

Siddalingappa and Others Vs. State by Circle Inspector of Police

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Court : Karnataka

Decided On : Sep-08-1992

Reported in : 1993CriLJ397

Judge : D.P. Hiremath and;L. Sreenivasa Reddy, JJ.

Appeal No. : C.A. No. 136/1992 (Against the judgment passed by S.J. Raichur, D/- 5/6-3-1992)

Appellant : Siddalingappa and Others

Respondent : State by Circle Inspector of Police

Advocate for Def. : Mr. S.R. Bannurmath, Addl. State Public Prosecutor

Advocate for Pet/Ap. : Mr. Mahabaleshwaragouda ;for Mr. P.S. Dineshkumar, Adv.

Judgement :

Hiremath, J.

1. The present appellants and another Basalingappa s/o Basappa were tried before the Sessions Court at Raichur for offences under Sections 302, 353 and 506 r/w S. 34, IPC and 109 r/w S. 302, IPC. The substantive charge of these offences was against A. 1 to A. 4, the present appellants. The 5th accused was charged only under Section 109 r/w Section 302, I.P.C. for having abetted the

commission of the murder of deceased Rangappa by A. 1 to A. 4. While A. 5 was acquitted, the present appellants were convicted under sections 302, 324 and 353 r/w S. 34, I.P.C. and sentenced to imprisonment for life, simple imprisonment for one month and simple imprisonment for 6 months respectively each for the aforesaid offences.

2. The prosecution case is brief and simple. A. 1 to A. 2 that is appellants 1 and 2 herein are the sons of one Sangyarangayya of the same village Honnakatamalli in Deodurg Taluk of Raichur District. This Sangya Rangayya was murdered some time prior to this incident that occurred on 15-4-1990. Deceased Rangappa was suspected to have committed his murder and he was also arrested and detained and he was also arrested and detained in the sub-jail at Deodurg pending investigation. There is a Magistrate's Court at Deodurg. He and other two prisoners were due to be produced before the jurisdictional Magistrate's Court at Deodurg on 21-5-1990. As the local Magistrate was on leave, deceased Rangappa and 2 other prisoners that is PW 10 Babu and PW 15 Chandrappa were required to be taken to Raichur for being produced before the Chief Judicial Magistrate. For that purpose the police escort was arranged by PW 31 the Head Constable of Deodurg Police Station. He deputed PWs. 8 and 9, the police constables and H. C. Ramalinappa, CW. 1 who died during the pendency of this case. Thus the escort party consisted of the H.C. and the two police constables. At 7.10 a.m. the directed these police officials to go to sub-jail, receive the 3 Under Trial Prisoners (U.T.P. for short) and then take them to Raichur and they were also directed to hand cuff them while being taken out of the jail. Accordingly, this escort party went to the sub-jail and took to their custody 3 U.T.Ps. from the Head Warden PW. 3 Mallikarjuna of the sub-jail to their custody. R. Rangappa the deceased U.T.P. No. 1000 was involved in the murder case of Sangya Rangayya whereas the other 2 U.T.Ps. were involved in some other cases which is not quite relevant for our purpose. Escort was arranged in fact at the request of this PW. 3 as it was his duty to produce these U.T.Ps. before the concerned Court. Relevant entries were made in the register maintained in the sub-jail which they call 'gate register' when the 3 U.T.Ps. were handed over to the custody of the 3 police officials. Necessary entry was also made in the Jail Court Register in this behalf. Thereafter this escort party hand cuffed deceased Rangappa and PW 10 with one

hand cuff whereas a separate cuff was used for PW 15 Chandrappa. A leading chain attached to the handcuff of PW 10 was held by P.C. PW 5. Another hand cuff which was put to Chandrappa was held by PW 8. They left the sub-jail premises at 7.25 a.m. and went to the local bus-stand to catch a K.S.R.T.C. bus to go to Raichur. By about 8 a.m. or so the bus arrived at its stand and it was bound for Raichur from Tintini, it was MEF 8304. It was parked at platform No. 9 and all the passengers alighted from it and may be for refreshments. Even the driver and the conductor went to the bus stand hotel for tiffin. The bus was almost empty when this escort party and the 3 U.T.Ps. boarded it. There were made to sit on one of the seats in the middle meant to accommodate 3 passengers and the constables as well as the head constable occupied different seats in front and behind the seat on which the U.T.Ps. were seated. Perhaps all of them were waiting for the driver and conductor to return and then for the departure of the bus.

