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State of Mysore Vs. M.N. Vasantha Kumar

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Court : Karnataka

Decided On : Apr-11-1969

Reported in : 1969CriLJ1299

Judge : H. Hombe Gowda, C.J. and ;K. Bhimiah, J.

Appellant : State of Mysore

Respondent : M.N. Vasantha Kumar

Judgement :

K. Bhimiah, J.

1. The State has filed the above appeal against the order of acquittal of the respondent passed by the Sessions Judge, Coorg Mercara, in S.C. No. 2 of 1967, The respondent was tried for offences under Sections 302 and 201, Penal Code. There is a criminal petition also filed by the State under Section 561 A of the Code of Criminal Procedure for expunging adverse remarks passed by the Sessions Judge in paragraphs 16, 19, 20, 45, 46 and 48 of the judgment under appeal. As both these matters are connected, they are clubbed and heard together and disposed of by common judgment.

2 The allegation against the respondent (accused) is that on 11-8.1966 at 5 P. M. at Mcolegadde in Charangala village, he caused the death of his brother, Montana MalMallayya by inflicting injuries with a bill hook and knowing that an offence

under Section 302, Penal Code punishable with death or imprisonment for life was committed, caused the evidence of the said offence disappear by concealing the dead body of Motana MalMallayya inside bushes with an intention to screen himself from legal punishment.

3. The learned Sessions Judge who tried the accused for offences under Sections 802 and 201 of the Penal Code, or want of legal evidence though he was morally convinced that the accused was mainly responsible for the murder of his younger brother, MalMallayya, with a view to usurping the entire ancestral property for himself, acquitted him. The State has challenged the judgment and the order passed by the learned Sessions Judge.

FACTS

The deceased and the accused were brothers. There was a misunderstanding between the brothers regarding the division of ancestral property and also about the enjoyment of the property. In 1965, the elders of the family wanted to effect a settlement, which, according to the prosecution, was resented by the accused. The accused wanted the entire property for himself to the exclusion of the deceased. It is also alleged that the deceased did not heed to the advice of the accused to marry a girl of the choice of the accused. Therefore, the accused wanted to get rid of his brother and usurp the entire property to himself. According to the prosecution, the deceased was last seen in the company of the accused on 11-8-1966 and thereafter his whereabouts were not known. On 15-8.66 a human hand was found in Dodda Gadde in Charangala village. A report as per Ex. P-I was made by P. W. 1 to P. W. 29 Madappa, Head constable, who was attached to Bhagamandala Outpost, and who took that report to the Police Head Constable, P. W. 28 Motayya, attached to Napoklu Police Station, who in turn, took the report to the Circle Inspector of Police, P. W. 44 Dinkar Uchil. They all went to the spot, seized the human hand as per Ex. P-2 on 17-8-1966. It was sent to the local doctor for opinion. Later on, it was sent to the Chemical Examiner, but on the advice of the Chemical Examiner, it was sent to the Forensic Expert who opined that it was a human hand. In the meanwhile, P. W. 28 had received a report from the patel of Charangala on 7-9-1966 informing the Police about the disappearance

of Motanna MalMallayya. It was converted into F.I.R. as concerning a man missing under Crime No. 126 of 1966 of Napoklu police station. Thereafter, he sent the F.I.R., for investigation to Madappa, Head Constable, P. W. 29, who was attached to Bhagamandala outpost. The Forensic Expert, as already stated, opined that it was a human hand. Then, a case under Section 174, Criminal P.C. was registered in Crime No. 154/66 and F.I.R. was sent to the District Magistrate and official superiors by P. W. 41, Muddurangayya, Sub-Inspector of Police.

