2024 INSC 320

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 985 OF 2010

BABU SAHEBAGOUDA RUDRAGOUDAR AND OTHERS **...APPELLANT(S)**

VERSUS

STATE OF KARNATAKA **...RESPONDENT(S)**

J U D G M E N T

Mehta, J.

1. The appellants herein, namely, Babu Sahebagouda Rudragoudar(A-1), Alagond Sahebagouda Rudragoudar(A-2) and Mudakappa @ Gadegappa Rudragoudar(A-3) along with Sahebagouda Gadageppa Rudragoudar(A-4), Basappa Avvanna @ Huvanna Giradi @ Chigari (A-5) and Basappa Dundappa @ Dondiba Hanjagi (A-6) were subjected to trial in Sessions Case No. 28 of 2002 in the Court of the learned Fast Track Court I, Bijapur for charges pertaining to offences punishable under Sections 143, 147, 148, 506(2) and Section 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter being referred to as 'IPC').

2. For the sake of convenience, the appellants shall hereinafter be referred to as A-1, A-2 and A-3.

3. The learned trial Court proceeded to discard the prosecution story and acquitted the accused appellants(A-1, A-2 and A-3) along with A-4, A-5 and A-6 vide judgment dated 23rd July, 2005.

4. The State of Karnataka challenged the said judgment recording acquittal of A-1 to A-6 by filing Criminal Appeal No. 2215/2005 before the High Court of Karnataka. The Division Bench of High Court vide its judgment dated 14th September, 2009 proceeded to allow the appeal; reversed the acquittal of A-1, A-2 and A-3 and convicted these accused for the offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs. 50,000/- each within a period of six months and in default, to further undergo imprisonment for two years. The appeal as against A-5 and A-6 was dismissed, while appeal qua A-4 stood abated on account of his death. Out of the fine amount to be realised, a sum of Rs. 10,000/- was ordered to be paid to the State Government and the balance amount of Rs. 1,40,000/- was ordered to be paid to the complainant(PW-1).

5. The judgment dated 14th September, 2009 rendered by the learned Division Bench of the High Court reversing the acquittal of the accused appellants and convicting and sentencing them as above is assailed in the present appeal.

Brief facts: -

6. The complainant, Chanagouda(PW-1) owns agricultural lands and a house in village Babanagar, Bijapur, Karnataka. It is alleged by the prosecution that in the morning of 19th September, 2001, the deceased Malagounda, son of complainant, along with labourers/servants Revappa(PW-2), Siddappa(PW-3), Hiragappa(PW-4) and Suresh(PW-5) had gone to put up a bund (check dam) in their land. At about 12 o' clock in the afternoon, the complainant(PW-1) packed lunch for these five persons and proceeded to the field where the farming operations were being undertaken. The work continued till 3.30 p.m. and thereafter, the four servants(PW-2, PW-3, PW-4 and PW-5), along with the deceased Malagounda and the complainant(PW-1) proceeded to the village. They had reached near the land of one Ummakka Kulkarni at about 4.00 pm, where A-1, A-2, A-3 and A-4 suddenly came around and exhorted that the way the complainant party had murdered Sangound, they would take revenge upon the members

of the complainant party in the same manner. A-1 holding a *jambai*, A-2 holding an axe, A-3 holding a sickle and A-4 holding an axe, belaboured Malagounda, as a result of which he fell down. The assailants thereafter threatened the complainant(PW-1) that if he tried to intervene, he too would meet the same fate as his son. Fearing for his own life, the complainant(PW-1) ran away and hid behind the bushes in order to avoid being beaten by the accused.

7. After sunset, the complainant(PW-1) returned to the village and narrated about the incident to his family members. A written complaint of this incident came to be submitted by the complainant(PW-1) at Tikota Police Station on 20th September, 2001 at 4.00 am in the morning whereupon FIR(Exhibit P-10) was registered and investigation commenced. After conclusion of investigation, a charge sheet came to be filed against the appellants(A-1, A-2, A-3) and other accused(A-4, A-5 and A-6) for the offences punishable under Sections 143, 147, 148, 506(2) and Section 302 read with Section 149 IPC in the Court of jurisdictional Magistrate. The case being exclusively sessions triable was committed to the Court of Sessions Judge, Bijapur where charges were framed against the accused for the above offences. The accused persons pleaded not guilty and claimed trial. The

prosecution examined as many as 27 witnesses, exhibited 24 documents and 17 material objects to prove its case. The accused, upon being questioned under Section 313 of Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') claimed that they were innocent and had been falsely implicated in the case. However, no evidence was led in defence. For the sake of convenience, the details of the prosecution witnesses are enlisted below: -

