

Aneppa and ors. Vs. the State of Karnataka

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Court : Karnataka

Decided On : Sep-05-1977

Reported in : 1978CriLJ462

Judge : C. Honniah, Actg. C.J. and; D.B. Lal, J.

Appellant : Aneppa and ors.

Respondent : The State of Karnataka

Judgement :

C. Honniah, Actg. C.J.

1. This is an appeal from the judgment of the Additional Sessions Judge, Gulbarga, dated 4-3-1977 convicting the accused (A1 to A5) - (Appellants), Under Section 302 read with Sections 149, 143 and 148 I.P.C. and acquitting accused 6 to 10.

2. The prosecution case, briefly stated is as follows; In the village Savalgi, there were two Maths, viz., Shivalingeshwar Math and Santeshwar Math. Mal-likarjun. Swamy (A8) was the head of Shivalingeshwar Math, while Dr. Neelkant Shivacharya Swamy (P.W. 35) was the head of Shanteshwar Math. In the year 1960 P.W. 35 started a free boarding hostel and a High School at Savalgi. There was a Committee managing the affairs of these two institutions. P.W. 35 was the President while Chandranath (A-10) was the vice-president and deceased Channabasappa was the Secretary till 1968 of the said Committee. In regard to

the management of these institutions, disputes arose between P.W. 35 and Channabasappa on the one hand and A6 to A-10 on the other. Thereafter, A6 to A-10 formed another committee headed by A8 and they were opposing P.W. 35 and Channabasappa. In the year 1973, there was theft in the school. P.W. 21 Revansi-ddayya, who was the clerk of the school, filed a complaint against A3, A5, A6, A7 and others. In the election to the Taluk Development Board, A10 opposed Channabasappa and in that, A9 supported A-10. In that election, Ghannabasappa was elected. A week prior to the murder of Channabasappa, proceedings Under Section 107 of the Cri. P.C. were initiated against A8 and some of his partymen and also against Channabasappa and others. The prosecution case was that the accused persons conspired on 6-7-1975 in Shivalingeshwar Math at Savalgi to do away with Channabasappa. In prosecution of that conspiracy, A1 to A5 went to Gulbarga on 8-7-1975 and waited near an open space opposite to Shri Sharnbasaweshwar temple. At about 8 or 8-15 A. M., Channabasappa as usual, went to the open space in front of the temple to answer call of nature. While Channabasappa was answering calls of nature, A2 and A5 attacked Channabasappa with jambias and the other three accused who were sitting on a tamarind tree jumped down and joined in the attack with jam-bias and thereafter all the five accused ran away from that place. Shortly thereafter, Channabasappa died.

3-4. The place where the murder of Channabasappa was committed was a busy locality. At the time of incident, there were number of persons who had come from the villages with their carts loaded with fodder and foodgrains. There were number of shops near the temple selling cocoanuts. There were one or two tea shops. Many persons of the locality were present.

5. Ashok (PW-7) who had gone to the open space to answer call of nature, on seeing the assault on Channabasappa, ran to the house of Malsiddappa (PW1) and told him that five persons murdered Channabasappa. Immediately, P.W.1 rushed to the spot. On the way, PW-1 met one Devendrappa (who has not been examined in the case). He came to know from him that A1 to A5 were the assailants of Channabasappa. He along with Devendrappa went to the spot and found the dead body of Channabasappa lying in the pool of blood with multiple

injuries. Prakash (PW2), Mahantappa (PW3), Vasudev (PW4), Rudrayya Swamy (PW5), Parasuram (PW6), Ashok (PW7) and Gurumurthy (PW22) also came to the spot. PW1 went to Jagath police station and reported the matter to Manikrao (PW45), Sub Inspector of Police. PW-45 recorded the statement of PW1 as per Exhibit P-I at 9-15 a.m. and registered a case.