3. Within a short while after they so sat, according to the prosecution accused Nos. 1 to 4 entered into the bus armed with a jambia each and started assaulting deceased Rangappa. The first assault was by A. 1 on the back of Rangappa and also the neck and thereafter the order accused assaulted him successively with the jam bias in their hands. Thus all of them stabbed the deceased one after the other and in their attempt to rescue the victim of this assault, the 3 members in the escort party sustained some minor injuries. However all the accused were over-powered by them and taken to their custody. The deceased was dragged out before he succumbed to these injuries. PW 8, PW 9 as well as the deceased CW 1 took all the 4 accused to the police station and produced them before PW 31. It was H. C. Ramalingappa who gave first information as per Exhibit P. 35 before him on which a Case in Crime No. 24/90 came to be registered against the accused persons. FIR was sent to the C.J.M. at Raichur through PW 28. The accused produced before him were arrested and 3 jam bias which were with them were also seized, they are M.Os. 5, 6 and 7. A mahazar was drawn. There were blood stained clothes on the person of all the accused persons and they were also seized. Similarly the clothes of PWs. 10 and 15 which were stained with blood were also seized. Investigation was taken up by the Circle Police Inspector PW 33 who had received the information at about 8.20 a.m. at his residence. This information was from the persons who were running towards K.S.R.T.C. but stand

out of curiosity. Having gone there they saw the dead body of Rangappa by the side of the K.S.R.T.C. bus near the rare entrance and police constable was found standing near the dead body. When he was still at the bus stand he received express report from PW 31 about the registration of this case and then he took up investigation by commencing with holding inquest over the dead body. It was sent for autopsy to the local hospital. It appears the CPI had sent requisition to the Tahsildar to be present at the spot and held inquest over the dead body and accordingly PW 11 the Tahsildar held it. He also seized another jambia stained with blood from the bus and also its cover. In the evening he seized the uniforms of the 3 police constables as they were also stained with blood. He examined the material witnesses and A. 5 was arrested when he was produced before him by PW 32 on 31-5-1990 and the blood stained articles were subjected for Chemical Analysis. Steps were also taken to send the police officials to hospital for examination and treatment.

4. The Sessions Court having relied on the eye-witness account of PWs. 8 and 9 and other circumstantial evidence found the accused guilty as aforesaid. Some of the material witnesses however did not support the prosecution and they were cross-examined. In this appeals it is argued for the appellants that the Sessions Court did not properly appreciate the various circumstances which cast doubt on the prosecution case. Though it could be said that the prosecution has been able to prove that deceased Rangappa died a homicidal death by being assaulted by some persons the evidence that it was the accused-appellants who did it is not worthy of reliance. The learned counsel Sri Mahabaleshwara Gouda urged that there was inordinate delay in the FIR reaching the C.J.M's. Court which casts doubt on the very truth of the prosecution case. Secondly, no explanation was coming forth as to what happened to another knife described as 'chaku' by some of the witnesses and why it was not seized from the bus. Though PW 10 is said to have been handcuffed together with the deceased, it is rather strange that not a single injury was caused to PW 10. Likelihood of some persons inimical to the deceased who was not a law abiding citizen committing the murder cannot be ruled out and the accused out of whom 2 are the sons of Sangya Rangayya and their 2 cousins were taken to custody out of suspicion and then arrested. In this behalf, the appellants' counsel strongly relies on the omissions of the names of

these accused persons in the statement of witnesses during inquest. We have assessed the evidence in the light of the arguments advanced by the learned counsel. The learned Additional State Public Prosecutor however supports the Judgment contending that it is neither perverse nor unreasonable. The trial Court did not commit any error in relying on the eye witness account of the 2 prosecution witnesses and they being natural witnesses and deserved to be believed.