PW-1	Chanagouda (complainant)(eye witness)
PW-2	Revappa (eye witness)
PW-3	Siddappa (eye witness) (hostile)
PW-4	Hiragappa (eye witness)
PW-5	Suresh (eye witness) (hostile)
PW-6	Basagonda (eye witness)
PW-7	Appasaheb (last seen witness)
PW-8	Sabu (panch witness)
PW-9	Basu (panch witness)
PW-10	Ramu (panch witness)
PW-11	Bhimanna (panch witness)
PW-12	Sangond (panch witness)
PW-13	Shantinath (panch witness)
PW-14	Sakrubai (mother of the deceased) (hearsay witness)
PW-15	Shankargouda (eye witness)
PW-16	Siddappa (hearsay witness)
PW-17	Dr. Anilkumar (Medical Jurist)
PW-18	Shetteppa (Retd. ASI) (registered the FIR) (Poujadar)
PW-19	Veerbhadrayya (Carrier Constable)
PW-20	Dayanand (Photographer)
PW-21	Raju (Scribe of Sketch Map)
PW-22	Shrishail (Carrier Constable)
PW-23	Ratansing (Assistant Sub-Inspector)
PW-24	Chandrashekhar (Investigating Officer)
PW-25	Jaganath (PSI)
PW-26	Mohammadsharif (Assistant Sub-Inspector)

PW-27	Basanagouda (Police Inspector, State Intelligence, Bangalore) (2nd Investigating Officer)

8. Upon hearing the arguments advanced by the prosecution and the defence counsel and after thoroughly appreciating the evidence available on record, the trial Court proceeded to hold that the prosecution could not prove the charges levelled against the accused beyond all manner of doubt and acquitted all the six accused vide judgment dated 23rd July, 2005 with the following pertinent findings: -

(i) That in the charge sheet, the prosecution had involved A-5 and A-6. However, none of the witnesses examined by the prosecution spoke a single word incriminating A-5 and A-6 either individually or vicariously and this circumstance casted serious doubts in the mind of the Court with regard to the conduct of the witnesses to implicate A-1 to A-4 while exonerating A-5 and A-6.

(ii) That PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 gave contradictory versions regarding exact identities/names of the assailants.

(iii) PW-4 who was a coolie and had worked along with the deceased Malagounda did not implicate A-4 in the crime.

(iv) Basagonda(PW-6), projected to be an eye witness gave evidence contradicting the evidence of PW-2 and PW-4.

(v) Rudrappa, son of PW-6 was one of the accused in the murder of Sangound, son of A-4 and thus, the said witness had a motive to speak against A-1 to A-4.

(vi) Likewise, another projected eyewitness, namely, Shankargouda(PW-15), did not state about the presence of A-4 at the time of incident.

(vii) The trial Court further found that it was admitted by the eye witnesses(PW-6 and PW-15) that it had rained in the village continuously for three days prior to the incident and thus, the theory put forth by the complainant that the deceased and the four labourers(PW-2 to PW-5) had gone to the field for raising a bund was improbable as during the spell of incessant rainfall, it would not have been possible to carry out such an operation and for that matter, any other farming activity.

9. At para 15 of the judgment, the trial Court concluded as below: -

> "…In view of conflicting nature of evidence of these eye witnesses, it is clear that their evidence is not consistent with the prosecution case and it has a different version with reference to each witness.

> Hence a serious doubt arises as to the truthfulness of the prosecution."

10. The trial Court discussed evidence of ASI, Tikota Police Station(PW-18), wherein he admitted that police visited the place of incident in the night only. It was also noted that complainant(PW-1) admitted that the complaint was made after the police had visited the place of incident.