4. As much progress was not made by the Local Police in the case, the investigation of the case was taken up by P. W. 50, Pushparaj Shetty, Inspector of Police, C.I. D. Branch, Bangalore, on the direction of the Superintendent of Police, Crime Branch, Bangalore. He conducted a confidential enquiry and gave a report as per Ex. P-66 to the inspector of Police, Mercara, P. W. 44 (Dinkar Uohil) on 9.12-1966. P. W. 27, Subramani, on receipt of the said report converted the F. I.R. 126 into 126-A under Section 302 of the Penal Code and sent a copy of the F.I.R. to the Court and sent express reports to the superior officers. The F.I.R. is Ex. P.37. P. W. 50, Pushparaj Shetty's confidential enquiry revealed that the accused requested Koragappa Naika, P. W. 49, a servant under the accused to dispose of the remnants of tbe dead body of his younger brother, whom he killed and had secreted it under bushes in a jungle. Koragappa Naika was not agreeable to this. He left the services of the accused and divulged this information to P. W. 46. Motana Kushalappa who, in turn, informed P. W. 42, Noor Mohammad of Bhagamandala. He (P. W. 50) contacted both these witnesses and got confirmation of the information got from P. W. 49. Then, with the help of P. W. 44, he got the accused arrested on 10-12.1966 The accused is said to have volunteered with the information as per Ex. P.67, to point out the place where the dead body was secreted and produce bill hook and clothes. The accused led the police and the panchas to Charangala and to his house in the village. He took them to the soft in his house and from the south, west corner of the Kitchen from under a country umbrella, he took out a bill hook and handed over the same to P. W. 50. From there, he led them to the southern room in the house and from a stand kept on the western side of the southern room, he produced an underwear and a blue coloured full-sleeved shirt. They were seized under Ex. P. 41 (d). M. 0. No. 9 is the bill-hook; M. 0. No. 7 is the bush shirt; M. 0. No. 10 is the underwear. It

is the prosecution case that the accused then led them through the fields and waste land for a distance of about six furlongs through shrub jungle and pointed out a bush covered with cut branches. He made an opening in the bush on the ground. A Mahazar as per Ex. P-41.F waa drawn in the presence of P. Ws. 42 and 48. He pointed out a skull. Inquest was held over the skull in the presence of panchayatdars Pariwara Ananda PW. 43, P. W. 42 Noor Mohammad, Hosoor Bidaappa P. W. 1 and B. A. Babu, P. W. 4. After the skull was recovered, a minute examination of the spot was held during the inquest proceedings. The panchayatdars found 9 bones in rain water channel and pieces of Banian, underwear, and a flap of a trouser near those bones. Further, at a distance of 5 Marus in the said rain water channel, they recovered 5 more bones. The skull had three out marks and the back portion of the bone was missing. M. 0. No. 1 is the skull. All these were seized under Ex. P.41 (f). Motana Kushalappa P. W. 48, Motana Ganapathy, P. W. 33 and Motana Annayya P. W. 14, it appears, identified the skull as that of Motana MalMallayya during the inquest. M. 0. No. 2 are the 9 bones; M. 0. No. 4 is a banian piece; M. O. No. 5 is the underwear piece; M. 0. No. 6 is the trouser flap with dhobi mark as mentioned in the inquest and M. O. Nos. 3, 5 pieces of bones recovered. Ex. P.5 is the inquest report. They were packed, sealed and seized. P. W. 50, Pushparoj Shetty, examined P. W. 5, Kamala and P. W. 6 Thayamma, who heard a human cry on a particular day in the evening time. He also examined Dhobi P. W. 21 Appanna to identify the Dhobi marks on the articles recovered from the scene of offence and a tailor, P. W. 24 Annappa to identify M. 0. No. 6, a flap of a trouser as the one stitched by him among several other witnesses. He sent these articles to the Chemical Examiner requesting him to forward the articles to the Professor of Forensic Medicine, Government Medical College, Mysore, for opinion. After completing the investigation, he submitted a charge sheet against the accused for offences under Sections 302 and 201, I.P.C., in the Court of the Munsiff-Magistrate, Virajpet. The learn-ed Magistrate, after holding a preliminary enquiry against the accused, committed him to take his trial before the Sessions Court, Coorg. Mercara, for the aforesaid offences. The learned Sessions Judge, as already stated, acquitted the accuse1 of the offences punishable under Sections 302 and 201 of the I. P. Code.

6. The plea of the accused is one of denial of the prosecution case.

Questions for decision are:

(1) Whether the homicidal death of Motana MalMallayya is proved ?

(2) Whether the accused was responsible for his death ?

(3) Whether the accused secreted the dead body of Motana MalMallayya to screen himself from legal punishment ?

6. Prosecution has sought to prove the case against the accused entirely on circumstantial evidence. The several pieces of circumstantial evidence relied upon by the prosecution are:

(1) Motive.

(2) The deceased was last seen in the company of the accused.