5. We think it unnecessary to refer again in this Judgment to the evidence concerning handing over of the deceased and the other 2 U.T.Ps. to the custody of this escort party consisting of the head constable who was dead by the time the case came up for trial and the 2 constables PWs. 8 and 9. Relevant registers have been produced and marked before the Court below in the evidence of the 2 police constables. The evidence of PW 31 and that of PW 3 is directly on the point and we do not find grounds to disagree with the finding of the trial Court that the 2 U.T.Ps. were in fact taken to the bus stand to be taken to Raichur to be produced before the C.J.M'S. Court. Even in the evidence of PWs. 10 and 15 we find corroboration of the testimony of these official witnesses though the 2 witnesses were cross-examined on the point of actual assault on Rangappa. It is therefore, necessary for us to pick up strings from the time the bus bound for Raichur arrived at the Deodurg bus stand from Tintani.

6. Exhibit P. 35 the complaint given by the deceased Head Constable, H.C. 720 Ramalingappa of the same police station gives the details of the incident of the morning in which Rangappa was assaulted to death. Though the Head Constable was dead. Exhibit P. 35 was got rendered in evidence through PW 31. One of the statements made in Exhibits P. 35 is that the accused uttered after assaulting the deceased that they had done as instigated by this Ningappa meaning thereby A. 5 PW 8 the constable P.C. 1109 in the escort party deposed about he and 2 other officials making arrangement for seating of these U.T.Ps. with hand-cuffs on and they also occupying the respective seats. They had boarded the bus when it became empty on account of the passengers getting down and going out and the driver and conductor also going to take tiffin perhaps to a canteen in the bus stand. He further deposed that within a minute or so after the U.T.Ps. and they occupied their seats all the 4 accused rushed into the bus armed with jam bias and

started assaulting the deceased. They made efforts to separate but the accused did not relent. The deceased was assaulted on his stomach, chest and other parts of the body. After Rangappa fell down A. 3 asked A. 1 to cut the throat of the deceased and he did accordingly. Even these 3 police officials sustained injuries when they intervened. This PW 8 sustained injury on his left hand. Their cloths were also stained with blood and so also the other 2 U.T.Ps. PW 10 Babu and Chandrappa PW 15. U.T.P. Babu who was hand-cuffed jointly with U.T.P. deceased Rangappa was attempting to go away by rescuing himself. The accused assured him that they would not harm him and that he need not worry. The accused shouted that they had taken revenge for the murder of Sangya Rangayya and that it was at the instance of Basalingappa. This Sangya Rangayya father of A. 1 had died about a month before. These escort party officials then asked the accused that their act having been accomplished they should come to the police station. When A. 1 to A. 4 were made to sit, the driver and the conductor also came there. These seats were stained with blood and so also the floor of the bus. The dead body of the deceased was lying on the ground near the bus and at about 9.25 a.m. they reached the police station with the accused persons. It was elicited in the cross-examination that the police station may be about 1 furlong from the sub-jail whereas the sub-jail was 1 Km. from the bus stand. It was also elicited that there were two coolies one had gone over the top of the bus and another was standing near the bus perhaps to load or unload the luggage and large number of persons were present when the incident occurred. According to him it was A. 1 who had inflicted injury on his left hand when he was preventing the assault on the deceased. He also asserted that it was intentional. He had been to the hospital in the evening at 7.30 p.m. but his statement was recorded in the morning at 11.30 a.m. The suggestion made that they had not gone to the sub-jail to receive the 3 U.T.Ps. was denied. He also stated that they had taken the jam bias from the accused persons and took them to the police station from the bus stand.