11. PW-2 stated in his cross examination that the police came to the village at about 10 or 11 am and recorded his statement at the police station at that time only i.e. at 12 o' clock. Taking this into consideration, the trial Court recorded a categoric finding that complaint(Exhibit P-1) was a post-investigation document and as such, it was hit by Section 162 CrPC and did not have any evidentiary worth. This conclusion was recorded in Para 17 of the judgment which is extracted hereinbelow for the sake of ready reference: -

> "According to the cross – examination of P.W.2, the police came to the village at about 10 or 11 a.m. He called by the police and they went to the place and the police inspected the dead body. P.W.2 is very much specific that they went to the place along with the police at 11p.m. and thereafter went to the police station at 12 O' clock in the night. According to P.W.2, the police have recorded his statement in the police station at that time only i.e., at 12 O clock. This goes to show that the police were aware of the offence at 11.00 p.m. on 19.09.2001. P.W.6., who claims to be an eye witness, returned to the house at about 5-00 or 6-00 p.m. and informed the incident to the children of his uncle viz., he informed Pargouda, Shankargouda and Chanagouda. But, however, P.W.1

was hiding near the bushes at his land and if what P.W.6 says is true, then in that case, P.W.1 was in the house at 5-00 or 6-00 pm only. Nothing prevented P.W.1 to rush immediately to the police station which was 10 Kms away and to file the complaint. Even P.W.6 further admits that he told the incident to these persons and they had told him that they will go to the police station and it was 6-00 or 7-00 p.m., at the time. Even if that is the case, P.W.1 has to offer explanation as to why he filed the complaint at 4.00 a.m. When the admissions of this witness are taken into account, the police were aware of the murder at about 11 p.m. in the night and they had even visited the place of offence. Nothing prevented the police who visited the place of offence to record the statement of P.W.1 at his house and the delay for six hours as per the evidence of P.W.1 or as to the evidence of P.W.6, the delay of eight hours is not explained by the prosecution. If already the statements of the witnesses were recorded at the village only after seeing the dead body, then in that case Ex.P1 which is the complaint, is hit by Section 162 of CrPC and cannot have evidentiary value."

12. The trial Court also concluded that the opinion of the Medical Officer regarding time of death of the deceased totally contradicted the case set up by the prosecution witnesses in their evidence regarding the time of incident.

13. Regarding the seizure of weapons/articles, the trial Court noted at para 19 that the complainant(PW-1) admitted in his cross-examination that the police had shown him the weapons of offence on the date of incident itself. However, as per the Investigating Officer(PW-27), the weapons were shown to have been recovered on 1st October, 2001 and, therefore, evidence of complainant(PW-1) totally contradicted the claim of the Investigating Officer(PW-27)

that he had seized the weapons in furtherance of the disclosure statements of the accused.

14. Taking note of these inherent lacunae, infirmities and contradictions in the prosecution evidence, the trial Court proceeded to hold that the prosecution case was full of inconsistencies and infirmities and that it had failed to prove the charges against the accused beyond all manner of doubt. Accordingly, the accused appellants(A-1, A-2 and A-3) and other three accused(A-4, A-5 and A-6) were acquitted of the charges.

15. The State preferred an appeal under Section 378(1) read with 378(3) CrPC challenging the acquittal of the accused. The learned Division Bench of High Court of Karnataka partly allowed the said appeal vide judgment dated 14th September, 2009 and while reversing the acquittal of the accused A-1, A-2 and A-3 as recorded by the trial Court, convicted and sentenced them as above. The appeal against A-4 stood abated on account of his death. The appeal against A-5 and A-6 was dismissed upholding their acquittal.

16. The instant appeal has been instituted at the instance of the accused appellants(A-1, A-2 and A-3) for assailing the judgment dated 14th September, 2009 rendered by the learned Division

Bench of the High Court of Karnataka, Circuit Bench, Gulbarga whereby the acquittal of the appellants has been reversed and they have been convicted and sentenced to suffer life imprisonment.

Submissions on behalf of the appellants: -

17. Learned counsel representing the appellants urged that the view taken by the High Court in reversing the acquittal of the appellants recorded by the trial Court by a well-reasoned judgment is totally contrary to the settled principles laid down by this Court regarding scope of interference in an appeal against acquittal.

18. Learned counsel urged that the appellate Court should be very slow to intervene with the acquittal of an accused as recorded by the trial Court. Acquittal can be reversed only if the findings recorded by the trial Court are found to be patently illegal or perverse or if the only view possible on the basis of the evidence available on record points towards the guilt of the accused. If two views are possible, the acquittal recorded by the trial Court should not be interfered with unless perversity or misreading of evidence is reflected from the judgment recording acquittal.