(3) On a certain day, a human cry was beard by two women who were grazing their buffaloes in the forest.

(4) Identification of the M. O. No. 6 recovered from the scene of offence by Dhobi and tailor P. Ws. 21 and 24.

(5) Extra-judicial confession to P. W. 49, Foragappa Naika, who, in turn, informed about it to P. Ws. 46 and 42.

(6) Recovery of the skull, bones and other material objects on the information furnished by the accused.

7. It is well settled that in cases in which the prosecution solely relies upon circumstantial evidence in support of the charges against the accused, each one of the circumstances must fully and satisfactorily be established and the circumstances so established must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also well settled that it is unsafe to convict a person of murder on circumstantial evidence where the separate pieces of circumstantial evidence relating to the movements of the accused and which converge on their guilt bear

palpable signs of conviction and do not fit in with the conduct of rational parsons. We are aware of the limitation attached to an appeal against acquittal. The presumption of innocence gets strengthened by an order of acquittal passed by the trial Court in favour of the accused. It is well settled that in an appeal against the order of acquittal the power of this Court to review the evidence afresh is as extensive as its power is in an appeal against the conviction. It is also well settled that if two reasonable views on the evidence adduced are possible the view that commended itself to the trial Court should be accepted as the trial Court had the benefit of seeing the demeanour of the witnesses in the box. Therefore, there must be good reasons for disturbing the findings. But if the trial Court has misdirected itself either on questions of law or in appreciating the evidence before it and as a result arrived at conclusions which are wholly unreasonable and unsupportable, then it is the duty of this Court to interfere with the decision under appeal. Bearing in mind these well settled principles of law, we proceed to examine the prosecution evidence adduced in support of the charges framed against the accused.

8. The prosecution has examined fifty witnesses. No defence witness has been examined in this case. The crucial question for determination is whether the prosecution has fully and satisfactorily established the homicidal death of Mottanna MalMallayya. The learned Sessions Judge has come to the conclusion that M. 0. No. 1, the skull, is the corpus delicate of the deceased, and in consequence of that finding, he is of the firm opinion that the deceased Mottanna MalMallayya is murdered. We are unable to agree with the finding of the learned Session Judge. It is our considered opinion that the prosecution has not fully and satisfactorily established that the corpus delicti discovered by the prosecution was that of Mottanna Mallaya and he met with a homicidal death. It is the prosecution case that on 15-8.1966 a human hand was found near Dodda Gadde in Oharaugala village. Information to that effect as per Ex. P.I was laid before the Police by P. W. 1. Thereafter, with the help of P.W. 28 Mottayya and P. W. 29 Madappa and panchas, P. W. 44, Dinkar Uchil, Circle Inspector of Police recovered the hand and gent it to the doctor P.W. 39, Dr. K. R. Mudduveerachar, for opinion, who in turn, sent it to the Chemical Examiner and ultimately, it was sent to the Professor of Forensic Medicine, P. W. 40, Srinivasa Iyengar, who opined that it was a human hand. Thereafter, as already stated, a case under

Section 174, Or. P.C. came to be registered in Crime No. 154/66. But much progress was not made in the case for a considerable length of time. Some persons in the village started agitating the matter. Finally, the Superintendent of Police, Bangalore, deputed P. W. 50, Pushparaj Shetty, Inspector of Police, C.I.D. Bangalore, for investigation. After making confidential enquiries, P. W. 50, made a report as per Ex. P-66. He got the accused arrested with the help of P. W. 44, Dinkar Uchil, C. I, Police. While in custody, the accused gave information as per Ex.P-67 to P. W. 50 stating that he would point out the place where the dead body was secreted and also produced a bill-hook and clothes. P. W. 50, Pushparaj Shetty, P. W. 42 Noor Mohd. and P. W. 43 Parivara Ananda, have given evidence that the accused led them through the fields and wet lands for a distance of about six furlongs and took them through a shrub of jungle and pointed out a bush covered with cut branches. He made an opening in the bush on the ground and pointed out the skull. A mahazar was drawn up as per Ex. P-41 (f) in the presence of P. Ws. 42 and 43. Then, an inquest was held as per Ex. P-5 in the presence of panchayatdars, P. Ws. 48 and 42, P. W. 1 Bidappa and P. W. 4 Babu Patel. On a minute examination of the spot, by the mahazardara during the inquest proceedings, at a distance of 4 marus from the place where the skull was recovered, 9 bones, M. 0. No. 2, were recovered in rain water channel. By the Bide of the bones, they '.recovered M. 0. No. 4, a banian; M. 0. No. 5 an underwear piece and M. 0. No. 6 a flap of trousers with a dhobi mark. At a distance of 5 marus from that place in the said rain water channel, they re. covered five more bones. The skull, according to them, had three out marks on the back and a portion of the bone was missing. The skull had 16 teeth on the upper jaw and the lower jaw is separated from the skull and the lower jaw bad also 16 teeth. It was seized under Ex. P-41 (f). It appears that P. W. 46 Mottana Kushalappa, P. W. 83 Mottanna Ganapathy, and P.W. 14 Mottana Annayya identified the skull as that of Mottana MalMallayya during the inquest. On the basis of this evidence, the prosecution wants the Court to infer that the skull M. 0. No. 1, was that of Mottana Mallyya and the out marks indicate that he had met with his unnatural death. The discoveries said to have been made on the information furnished by the accused, in our opinion, are no discoveries at all. Long prior to the accused furnishing the information as per Ex. P 67, the whole village and even the

