by the Apex Court considering the hostility of the witnesses in their cross-examination though they have supported their case during the course of their examination-in-chief. It is worth to extract paragraph No.57 of the said Judgment.

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. 57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in- chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. 57.2. As has been noticed earlier, in the instant case the cross-examination has taken place :

27. : after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. 57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court

while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. 57.4. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable :

28. : in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. 57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe- guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

10. In spite of circulation of this Judgment we have observed in the present case that a long adjournment has been granted by the Court for cross- examination of PWs-4 and 5 which in this case enabled :

29. : the accused to win over the witnesses. It is also worth to mention here the provisions of Section mentioned in the criminal procedure code, which goes without saying sanctity should be given to the trials in criminal cases particularly in heinous offences by the Court. The provision under Section 309 reads as follows: 309. Power to postpone or adjourn proceedings: [(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.]. (2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such :

30. : terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand on accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing: [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]. [Provided also that - (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party; (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine :

31. : or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.].

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

11. On meticulous reading of the above said provision in fact no ruling is required, since the law itself is very much clear as to how the courts have to adopt the procedure in conducting the criminal cases. On meticulous reading of the above said provision, it clearly indicates that, once the trial is started it shall be continued from day to day basis until all the witnesses in attendants have been examined, unless the court finds the adjournment of the same, beyond the following :

32. : day to be necessary for reasons to be recorded. Further, the provision also says that, no adjournment shall be granted at the request of the party except where the circumstances are beyond control of that party and it should not be in a casual manner granted on the request of the pleader merely because he is engaged in another court. And where the witnesses are present and the counsel is not ready to cross-examine, the Court may record the statement of the witness and pass such orders as it thinks fit dispensing with the examination- in-chief or cross-examination, as the case may be. Section 230 empowers the Court to compel the attendance of any witness for the production of any document by the prosecution and on the day fixed and under Section 231 on the day fixed the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. The Judge may in his discretion permit the cross-examination of any witness :

33. : to be deferred until any other witness or witnesses have been examined or recall any witness for further cross- examination. This provision under Section 230 & 231 shall be read in consonance with Section 309 of Cr.P.C. When the law makes a stringent provision with reference to the trial of criminal cases, the court should awake and arise in such circumstances to exactly act according to the letter and spirit of the legislation. The main object of these provision is to see that,

all the witnesses in criminal cases particularly in heinous offences should be continuously recorded without any gap foreseeing that the witnesses if once examined before the court and long time is granted to cross-examination, there is every chance of the accused winning over or persuading the witnesses. The Courts should take all necessary care to avoid such situation. Therefore once the witness is examined as far as possible, the cross-examination should be done on the same day :

34. : same day or at least on the next date itself. If the Court feels it just and necessary, the cross-examination has to be deferred. If suppose there are many other witnesses who deposed in the similar manner, where the accused seeks time to cross-examine the witnesses at once in such situation the Court should normally grant time and examine the witnesses, record both examination-in-chief and cross-examination as far as possible on the same day, if not on the next day at least.

12. The present case is a glaring example wherein a long time has been granted by the Court for cross-examination of the witnesses. The Court should also examine the relationship between the parties, whether there are any chances of witnesses being won over or persuaded by the accused. We cannot set down any particular circumstances under what circumstance the Court may grant time for cross-examination or should not grant time. But it all depends upon the facts :

35. : and circumstances of each and every case, where the Court itself has to apply its mind judiciously considering all the surrounding circumstances and as far as possible it should control granting adjournment in such cases and insist upon the cross-examination of the witness on the same day when the witnesses were examined-in-chief. Even otherwise, if the witnesses are examined-in-chief and they have supported the case of the prosecution, in such an eventuality the cross-examination should not be normally deferred. In such an eventuality all the witnesses who were similarly placed, a date has to be set down and examine all those particular witness on a particular day with the consent of the counsel for the accused that he would cross-examine the witnesses on that day, so that deferring of the cross-examination of one witness after the examination of another witness

can be avoided. Therefore, under the above said circumstances bearing :

36. : in mind the hostility of the witnesses in this particular case, though we are of the opinion that the accused has persuaded the witnesses subsequently after their examination-in-chief particularly PWs-4 and 5. But the fact remains that there is no evidence against the accused, if we over all consider the cross-examination and examination-in-chief of these witnesses. Hence, there is inevitability, the Court has to acquit the accused for want of adequate and sufficient evidence. Nevertheless, we are of the opinion that such circumstances could have been avoided by the Trial Court in refusing to grant such a long adjournment for cross-examination of the witnesses.

13. With these observations, we are of the opinion that, the prosecution though produced certain material before the Court, in our opinion, it is so inadequate, wherein the court cannot with all conclusiveness and with all certainty say that the :

37. : prosecution has proved its case beyond all reasonable doubt. Therefore, giving benefit of such doubts in favour of the accused, we prefer to acquit the accused.

14. Though we are acquitting the accused, we have made certain observations in the body of this Judgment. Therefore, Registry is hereby directed to circulate a copy of this Judgment to all the Judicial Officers who are dealing with the criminal matters to bear in mind the observations made by this Court while dealing with criminal matters while examining the witnesses in the trials.

15. With the above said observations, we proceed to pass the following:

ORDER

The appeal is allowed. Consequently, the judgment of conviction and sentence passed by the II Additional District and Sessions Judge, Haveri, sitting at :

38. : Ranebennur, dated 04th day of January, 2016 in S.C.No.32/2012 for the offence punishable under Section 302 of IPC is hereby set aside. The appellant/accused is hereby acquitted of the charge leveled against him for the

above said offence. The appellant/accused who is said to be in jail shall be released forthwith, if he is not required in any other case/s. Fine amount, if any, already deposited by the accused, before the Trial Court, shall be refunded on proper identification and acknowledgment. The rest of the order passed by the Trial Court with reference to the properties are concerned is not disturbed. Registry is directed to communicate the operative portion of the judgment to the concerned jail authority :

39. : for release of accused/appellant forthwith, if he is not required in any other case/s. Sd/- JUDGE Sd/- JUDGE *Svh/-

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