19. Learned counsel further urged that the learned Division Bench of the High Court, while rendering the judgment reversing

acquittal of the appellant barely referred to the findings on the basis of which the trial Court had acquitted the accused by extending them the benefit of doubt. Rather, the High Court went on to record its own fresh conclusions after re-appreciation of the evidence. Such an approach is *de hors* the well-settled principles governing consideration of an appeal against acquittal and hence, the impugned judgment deserves to be set aside.

20. They advanced pertinent submissions assailing the judgment of the High Court seeking acquittal of the accused appellants.

21. It was urged that the complainant(PW-1), father of the deceased Malagounda and the four labourers(PW-2, PW-3, PW-4 and PW-5) abandoned the deceased victim whom they claimed to have seen being belaboured with their own eyes. They neither made any efforts to take stock of the victim's condition nor was the matter reported to the police promptly which makes it clear that the so called eye witnesses actually never saw the incident happening with their own eyes and a case of blind murder has been foisted upon the appellants on account of prior enmity.

22. The attention of this Court was drawn to the following excerpts from the evidence of complainant, Chanagouda(PW-1):-

"**....Again I returned back and went near my land and entered the bushes to hide myself. I sat at that place up to 6 or 7 PM in the evening. After the sun-set I returned to my village. I told the incident to my family members. In the night myself and my brothers and relatives went to the place and saw the dead body. Thereafter we informed to the police. The cousins informed about the incident to the police. At that time the police came to our house and took me to the police station. The police enquired me and I informed them about the incident and they made a writing. It was about 2 or 3 AM in the morning.** In the morning hours the police came to the place. I now see the complaint at ex.P.1, and it bears my signature at Ex.p.1(a)....

....The police recorded what I have stated to them in the police station. Thereafter I signed to that writing. On the next day the police have taken my statement. The Poujadar recorded my statement. The inspector also questioned me. It is not correct to suggest that the inspector has not recorded my statement.....

....My relatives did not made a telephone call and personally went to the police station and brought the police. At that time initially the police came and thereafter the Poujadar came. They came to our house. The poujadar questioned me what has happened. I told the Poujadar what I was knowing. The poujadar made a writing about it. The writing was made after the police visited the place of incident.....

.....Myself and my relatives went to see the dead body in the night and at that time it was 10 to 11 PM. When we returned to house it was 10 or 11 PM. Phone facilities are available in our village. I did not made any telephone call to the police. I also did not tell-to my relatives to make a telephone call to the police station. Shivanagouda and Banagouda are my other two sons. Both of them are educated. They were present in the house when I returned from the land. When I told my son about the incident, they went on motor-cycle to the police station but did not made any telephone call to the police station. My son Shivanagouda and Sangond went on the motor-cycle to the police station. They went to the police station at about 12 o'clock in the night. The distance between Tikota Police Station and my village is 10 KMS.....

....**On the day of incident only the police showed the weapon of offence.."** **(emphasis supplied)**

23. In this very context, the attention of the Court was drawn to the evidence of ASI Tikota Police Station(PW-18), who recorded the

FIR(Exhibit P-10) wherein he admitted that he did not know whether prior to 4.00 am on that day, the information of the murder was already provided at the police station.

24. Learned counsel thus urged that the police had already been informed about the incident by none other than the sons of the complainant(PW-1) around 12 o' clock in the night and hence, there was no reason as to why the FIR was not registered immediately on receiving such information.

25. Learned counsel contended that the complainant(PW-1) admitted in cross examination that the Poujadar scribed a complaint and he was made to append his signatures thereupon. It was submitted that the said complaint was not produced on record. Hence, there is a genuine doubt regarding the FIR(Exhibit P-10) being a subsequently created post investigation document.

26. He then referred to the statement of Revappa(PW-2) who admitted in cross-examination that the police came to the village at about 10 or 11 pm and he was sleeping in his house when the call came from the police. A police officer from Tikota Police Station came to call him. He along with the police officer went to the place of incident where the dead body was lying. The time was

about 11.00 pm. They went to the police station at 12 o' clock in the night where his statement was recorded.

27. The Court was taken through the statement of Hiragappa(PW-4) who also stated that police came to their village at 8.00 or 9.00 pm in the night. They inquired from him and he divulged as to how the incident had happened. He and the other witnesses were questioned and their statements were noted whereafter they proceeded to the crime scene. They all went to the police station at about 11.00 pm in the night. He travelled in the police jeep. His statement was again recorded at the Police Station around 12'o clock or 1.00 am.