Police knew the place wherefrom the skill was discovered. The human hand was discovered in the vicinity of the place where the skull, M. 0. No. 1, was discovered. Thus, the police knew the place from where they could recover Borne remnants of ft human body. Therefore, in our opinion, it is a rediscovery which does not fall within the purview of Section 27 of the Evidence Act and hence no importance can be attached to the said discovery. The learned Sessions Judge who had the benefit of observing the demeanour of P. W. 46 Mottana Kushalappa, P. W. 33 Mottana Ganapathy and P. W. 14 Mottana Annayya, who have identified the skull as that of Mottana Mal. Mallayya has rejected their evidence and further tbe evidence of P. W. 21, Appanna Dhobi, and P. W. 24 Annappa, a tailor, who have identified M. 0. No. 6 as belonging to Mottana Mallyya has also been rejected, we think rightly, as untrustworthy. But his finding that the corpus delicti was that of Mottana MalMallayya and be was murdered is based solely on the evidence of P. W. 35, Dr. S. Choudry, Assistant Director of Forensic Science Laboratory, Calcutta. The evidence of P. W. 85, Dr. Choudry is that he received a photo said to be that of the deceased Mottana MalMallayya and a human skull with a lower law. He conducted the following experiment on the skull and photograph. His evidence is that a quarter size positive transparency and a quarter size negative of the deceased face were made from the available photograph. The positive transparency of the face so prepared was placed under the ground glass of the camera and some anatomical land marks, namely, nation root of the upper lip, point of contact between the two lips in the midsagittal plane, lowest point of the chin, outer angles of the two eyes, points of maximum molar prominence and the entire outline of the face were marked carefully with a fine pencil on the ground glass. Further his evidence is that one vertical line was drawn through the nasion and the point of contact between the two lips in the mid-sagittal plane and that line passed through the root of the upper lip and the lowest point of the chin. One horizontal line was drawn connecting the two outer angles of the eyes. Then the skull in question was fixed on a suitable Stand in the identical position in which the deceased's face appeared in the original photograph. The skull with the stand was then placed on a heavy table in front of the camera fitted with ground glass marked earlier. The skull was then moved and adjusted until the following points coincided:

1. Nasion of the deceased's face and of the skull.

2. Root of the upper lip of the deceased's face and the anterior nasal spine of the skull:

3. Outer angles of the eyes in the deceased's face and the inner border of the outer margins of the eye-sockets. Then the skull was photographed in that position. Thereafter, the two negatives, one of the deceased face and the other of the skull were superimposed to determine how closely the photograph of the skull would fit into the photograph of the deceased's face. By adjusting the two negatives in such a way, the following points in the two negatives accurately coincided: -

1. Nasion.

2. Root of the upper lip and the anterior nasal spine,

3. Outer angles of the eyes and the inner border of the outer margins of the eye-sockets. The resulting super-imposed photograph from the two negatives, according to his evidence, shows correspondence between the anatomical land marks of the skull and those of the deceased's face with due allowance for the relative thickness of the soft parts in different regions, namely, scalp, lowest point of the chin and the zygomatic arches. For the anatomical correspondence, the following features were taken into consideration by him:-