6. Investigation was started and during the course of investigation, A1 to A5 were arrested on 1-8-1975. On the information given by the accused, clothes and jambias were recovered from the houses of these accused persons. After due investigation, the case was put up against A1 to AS and A6 to AIO alleging that in pursuance of the conspiracy held on 6-7-1975, A1 to A5 murdered Channabasappa. The learned Sessions Judge disbelieved the conspiracy story and acquitted A6 to AIO. Relying on the testimony of the eye witnesses and other circumstances, the learned Sessions Judge convicted A1 to A5. We are told that the appeal filed against the order of acquittal of A6 to AIO, was not admitted by this Court.

7. The prosecution mainly relied upon the direct testimony of PWs. 2 to 7 and PW 22. All these witnesses belong to the same locality in which Channabasappa was residing. They have stated the reasons for being present at the time of incident. PWs. 2, 3 and 7 are related to Channabasappa. PWs. 2 and 7 had gone to the open space to answer call of nature. PW6 was in his fuel depot which was near the temple. PW4 had gone to the temple PWS was going there on private work on a bicycle. PW 22, a boy of 16 years, was keeping cocoanut shop in front of the temple.

8. PWs 7 and 22 have not identified any of the accused as the assailants of Channabasappa. PW 7 was present right from the beginning when Channabasappa came to the open space to answer call of nature. The sum and substance of the evidence of the other witnesses is that accused 2 and 5 attacked Channabasappa when he was answering call of nature and the other three accused jumped down from a tamarind tree and joined the other accused and all of them assaulted Channabasappa with jambias and ran away from there. All these witnesses were living in different parts of that locality which was little away

from the place of murder. According to them, they were there for different purposes as stated earlier. Except PW 2, no other person from nearby shops or any of the cart-men who were present in the open space even before Channabasappa went there, has given evidence in support of the case of the prosecution. According to these witnesses, 10 or 12 persons were already there even before the attack on Channabasappa and no one has been examined. PW1, soon after the murder, came to the spot on being told by PW 7.

9. PW 7 who is related to Channabasappa did not mention the names of the assailants nor told the identity of the assailants to PW1. According to PW1, he met one Devendrappa on the way who gave him the names of accused 1 to 5 as the assailants. Significantly, in this case, Devendrappa has not been examined. Therefore, the version contained in Exhibit P-I is the version stated to have been given by Devendrappa. That very person having not been examined, no importance could be attached to the version in Exhibit P-I. All these eye witnesses, according to PW1, were present when he went to the spot. He knew all of them intimately. Even then, their names have not been mentioned in Exhibit P-I. It is, therefore, clear that the story in Exhibit P-I must have been thought of by PW1 to implicate the accused.

10. According to these eye witnesses, the incident took place for about 2-3 minutes. Some of the witnesses saw the assailants running away. Some of them chased the accused persons and the assailants on showing jambias they returned back. These witnesses, when they were examined during the course of investigation, did not give any identification marks of the accused. Strangely enough, these witnesses identified accused 1 to 5 in an identification parade held on 1-9-1975 and on 20-10-1975. Identification is, however, one of the questions vexatious of criminal jurisprudence. In all cases involving personal identification, there is invariably abundant material present for founding cross-examination. It depends on variable, inconstant factors, such as eye-sight, climatic conditions, visibility and illumination, facial or bodily peculiarities, the possibility of a duplication of those peculiarities in other persons, ability of the identifier to describe accurately the mannerisms by which he is able to distinguish the particular person from others of similar build, the ability of that person to retain a

clear mental vision of the person he has seen, the length of time between the identifier seeing the suspect and the identification parade, the possibility of external influences (photographs, newspaper descriptions, conversations with other witnesses etc.) as well as the actual conditions under which the identification parade is conducted.

11. In this case, though the eye witnesses were present and saw the incident as stated by them which happened in about two or three minutes, the accused persons were totally strangers to them. It is difficult to believe their story, that they remembered the identity of the assailants in an identification parade held long after the murder.

12. Above all, it is extremely doubtful whether these witnesses were at all present at the time of the incident. If PW 1 knew the names of the accused, as he claims, he would have informed these witnesses.