28. Learned counsel also referred to the statement of Basagonda(PW-6) who claimed to be an eye witness of the incident and urged that the witness stated about the presence of only two servants with the deceased Malagounda while he was allegedly being assaulted by the accused. Most significantly, he did not state about the presence of the complainant(PW-1) at the crime scene. PW-6 admitted in his cross-examination that he returned to his house at about 5 to 6 pm and informed about the incident to the children of his uncle and Paragouda, Shankargouda and Chanagouda(PW-1). Many people had gathered when he spoke

about the incident. It was submitted that this version of PW-6 completely belies and eclipses the claim of the complainant(PW-1) that he had seen the incident with his own eyes because, if the complainant(PW-1) had himself witnessed the occurrence, there was no occasion for PW-6 to collect all the family members including the complainant(PW-1) and inform them about the incident.

29. The evidence of PW-15, another alleged eye witnesses was criticised and it was submitted that the conduct of this witness who happens to be a cousin of PW-1, in casually going away to his farmland despite witnessing the brutal assault and not taking any steps to inform the police or the close relatives clearly shows that he is a cooked up witness and was not present at the crime scene.

30. The statement of Dr. Anil Kumar(PW-17) was referred to and it was submitted that the Medical Jurist conducted autopsy upon the dead body at about 9.00 am on 20th September, 2001 and gave pertinent opinion that the time of death of the victim was 18 to 24 hours before the autopsy being carried out. In cross-examination, he admitted that decomposition had set in the dead body and that the time of death was more than 24 hours prior to the examination. Thus, it was submitted that the time of incident as portrayed in

the evidence given by the so called eye witnesses is totally contradicted by the opinion of the Medical Jurist.

31. It was also contended that the Investigating Officer(PW-27) has given false evidence regarding the disclosure statements made by the accused and the recoveries of the weapons effected in furtherance thereof, because the complainant(PW-1) clearly admitted in his evidence that the police had showed him the weapons on the very day of the incident.

32. It was also contended that neither the disclosure statements nor the recovery memos bear the signatures/thumb impressions of the accused and hence, the recoveries cannot be read in evidence or attributed to the accused appellants.

33. Learned counsel for the appellants vehemently urged that the learned Division Bench of the High Court was not justified in causing interference into the well-reasoned judgment of acquittal rendered by the learned trial Court and reversing the acquittal of the accused appellants and that too, without recording any finding that the trial Court's judgment was perverse or that no view except the one warranting conviction of the accused was possible upon appreciation of evidence as available on record. On these grounds,

he implored the court to set aside the impugned judgment and restore the acquittal of the appellants.

Submissions on behalf of Respondent-State: -

34. *Per contra*, learned counsel appearing for the respondent State vehemently and fervently opposed the submissions advanced by learned counsel for the appellants. He urged that learned Division Bench of the High Court, while considering the appeal against acquittal, thoroughly reappreciated the evidence available on record and arrived at an independent and well considered conclusion that the depositions of the eye witnesses PW-1, PW-2, PW-4, PW-6 and PW-15 were convincing and did not suffer from any significant contradictions or infirmities so as to justify the decision of the trial Court in discarding their evidence and acquitting the accused of the charges. The FIR(Exhibit P-10) was promptly lodged at 4.00 am in the morning of 20th September, 2001. There was no such delay in lodging the report which could cast a doubt on the truthfulness of the prosecution story. The so called contradictions and discrepancies highlighted by the trial Court in the evidence of the eyewitnesses for doubting their evidentiary worth are trivial and insignificant and acquittal of accused as recorded by the learned trial Court disregarding the

testimony of the eyewitnesses is based on perverse and unacceptable reasoning. Learned counsel thus urged that the High Court was perfectly justified in reversing the acquittal of the accused appellants by the impugned judgment which does not require interference in this appeal.

35. We have given our thoughtful consideration to the submissions made at bar and have gone through the judgments of the trial Court and High Court as well as the evidence available on record.

Discussion and Conclusion: -

36. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial Court.

37. This Court in the case of ***Rajesh Prasad v. State of Bihar and Another***[1] encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

> **"29.** After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of

[1] (2022) 3 SCC 471

acquittal in the following words: (*Chandrappa case* [*Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415]

> "*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (*2*) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the

> appellate court should not disturb the finding of acquittal recorded by the trial court."

38. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka***[2] this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

> "**8.1.** The acquittal of the accused further strengthens the presumption of innocence;
>
> **8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
>
> **8.3.** The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
>
> **8.4.** If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
>
> **8.5.** The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

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(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

41. In light of the above legal principles, if we go through the impugned judgment, we find that none of these essential mandates governing an appeal against acquittal were adverted to by learned Division Bench of the High Court which proceeded to virtually decide the appeal as a first Court on independent appreciation of evidence and recorded its own findings to hold the accused appellants(A-1, A-2 and A-3) guilty of the charge under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life.

42. Thus, on the face of record, the judgment of the High Court causing interference with the acquittal of the accused appellants as recorded by the trial Court is contrary to the principles established by law.

43. Keeping the above scenario in mind, we now proceed to analyse the evidence and shall assign our reasons regarding the impugned judgment being flawed, with reference to the material infirmities and lacunae in the prosecution case.

44. The place of occurrence is admittedly at a distance of 10 kms from Police Station Tikota. The complainant(PW-1), father of the deceased Malagounda claiming to be an eye witness of the incident deposed that he lodged a complaint(Exhibit P-1) at the police station at 4 am, which resulted into registration of FIR(Exhibit P-10). It was alleged in the report that the complainant along with PW-2, PW-3, PW-4 and PW-5(servants, who had accompanied the deceased Malagounda to erect a bund in their land) witnessed the incident wherein, the assailants including the appellants herein, assaulted and killed the deceased by inflicting injuries with sharp weapons. It may be noted that even though the complainant(PW-1), the deceased and the labourers were all going together and the

assailants were six in number, none other than the deceased Malagounda received a single injury in the incident.

45. Relevant portions from the evidence of complainant(PW-1) have been extracted and highlighted above and on going through the same, we find that his testimony suffers from patent infirmities, contradictions and inherent loopholes which brings him within the category of wholly unreliable witness.

46. The complainant(PW-1) stated in his evidence that he saw the brutal assault launched by the appellants and A-4(Sahebagouda) on his son Malagounda which took place at 4.00 pm or 5.00 pm in the evening of 19th September, 2001. While the incident was going on, he hid amongst the bushes so as to avoid being harmed by the assailants. The complainant did not state anything about the accused going away from the crime scene after the incident. However, he claimed that he returned back to his house just after sunset. The incident took place in the month of September and thus, it can be presumed that sunset must have occurred around 6:15 to 6.30 pm. The complainant stated that on reaching home, he divulged about the incident to his family members and soon thereafter, he and his cousins (as per his version in examination-in-chief) and his sons Shivanagouda and Banagouda(as per cross-

examination) went to the Police Station Tikota and informed the police about the incident.

47. Apparently, thus, the close relatives of the deceased had gone to the police station in the late hours of 19th September itself. If this version was true then, in natural course, these persons were bound to divulge about the incident to the police and their statement/s which would presumably be about an incident of the homicidal death would have mandatorily been entered in the Daily Dairy of the police station if not treated to be the FIR. However, the Daily Diary or the *Roznamcha* entry of the police station corresponding to the so called visit by the relatives of the deceased to the police station was not brought on record which creates a grave doubt on the genuineness of the FIR(Exhibit P-10). The complainant(PW-1) admitted in cross examination that the Poujadar came to his house and he narrated the incident to the officer who scribed the same and thereafter, the complainant appended his signatures on the writing made by the Poujadar. However, ASI Tikota Police Station(PW-18) testified on oath that complainant(PW-1) came to the police station and submitted a written report which was taken as the complaint of the incident. He did not state anything about any complaint being recorded at

the house of the complainant prior to lodging of the report. Thus, there is a grave contradiction on this important aspect as to whether the report was submitted by the complainant(PW-1) in the form of a written complaint or whether the oral statement of complainant(PW-1) was recorded by the police officials at his home leading to the registration of FIR(Exhibit P-10). The non-production of the Daily Dairy maintained at the police station assumes great significance in the backdrop of these facts. Apparently thus, the FIR(Exhibit P-10) is a post investigation document and does not inspire confidence.