1. General contour.

2. The position of eye brows,

3. The position of the eye-balls,

4. The angles of the eyes,

5. Position of the root of the upper lip,

6. Position of the line of contact between the two lips,

7. Position of the lowest point of chin,

8. Molar prominences,

9. Position of zygomatic arches, and

10. Various soft tissues.

He found that the anatomical features made out in the skull were found to be identical with those made out in the photograph Ex. P-16 of the face of the deceased. On the basis of the result so obtained from the above experiment, P. W. 35 opined that there was correspondence between the anatomical landmarks of the skull and of the photograph of the deceased's face when photographically superimposed. He, therefore, concluded that the skull in question could have been the skull of the person in the photograph Ex. P.16. Ex. P.46 is the report he has issued on the superimposition test. In the course of the questions put by the Court, he admits that it is not possible to give a definite opinion whether a particular skull belonged to a particular person by superimposition technique, at this stage. He further says that as all the anatomical features have coincided there is a strong probability that the skull in question belonged to the parson found in group photo Ex. P-16. From the opinion furnished by P. W. 35, it is not possible to say conclusively that the skull, M. 0. No. 1. is that of Mottana MalMallayya whose photo is found in Ex, P-16, as P. W. 85 himself has admitted that it is not possible to give a definite opinion whether a particular skull belongs to a particular person by superimposition technique. From his evidence, as admitted by him, there can only be a strong probability that the skull in question belonged to the person found in photograph, Ex. P-16. There is no other evidence corroborating the opinion furnished by the expert, P. W 35. In the absence of any corroborative evidence, it is not possible for us to accept and act on the opinion furnished by P. W. 85 in coming to the conclusion that the corpus delicti that was found was that of Mottana MalMallayya.

9. There is another circumstance in this case which throws a great deal of doubt regarding the opinion furnished by P. W. 35. P. W. 40. Dr. Srinivasa Iyengar, Professor of Forensic Medicine who examined the human hand sent to him, has, no doubt, opined that the specimen sent consists of a human arm, fore-arm and a part of hand of the left side. It is important to note that the age of the person to

whom that hand belonged was between 18 and 22 years. He has sent his opinion as per Ex. P-57. M. 0. No. 8 are the bones sent and examined by him. He was also requested by P. W. 50 pushparaj Shetty to examine the skull and mandible, M. 0. No. 1 and other bones which were recovered from the scene of offence. He is of the opinion that the bones were of a human being and belonged to one body and the age was between 25 and 35 years. The prosecution has produced evidence relating to the discovery of the hand in order to connect that hand with the skull and other bones that were found there. But, on the showing of the prosecution itself, the hand belonged to a person aged between 18 and 22 years ; whereas the skull belonged to a person aged between 25 and 35 years.

10. The prosecution has not left the matter at that. It has examined P. W. 18, Karumba, may a, Head Master of 8 B. School, Bhagamandala and got the entry of admission of Mottana MalMallayya marked as Ex. P-15 (a). According to Ex. P-15 (a), his date of birth is 1-9-1935. -Mottana MalMallayya's age at the time of the occurrence was approximately about 81 years. Thus, the prosecution has proved that the skull, M. 0. No. 1, and the hand bones M. 0. No. 8 did not belong to one and the same person. The recovery of M. 0. No. 1 and M. 0. No. 8 in the course of investigation throws a great deal of doubt as to whether the skull and the hands so recovered were those of Mottana MalMallayya. P. W. 40, Srinivasa Iyengar has given evidence that he found 3 cut marks on the skull, M. 0. No- 1, but his evidence is that definite opinion as to the cuts being ante-mortem cannot be given as the skull was dried and devoid of any signs of vital re-action or repair of bone. This opinion makes it impossible for any Court of law to conclude that tbe person to whom the skull, M. 0. No. 1, belonged, met with homicidal death. From the foregoing discussion, we are of the opinion that the prosecution has not fully and satisfactorily established that the corpus delicti found in this case was that of Mottana MalMallayya and that he met with a homicidal death.