7. PW 9 another constable in the escort party corroborates his testimony on all material particulars. However he used the word 'chaku' instead of jambia as stated by PW 8. He also speaks about the accused raising their voice after the deceased died. He speaks about the injury sustained by PW 8. This witness also speaks about A. 1 sustaining injury on his right hand when assault on the deceased was

going on. Having felled the deceased to the ground outside the bus A. 1 cut the neck of the deceased with 'chaku'.

8. The evidence of these 2 witnesses if believed thus established beyond doubt the complicity of the accused in the commission of this offence. Though PWs 10 and 15 did not implicate the accused by identifying them, they do swear about the deceased having been assaulted in the bus and according to PW 10 about 5 minutes after they sat at their seats 4 or 5 persons entered into the bus and started assaulting the deceased Rangappa. He also asserts that he and Rangappa were handcuffed together when the incident occurred and as a result of the attack deceased Rangappa fell and died. He becomes stunned, covered both his eyes with one hand and he opened his eyes only in the Office of the CPI. Even PW 15 who speaks of the assault on the deceased states that he cannot say who murdered Rangappa, though he admits that some persons were killing Rangappa and therefore he ran away using the driver's cabin. This witness however was separately handcuffed. The driver and conductor of the bus though spoke of the incident did not identify the accused persons. Similar is the evidence of the coolies who were in the bus stand when the incident occurred and they are PWs. 5 and 7. The evidence of these witnesses thus establishes beyond any doubt that Rangappa did die homicidal deaths in that K.S.R.T.C. bus when he was assaulted by 4 or 5 persons but the evidence of PWs 8 and 9 is that these 4 accused persons were the assailants. We now proceed to consider the points raised by the learned counsel for the appellants.

9. His first argument is to attack the inquest report under section 174, Cr.P.C. which does not mention the names of the assailants though states that the murder was committed by the sons of Sangya Rangayya. Therefore according to him if the names of these accused persons were known when the inquest was drawn they could have certainly found place in the inquest report. In the case of *Basit Ali v. State of Madhya Pradesh* 1976 Cri LJ 776, the Madhya Pradesh High Court relying on the decision of the Supreme Court in the case of *Podda Narayana v. State of Andhra Pradesh* : AIR 1975 SC1252 , referred to the scope of the proceedings under S. 174, Cr.P.C. and pointed out that they have a very limited scope. The object of the proceedings is merely to ascertain whether a person has

died under suspicious circumstances or an un-natural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under S. 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. A similar view was taken in the case of *Yogendra Singh v. State of Rajasthan*, 1980 CrL LJ NOC 113 (Raj), in which their Lordships of the Division Bench pointed out that it is not necessary that the names of the assailants or the names of the witnesses should be contained in the inquest report, though in practice the names of the assailants are mentioned in it. It will depend on the facts and circumstances of each case as to what is the effect of non-mention of the names of the assailants or witnesses in the inquest report. If names of some only of the accused persons or some only of the witnesses are contained in the inquest report, then this omission along with the other infirmities in the case may be a serious matter in a case. Whether the omission mentioning the names of the accused persons should be considered as very material is the point. It may be stated here that the CPI had arrived even before he received the express report from PW 31 of the registration of this case. His attention was attracted towards the spot when he saw people running towards the bus stand when he was in his house and like any other person he also went to the bus stand to see what it was. By that time Rangappa was done to death. None of the accused persons were there nor the police officials who had taken them into custody. It was PW 31 who took the accused persons to his custody when they were produced by PWs 8 and 9 and CW 1. It is quite likely that there were none to give the names of these accused persons during inquest because apparently their names were ascertained only by these police officials. A. 1 and A. 4 in fact are the sons of Sangya Rangayya whereas 2 and 3 are said to be their cousins. Therefore if the reference is loosely made to the sons of Sangaya Rangayya as the assailants that in fact affords guarantee to the truth of the prosecution story instead of shaking it. Whether there is a possibility of the accused having been taken into custody some time later out of suspicion though Rangappa was in fact assaulted by some other persons receives our attention in view of the submission made by the appellants counsel. In our view there are no such circumstances to