48. Shivanagouda and Banagouda, the educated sons of the complainant(PW-1), who were the first persons to approach the police station(as stated by PW-1 in cross-examination) were not examined by the prosecution. The complainant(PW-1) also stated that his relatives personally went to the police station and brought the police to the village. The factum of the police having arrived at the village at about 10.00 pm or 11.00 pm was also stated by PW-2 and PW-4**.**

49. A very important fact which is evident from the evidence of Basagonda(PW-6) who claimed to be an eye witness of the incident is that he did not state about the presence of the complainant(PW-

1) at the place of incident while the victim was being assaulted. PW-6 stated that he returned to his house at about 5.00 pm or 6.00 pm and then he informed the family members, i.e., Paragouda, Shankargouda and Chanagouda(PW-1). Thus, the case set up by prosecution that complainant, Chanagouda(PW-1) was an eye-witness to the incident, is totally contradicted by evidence of PW-6 who categorically stated that it was he who had informed the family members, the informant Chanagouda (PW-1) being one of them, about the incident at 6.00 or 7.00 pm and that they responded saying that they would be going to the police station for filing a report.

50. Thus, the claim of complainant(PW-1) that he was an eye witness to the incident is totally contradicted by the statement of PW-6. The conduct of the family members of the deceased and the other villagers in not taking any steps to protect the dead body for the whole night and instead, casually going back to their houses without giving a second thought as to what may happen to the mortal remains of the deceased, lying exposed to the elements is another circumstance which creates a grave doubt in the mind of the Court that no one had actually seen the incident and it was a case of blind murder which came to light much later. As a matter

of fact, if at all the sequence of events as emanating from the evidence of the prosecution witnesses was having even a grain of truth, then it cannot be believed that the dead body would be abandoned in this manner or that even the police officials would not put a guard at the crime scene.

51. Added to that, the version of Medical Jurist(PW-17) who stated in his cross-examination that the dead body of the deceased Malagounda was in a stage of decomposition and that the time of death was more than 24 hours prior to the autopsy done at 9.00 a.m. on 20th September, 2001 creates further doubt in the mind of the Court on the theory of the so called eye witnesses that the incident happened at 4.00 pm on 19th September, 2001.

52. The witnesses Revappa(PW-2), Basagonda(PW-6) and Shankargouda(PW-15) admitted that it had been raining incessantly in the village for almost three days. In such circumstances, the reason assigned by the complainant(PW-1) for the deceased Malagounda and the four servants(PW-2, PW-3, PW-4 and PW-5) to have gone to the agricultural land, i.e., for putting up a bund is totally unacceptable. Since it was raining incessantly, there could not be any possibility for these people to have made an attempt to put up a bund on the land.

53. Thus, there is no logical explanation for the presence of the deceased and the servants in their field on the date and time of the incident. It seems that not only did the complainant party create eye witnesses of the incident but has also suppressed the true genesis of the occurrence.

54. PW-1 and PW-6 admitted that Sangound, son of the accused A-4 had been murdered in front of their house and that the accused party was carrying a grudge that deceased Malagounda had murdered the boy. PW-6 also admitted that deceased Malagounda, his father[(complainant)(PW-1)] and two brothers(Shivanagouda and Banagouda) were arraigned as accused for the murder of Sangound(son of A-4). The incident of murder of Sangound happened two years prior which is far too remote in point of time so as to impute motive to the appellants that in order to seek revenge, they had murdered the deceased Malagounda.

55. It has been laid down by this Court in a catena of decisions that motive acts as a double-edged sword. Hence, the very fact that members of the prosecution party were arraigned as accused in the murder of Sangound, son of A-4, this could also have been

the motive for the prosecution witness to rope in the accused appellants for the murder of Malagounda.

56. The High Court heavily relied upon the circumstance of recoveries of weapons made at the instance of the accused as incriminating evidence. However, as was rightly pointed out by learned counsel representing the accused appellants, the complainant(PW-1) admitted in his cross-examination that he was shown the weapons of the offence by the police on the date of incident itself.

57. At this stage, we would like to note that the Investigating Officer(PW-27) who investigated the matter, claims to have effected the recoveries in furtherance of the disclosure statements of the accused and testified as below to prove the procedure of disclosure and the discoveries: -

> "On 1.10.2001 PSI Tikota produced accused Babusaheb Sahebgouda Biradar and Alagond Sahebgouda Biradar who were interrogated and recorded vol. statement of both accused persons. I now see the vol. statement or Alagond which is at Ex.P.15. It bears my signature and the LTM of Alagond. I now see the vol. statement of Babu and it is marked as Ex.P.16 and it bears my signature and the LTM of Babu Biradar. I recorded vol. statement of Babu Sahebgouda Pudragoudar and Alagond Sahebgouda Biradar. And accordingly conducted seizure panchanama and seized two axes and one koyta produced by Pudragoudar i.e. Babu Sahebgouda Pudragoudar, in the field of Anasari. And accordingly also seized one Jambiya produced by Alagond Biradar. I recorded the statements of Krishnaji Govindappa Kulkarni. On 2.10.2001 produced both the accused before the Hon'ble Court. On 3.10.01 I arrested accused Mudakappa Gadigoppa@Sahebgouda