11. The determination of the complicity of the accused with this crime becomes unnecessary because of the failure on the part of the prosecution to prove the crucial question, namely, that Mottana MalMallayya is dead and that he met with a homicidal death. Farther the other pieces of circumstantial evidence relied upon by the prosecution to substantiate the charge of murder against the accused are not

only not fully and satisfactorily proved but those circumstances cannot also be said to be incompatible with the innocence of the accused and they are incapable of explanation upon other reasonable hypothesis than that of the guilt of the accused.

12-13. Let us first take the circumstance that the deceased was last seen in the company of the accused. His Lordship reviewed the evidence and proceeded.

14. The trump card in the chain of circumstantial evidence adduced by the prosecution is the extra-judicial confession of the accused to P. W. 49, Koragappa Naika. This extra, judicial confession in the case, in our opinion, is unbelieveable. The evidence of P. W. 49 Korgapta Naika is that he requested S. K. Annappa of Bhagamandala to secure him an employment. He met the accused in the shop of Appanna who asked the witness whether he was willing to work under the accused. He agreed and went along with the accused to his-house. He worked for about 10 days earlier to Kaveri Shankramana. While be was working, he saw the accused being taken by the Police Constables about 10 days after he joined his service. He learnt from the wife of the accused that the constable took the accused as the brother of the accused was missing from about 2 months. In that connection, the accused was being taken to Bhagamandala by the police. In the evening, the accused returned, and this witness asked the accused as to why be was being taken by the police, for which he (the accused) appears to have replied that he was taken by the police casually. Then again the police came and told the accused that he must search and find out his brother, as otherwise it would be harmful to him. F. W. 49 Koragappa Naika heard this and went away. Further, he gives evidence that in the night after food when he was in his room, the accused came there. Then again P. W. 49 asked him as follows:

The other day the Police had come, today also the Police have come. What is the matter ?

To this, P. W. 49 says, the accused told him 'You must do me some favour.' He agreed to do it if it was possible for him. Then the accused told him that he bad cut and put his brother in a bush in the forest and that this witness should help him to bury that dead body. P. W. 49 Koragappa Naika told that it was not possible for him to do so. The accused insisted upon his doing that favour to him. Again, he

said that it was not possible for him to render such help. On the following day, he met P. W. 46, Mottana Kushalappa and disclosed to him the confession made by the accused on the previous night. 8 days later, this witness had been to Bhagamandala and was called by P. W. 42 Noor Mohammed who took him to his upstairs and enquired whether he had told anything to Kushalappa, P. W. 46. He affirmed what he had told P. W. 46 Kushalappa. Four days later he told the accused that he would be going home as he was frightened. The accused appears to have paid him Rs. 50/, though his salary was only Rs. 30/- and asked him to go home as early as possible. It was, thereafter, the C.I. D. Inspector questioned him. P. W. 46 Mottana Kushalappa does not refer to his having heard from P. W. 49 the extra-judicial confession made by the accused P., W. 49 Koragappa Naika in the course of examination-in-chief, Even in the course of cross-examination, he has denied that P. W. 49 had told him that he would show the place where the dead body of Mottana MalMallayya was secreted. Thus, P. W. 46, Eushalappa does not corroborate the evidence of Koragappa Naika, P. W. 49, in the matter of extra-judicial confession made by the accused to F. W. 49 Koragappa Naika. According to the evidence of P. W. 48, Noor Mohammed, in the first week of November, 1966, P. W. 46 Kushalappa met him in his shop, called him aside and told him as follows : -

I have been told by Koragappa that Vasantha Kumar has murdered his brother MalMallayya in the forest and that Vasantha Kumar requested the help of Koragappa to dispose of the dead body.

P. W. 46 Mottana Kuahalappa himself does not speak to anything about it, nor has he given evidence that he told P. W. 42 Noor Mohammed about what P. W. 49 Koragappa Naika had told him in connection with the extra-judicial confession. In the first place, it was unlikely that the accused would have made an extra-judicial confession to P. W. 49, Koragappa Naika, who worked under him as a servant for a period of only 10 days. Further the evidence of P. W. 49 Koragappa Naika is not corroborated by P. W. 46 Mottana Kushalappa to whom he conveyed the extra-judicial confession made by the accused immediately thereafter. The evidence of P. W. 46 Mottana Kuahalappa and P. W. 42 Noor Mohammed is highly inconsistent on this point. Besides, P. W. 49 Koragappa Naika, has not given the

actual words used by the accused while making the extra judicial confession. We, therefore, think that the evidence relating to the extra judicial confession is highly artificial and untrustworthy. Therefore, we hold that the extra-judicial confession made by the accused to P. W. 49 Koragappa Naika is not satisfactorily established in the case.