make it even a remote possibility. The reason is obvious. The accused persons were caught at the spot by these police officials and even they were disarmed of the weapons they used. There was no time gap between the actual incident and they being produced before PW 31. Within almost an hour the accused were before PW 31 with tell-tale circumstances on their persons namely blood stained clothes as also clothes of the police officials. It is also note worthy that A1 sustained injury the relevance of which we will consider at the relevant stage. The names appears in the FIR filed by deceased CW 1 and hence in our view the police officials going in search of the accused persons in the village which is away from Deodurg but the distance of which is not brought on record cannot be accepted. At any rate to take them to their custody they had to make efforts to search for them in the village. Such an eventuality becomes incredible and improbable as they were taken into custody at the spot though urged by the appellants counsel that the delay in FIR reaching C.J.M. clearly supports the case of the accused persons.

10. The FIR no doubt reached the Magistrate at Raichur at 5.40 p.m. delivered by PW 28, the Constable to whom it was handed over at 10.40 a.m. by PW 31. According to this witness he came to the bus stand at Deodurg at 11 a.m. to catch the bus to go the Raichur. He could not get any bus as some of the buses went directly without entering into the bus stand due to the murder having taken place. Therefore he went to the cross-road and caught a lorry at 11.30 a.m. or 12 Noon. The lorry in which he was travelling had break-down. As it rained heavily with lashing winds at about 4 p.m. after repairing the lorry he proceeded for Raichur. The lorry reached Raichur at 5 p.m. He went to the Court at 5.15 p.m. found the Magistrate having left the Court and then he went to his residence and handed over to him the FIR. It was only suggested that there was no raining at all on 20th of May, 1991 but his evidence that it had rained when the lorry was proceeding towards Raichur was not challenged in his cross-examination. However he admitted that between 10 a.m. and 12 Noon about 10 or 13 buses pass through Deodurg going to Raichur. But he then stated that 2 to 3 hours were taken for the lorry to be repaired. It was only elicited that he was sitting in the lorry itself when it was raining. He denied the suggestion that the FIR in fact was give to him at 2.30 p.m. or 3 p.m. and that he had left Deodurg by 3 p.m. bus. In our view even if it is

assumed that there is delay in the FIR reaching the Magistrate, the point is whether the evidence of PWs 8 and 9 should be discarded on that ground alone. A. 1 was produced with the injury on his hand before PW 13 at 3.45 p.m. Even in that event according to the appellants' counsel the argument that FIR came into existence only at about 2.30 p.m. or so should be accepted. If the condition in which the accused persons were produced before PW 31 is considered, there is no escape from the fact that the accused were in fact taken into custody at the very spot where Rangappa was done to death. He had sustained as many as 21 incised wounds on various parts of the body and the 2 witnesses have consistently stated that they assaulted one after the other mercilessly. Thus it is apparent that this Rangappa was brutally assaulted by whosoever were the assailants but in our view there is no reason to discard the evidence of PWs 2 and 3 whose evidence finds corroboration in the FIR filed by the deceased CW 1. Though on the face of it the reason given by PW 28 about the break down of the lorry and rains lashing on the way do not appear to be very plausible, such eventualities do occur but then it is contended that a large number of buses did ply between Deodurg and Raichur in about an hour or 2 and that PW 28 could have caught one such bus. He has however given reason that the buses did not touch the bus stand on account of this incident. However that does not mean that the buses never stopped at Deodurg because passengers must have got down at Deodurg and PW 28 could have caught one such bus. As we have already stated earlier, delay in FIR reaching the Magistrate may put the Court on guard and the Court may have to be cautious in making its approach to the evidence, but there is no law that on this score alone otherwise reliable and truthful evidence should be discarded. Applying that well established principle of appreciation of evidence and even exercising the caution that is required of us we do find that the two witnesses PW 8 and PW 9 are very natural witnesses whose evidence has not been shown to be shaky by any standard but on the other hand their efforts must be commended for having immediately overpowered the 4 assailants who were armed with weapons like jam bias and for having taken them to the police station without any loss of time. In our view therefore the Sessions Court was right in believing the evidence of these witnesses and we do not find any infirmity in their evidence.