13. The medical evidence in this case amply establishes that there were lacerated injuries of a pretty serious nature. Although the doctor has stated that the lacerated injuries might be caused by jambias which were pointed sharp instruments, it is difficult to believe that if the jambias had been used, lacerated injuries would have been caused. According to the eye witnesses, only jambias were used and no other weapons, and the accused stabbed Channabasappa. There was not even one stab or one punctured injury on the person of Channabasappa. The medical evidence clearly belies the direct testimony of these witnesses.

14. In *Ram Narain v. State of Punjab* : 1975 CriLJ1500 the Supreme Court held that where the direct evidence is not supported by expert evidence, then the evidence is wanting on the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence.

15. this Court in *Pampa v. State* [1973 (2) Mys LJ 13] thus observed:

Where there is a conflict between the medical evidence and the oral testimony of witnesses, the evidence can be assessed in two ways. A Court can either believe

the prosecution witnesses unreservedly and explain away the conflict between their evidence and medical evidence by holding that the witnesses have merely exaggerated the incident or rely upon the medical evidence and approach the oral testimony with caution testing it in the light of the medical evidence. The first method can be applied in cases where the oral evidence is not open to any doubt and creates confidence. Where the evidence is not of that character, when the medical evidence is not open to any doubt or suspicion, the only and judicial way of assessing the evidence is the second method.

In this case, we are of the view that the direct testimony of the eye witnesses is suspect and that evidence conflicts with the medical evidence. It is, therefore, unsafe to rely upon the direct evidence.

16. Reliance is placed by the prosecution on the extra judicial confession stated to have been made to PW33 Hanumanth Rao. Extra-judicial confessions should be proved in the same way as other admissions or statements by the evidence of the persons to whom they were made. They must be proved by evidence of the most reliable character. The infirmity is that in most cases owing to the absence of any writing the exact words used by the accused cannot be known and the witness may have misunderstood or may not have remembered. For this reason extra-judicial confessions are not considered of much value unless the witnesses can be depended upon. It is unsafe to convict a person only on such evidence without corroboration. As a rule of caution, courts usually require some material corroboration to an extra-judicial confession.

17. PW 33 is a resident of Pattan village, quite some distance from the village of the accused. According to him, A-1 to A-5 met him in his house at 9 P.M. when it was raining. A-3 told him that he and other accused committed the murder of Channabasappa. He has admitted that he was not intimate with the accused. It is therefore unlikely that the accused would have confessed before him. He has stated that the clothes of the accused were stained with blood. This is improbable because by the time they met him, they must have been drenched in the rain, as it was raining, in which case there could not have been blood marks. Therefore, we are of the opinion that this is a witness on whom no reliance could be placed.

18. In this case the complaint was lodged at 9 A.M. in the police station, close to the court. But the First Information Report was received by the court at 2 P.M. PW 45 has stated that he could not send the FIR to court forthwith as he got fever. This explanation is far from satisfactory. No court could believe that story. The only inference is that the complaint must have been lodged after a good deal of deliberation. The delay has played a considerable part.

19. There is some indication in this case that Channabasappa might have been murdered very much earlier than 8 A.M. It was unlikely that Channabasaippa and some of other witnesses would have gone to the open space in front of the temple to answer calls of nature at about 8 A.M. when large number of people were present.

20. PW 1 set the law in motion on the information given by one Devendrappa. He has not been examined. No satisfactory reason has been given for his non-examination. This throws a good deal of doubt on the prosecution story. It appears to us that the story in Ex. P-I must have been thought of by PW 1 after a good deal of deliberation to implicate the accused falsely.

21. For the reasons stated above, we are satisfied that the prosecution had not been able to prove its case against A-I to A-5 beyond reasonable doubt and, therefore, they are entitled to be acquitted. We, accordingly, allow this appeal, set aside the convictions and sentences passed against A-I to A-5 (appellants) by the Sessions Judge, Gulbarga, in S.C., No. 8 of 1975 and acquit them. We direct that the appellants be set at liberty forthwith.