15. As regards motive, the theory of the prosecution is that the accused killed his brother Mottana MalMallayya with a view to getting all the family properties exclusively for himself. On the face of it, the said theory is fantastic in view of the fact that the accused has got another brother Magadha who has been examined as P. W. 87 (Magadha). Assuming that the accused had intended to do away with his brother, Mottana MalMallayya, be could not have got the entire family property exclusively for himself during the life time of P. W. 87, Magadha. His Lordship further examined the evidence and proceeded. In view of what has been discussed above, it is not possible for us to agree with the learned State Public Prosecutor, accept and act upon the evidence of the several witnesses who have been examined to prove the several circumstances against the accused in support of the charges framed against him. Therefore, we are of the view that the order of acquittal passed by the learned Sessions Judge, Coorg Meroara does not call for interference.

16. Now turning to the criminal petition No. 93 of 1968 filed by the State the adverse remarks sought to be expunged are found in paragraphs 16, 19, 20, 45, 46 and 43 of the-judgment in question which reads as under:

Para. 16 : When a case is registered for the commission of a heinous offence, the eyes of all the higher officers will always be towards the progress of investigation in that case. Under such circumstances, even if the subordinates of the Supdt. of Police wanted to screen any offender or offenders, they could not have done in the same manner and so free handedly as they have done in this case.

Para. 19 : I have pointed out that the Head Constable (P. W. 28), Sub-Inspector (41), Circle Inspector of Police (P. W. 44) were not faithful and honest in this investigation made by them. Likewise, I have shown that how the Deputy Superintendent of Police did not dis. charge his duties in right earnest. These

remarks made by the Court and conclusions arrived were obviously expected, which naturally would reflect on the organising and administrative capacity of the Head of the office and hence as such 'the Head of the office would not be prepared to suffer ignominy and sustain loss of good name and face public disgrace. Keeping these facts and circumstances before us we have to judge the evidence of the Superintendent of Police (P. W. 47).

Para 20: Thus in spite of sufficlent material available to the local police, below the rank of the Superintendent of Police, they did not care to register a case under Section 302, I.P.C. from the very beginning. All these illegal and unlawful acts which I have already pointed out apparently were only in order to shield the criminal or criminals from clutches of law.

Para 45: Under such circumstances when the accused had already purchased the local police officers below the rank of Superintendent of Police, there was nothing for him to worry about and ask P. W. 49 to do him a favour and to have disclosed the secret which nobody would leak out even to friends commending full confidence.

Para 46: The accused who is wealthy enough to make the local police dance to his tune would have also easily purchased a pauper like Koragappa Naik :(P. W. 49) taking advantage of his poverty.

Para 48; The local investigating Officers were not honest and faithful in the discharge of their duties and they are to a great extent responsible for the escape of the accused from the iron ditches of the Court of law and justice, even though the learned public Prosecutor has argued the case very capably.

I have used the words' mental agony' here because this judgment has consequently allowed the team of the local investigating officers to succeed in their efforts to favour the accused.It is well settled that the State as a juristic person and a party aggrieved by such observations is well within its limits to file an application for expunging adverse remarks by the Court against the police force. (See State of Uttar Pradesh v. Mohd. Naim : [1964]2SCR363 . In the above cited decision, the Supreme Court has laid down as follows:

If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice fairplay and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the .matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending him-gulf; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case: as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve.As can be seen above, there are three limitations recognised by law in the matter of making disparaging remarks. Firstly, no person should be condemned unheard; secondly, in making the criticism, the Magistrate or Judge should not travel outside the record and thirdly, the adverse remarks should be made with sobriety and due sense of responsibility. We are also aware of the circumstances in. which the High Court would normally expanse the remarks. They are:

(1) In weighing evidence, the trial Court is entitled to make remarks which may reflect adversely on the character and conduct of the witnesses and the parties to the case and the High Court cannot substitute its own opinion and expunge such remarks.

(2) However, as such adverse remarks are likely to injure the reputation or; prejudicially affect the means of livelihood or the career of the person concerned, this power should be exercised by the trial Court with great restraint and moderation. The need for this caution is still greater in the case of remarks against officials.