11. A. I was injured in this incident and he was examined by PW 13 at 3.45 p.m. when he was taken to him through P.C. 1052 and on examination he noticed an incised wound 2' x 1' x 1/2' below middle of the right fore-arm inner aspect and another incised wound 2' x 1' x 1/2' over the middle of right fore-arm outer aspect. He was treated and injury certificate issued by PW 13 is at Exhibit P. 18. Unfortunately this circumstances was not put to the accused when they were examined under S. 313 Cr.P.C. by the trial Court. PW 13 assessed the age of these injuries as below 12 hours from the time of his examination. In a similar situation in the case of Shivaji Sahebrao Bobade v. State of Maharashtra, : 1973 CriLJ1783 the Supreme Court observed that were such an omission has occurred in putting the material circumstance appearing against the accused in his statement under S. 313 Cr.P.C. it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstance, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards the compliance with S. 342 Cr.P.C. (Old Code) the omission has not been shown to have caused prejudice to the accused. Similarly when such a situation had arisen in the case of Makan Jivan v. The State of Gujarat, : 1971 CriLJ1310 their Lordships of the Supreme Court pointed out that in the case before them the plea of the accused persons was that they were not present at the scene at the time of the occurrence. In view of that plea any further question to them would have been purposeless. It was also pointed out earlier that it is well settled that every error or omission in complying with S. 342 (old code) does not necessarily vitiate the trial. Errors of that type fall within the category of curable irregularities and the question whether the trial has been vitiated depends

in each case upon the degree of error and upon the prejudice that has been or likely to have been caused to the accused. Despite the defective questioning of the accused in that case of *Ajmer Singh v. State of Punjab*, : 1953 CriLJ521 cited before them, their Lordships pointed out that on the facts of that case, the accused were not prejudiced as the material evidence in that case was direct evidence and that evidence was taken in the presence of the accused who was represented by a counsel. It is no doubt true that every incriminating circumstance or circumstances appearing against the accused should be put to them in the statement under S. 313 Cr.P.C. to elicit from them what they have to say on those circumstances. If omission has occasioned as has happened in this case with regard to the particular circumstance namely A. 1 sustaining an injury during this assault, and the material prosecution witnesses saying that he sustained these injuries when deceased was being assaulted by the accused it was only necessary for the trial Court to put this circumstance to the accused. We have considered from the point of view of prejudice the omission on the part of the trial Court to put this question to the accused persons in the light of the defence they have taken and the plea made by them on other circumstances. They have consistently denied every circumstance only saying that it is false and nothing more. It is consistently contended by them by putting forth their defence that the witnesses were never present at the spot and that though some others committed the murder of the deceased they were falsely implicated as happened in the case of *Makan Jivan v. State of Gujarat*, : 1971 CriLJ1310 before the Supreme Court. In such a situation we asked the learned counsel for the appellants what could be the explanation of the accused persons with regard to the injury to A. 1. His answer was nothing more or less than what the accused had pleaded in their question namely one of total denial. We then considered the evidence in the light of the submission made by the learned counsel and find that the evidence given by the 2 witnesses which finds support in the medical evidence does deserve acceptance by us and that there is additional circumstance to corroborate the testimony of these witnesses namely A. 1 sustaining an injury in the assault on the deceased. Similarly the police officials also sustained injuries though minor as referred to above. In our view therefore the direct evidence as well as the strong circumstantial evidence have established the guilt of the accused beyond doubt and we do not find any

grounds to come to a different conclusion from the one arrived at by the trial Court. The appeal fails and it is dismissed.

12. Appeal dismissed.

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