> Pudragoudar and the interrogated to him and also recorded his voluntary statement. As per the vol. st. conducted seizure panchanama and seized two sickles, 0 pen shirt which was blood stained, bush-shirt which was blood stained which were belonging to accd. Gradi and one plastic carry bag.Which articles are kept in land of Basappa Gradi."

58. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act') and the discoveries made in furtherance thereof.

59. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of ***State of Uttar Pradesh v. Deoman Upadhyaya***[3].

60. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between

[3] AIR 1960 SC 1125

himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

61. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

62. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.

63. In the case of ***Mohd. Abdul Hafeez v. State of Andhra Pradesh***[4]**,** it was held by this Court as follows: -

> **"5.** ....If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

[4] (1983) 1 SCC 143

64. Further, in the case of ***Subramanya v. State of Karnataka***[5], it was held as under: -

> **"82.** Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:
>
> > *"**27. How much of information received from accused may be proved. —***
> >
> > *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*
>
> **83.** The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.
>
> **84.** If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place

[5] 2022 SCC Online SC 1400

> where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter." (emphasis supplied)

65. Similar view was taken by this Court in the case of ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh***[6], wherein this Court held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.

66. If we peruse the extracted part of the evidence of the Investigating Officer(PW-27)(reproduced *supra*), in the backdrop of the above exposition of law laid down by this Court, the interrogation memos of the accused A-2(Exhibit P-15) and A-1 (Exhibit P-16), it is clear that the Investigating Officer(PW-27) gave

[6] 2022 SCC OnLine SC 1396

no description at all of the conversation which had transpired between himself and the accused which was recorded in the disclosure statements. Thus, these disclosure statements cannot be read in evidence and the recoveries made in furtherance thereof are *non est* in the eyes of law.

67. The Investigating Officer(PW-27) also stated that in furtherance of the voluntary statements of accused(A-1 and A-2), he recovered and seized two axes and one *koyta* produced by A-1 in the field of Ansari and one *jambiya* produced by A-2. The Investigating Officer(PW-27) nowhere stated in his deposition that the disclosure statement of the accused resulted into the discovery of these weapons pursuant to being pointed out by the accused.

68. The Investigating Officer(PW-27) further stated that he arrested accused A-3, recorded his voluntary statement and seized two sickles. However, neither the so called voluntary statement nor the seizure memo were proved by the Investigating Officer(PW-27) in his evidence.

69. Thus, we are of the firm opinion that neither the disclosure memos were proved in accordance with law nor the recovery of the weapons from open spaces inspire confidence and were wrongly

relied upon by the High Court as incriminating material so as to reverse the finding of the acquittal recorded by the trial Court.

70. The evidence of seizure of weapons of the offence is not trustworthy and was rightly discarded by the trial Court.

71. In addition thereto, we may note that admittedly, the prosecution did not procure any serological opinion to establish blood group, if any, on the weapons so recovered. Thus, the recoveries are otherwise also meaningless and an exercise in futility.

72. Thus, neither the evidence of the eye witness is trustworthy nor did the prosecution provide any corroboration to the vacillating evidence of the so called eye witnesses. We have already held that the FIR(Exhibit P-10) was a post investigation document. Thus, the entire prosecution case comes under the shadow of doubt.

73. Resultantly, we are of the firm opinion that the view taken by the trial Court in the judgment dated 23rd July, 2005 recording acquittal of accused is a plausible and justifiable view emanating from the discussion of the evidence available on record. The trial Court's judgment does not suffer from any infirmity or perversity. Hence, the High Court was not justified in reversing the well-

reasoned judgment of the trial Court thereby turning the acquittal of the accused appellants into conviction.

74. The impugned judgment dated 14th September, 2009 rendered by the High Court cannot be sustained and is hereby reversed. The accused appellants are acquitted of all the charges. They are on bail and need not surrender. Their bail bonds are discharged.

75. The appeal stands allowed accordingly.

76. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

New Delhi;
April 19, 2024