(3) In any case, such remarks, where justified, should be couched in restrained and decorous terms.

(4) No such remarks should be made unless:

(a) they are based on material legally and properly brought on the record; and

(b) where adverse inference is sought to be drawn from some alleged prior act, conduct or statement of a witness, an opportunity is afforded to such witness to furnish an explanation,

(5) The High Court will, in the exercise of its inherent jurisdiction, expunge such remarks if the same are likely to do harm to the person concerned and (a) are based on no admissible evidence or (b) are wholly irrelevant to any point in issue or (c) where such remarks are based on some prior act of a wit ness which has not been brought to his notice, to enable him to furnish an explanation.

(6) This jurisdiction of the High Court is however, to be exercised in rare cases or exceptional hardship.

(7) However, if the remarks, though unjustified form an integral part of the judgment and are not distinctly separable, the High Court would not expunge the same. (See AIR 1959 Punj 211).

We would like to consider the adverse remarks passed by the learned Sessions Judge in paras Nos. 16. 19, 20, 45, 46 and 48 of his judgment in the light of the principles set out above.

17. As regards remarks in paras No3. 16, 19 and 20 of the judgment, we are not able to agree with the learned State Prosecutor that they are not justified in the circumstances of the case. There has been an inordinate delay in the investigation into the case until the C. I. D. Inspector P. W. 50 Pushparaj Shetty appeared on the scene. In our opinion, P. W. 28, Mottayya, P. W. 41 H. Muddurangayya and P. W. 44 Dinkar Uchil, C. I. of Police, deserve the remarks found in paras 16, 19 and 20 except in the last sentence. Rut in our opinion, there is no justification for the learned Sessions Judge to pass the remarks found in the last sentence of para 20

and paras 45, 46 and 48. There is no suggestion made to any Police Officer that they were shielding the accused in the case or that they had been purchased by the accused. There is no material on record for any Court to come to the conclusion that the accused is wealthy enough to make the local police dance to his tunes. There is no evidence on record to show the extent of property owned by the accused; and the material produced by the prosecution is hardly suffl. clent to conclude that the accused is a wealthy man who could purchase either the police or P. W. 49, Koiagappa Naika. We have it in the evidence of P. W. 9 K. L. Murthy, that the accused has borrowed a sum of Rs. 1,500/-in 1963 and he is still due in a sum of Rs. 407, for which a suit was filed before the arbitration Court and a decree obtained and the accused paid only Bs. 100/- in discharge of that degree. We have it in the evidence of P. W. 10, 8. D. Kosta, a clerk in the Vijaya Bank that the accused had a fixed deposit of Bs. 1,500/. and he withdrew it on 7-10.1966. To say that a man of this status is wealthy enough to make the local police dance to his tunes, is not appealable to any judicial mind. The learned Sessions Judge has observed in para 48 that the local Investigating Officers were not honest and faithful in the discharge of their duties and they were, to a great ex. tent, responsible for the escape of the accused from the iron clutches of the Courts of law and justice. In spite of diligent efforts made by P. W. 50, Pushparaj Shetty after the matter was taken up by the 0. I. D., nothing better was or could have been done for the successful prosecution of the accused in the facts and circumstances of this case. Therefore, in our opinion, the remarks in paras Nos. 16, 19 and 20 except the last sentence in para 20, are justified and form an integral part of the judgment and we are not inclined to expunge them. But the adverse remarks found in the last sentence of para 20 and paras 45, 46 and 48 are not based upon evidence on record and are not guided by considerations of justice, fairplay and restraint Therefore, they are liable to be expunged. It is unfortunate that this Judge, in the course of many of his judgments, same of which we had occasion to examine of far, indulges in passing adverse remarks, which normally depart from sobriety, moderation and restraint against the police and witnesses. This attitude is certainly not in the interest of administration of criminal justice.

18. For the reasons stated above, we dismiss the appeal filed by the State against the order of acquittal of the accused. Further, we direct the remarks in paras 45, 46 and 48 and the last sentence in para 20 do stand ex-purged from the order of the learned Sessions Judge dated 22-8-1967. The Criminal Petition No. 98 of 1968 in so far as it relates to the expunging the remarks in paras 16, 19 and 20 except the last sentence in para 20 stands dismissed.

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