PANDAPPA HANUMAPPA HANAMAR AND ANR. A

v.

STATE OF KARNATAKA

FEBRUARY 28, 1997

B

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

Indian Penal Code, 1860/Criminal Procedure Code, 1973—Sections 302 and 34—Sections 378, 386— Appellant charged with having caused death of the deceased with common intention—Trial Court acquitted disbelieving C *evidence on record—Reversal of acquittal by the High Court—On appeal—Held : Findings of trial Court patently perverse—High Court fully justified in reversing the same—Conviction can be based on testimony of single eye witness if found credible—Hostile witness can not be discredited entirely—No legal bar in believing testimony of hostile witness if corroborated by other reliable evidence—Independent witnesses can not be discarded on the* D *basis of insignificant contradictions when nothing was brought out in cross-examination that they were interested in the prosecution case or that they deposed inimically—Entertainment of doubt regarding actual time of occurrence on the basis of the time mentioned in the charge—Held : Irrelevant and improper—Mentioning of time in the charge not necessary—Consistent deposi-* E *tion of witness regarding time of actual occurrence relevant and should be relied upon—Failure to explain minor injuries on the person of the accused—Does not affect the prosecution case—Prosecution owes no duty to explain on the facts and circumstances of the case—When it was proved that the deceased was unarmed and the accused attacked him fully armed, minor injuries might have caused in the process.* F

As per the prosecution, the appellants had grudge against the deceased as he deserted their sister, who was his wife but was living with another woman. In order to take revenge, they alongwith another, attacked him at about 10 A.M. in the morning on December 16, 1986, when he was G **shelling ground nuts in his field in company of P.W. 1 and 2. They started assaulting him with axe, knife and 'rimpage'. P.W. 2 snatched the axe from the hands of A. 2 and threw it away. But they continued the assault. Raising hue and cry P.Ws. 1 and 2 ran towards the village, to inform the other villagers. On their way they met P.W. 3 and informed him of the incident. A little later they found the appellants coming behind them with A1 carry-** H

A ing the severed head of the deceased in his hand. PWs. 4, 5, 6, 8 and 11 also saw the appellants carrying the severed head along the village road and then tying it to the village gate. P.W. 6 informed the police over phone about the incident. Police arrived at the spot, took photographs of the severed head and the torso, recorded the statement of P.W. 1 and treating the same as FIR started investigation. After inquest the deadbody was sent for B postmortem. The accused were arrested on the same night and pursuant to their statement the weapons used for committing the crime were recovered. After usual investigation the accused were chargesheeted under Section 302 read with Section 34 of the India Penal Code and were sent for trial. The trial Court acquitted them disbelieving the evidence on record, entertaining C doubt regarding the actual time of occurrence and also considering the failure of the prosecution to explain the minor injuries on the persons of the accused to be against the prosecution. On appeal, the High Court reversed the order of acquittal holding that the findings of the trial Court were patently perverse. Being aggrieved, the appellants filed the present appeal.

D

Dismissing the appeal, this Court

HELD : 1. The evidence on record conclusively proves that the findings recorded by the trial Court in favour of the appellants are patently perverse and the High Court was fully justified in reversing the same.

E [536-E]

2.1. The trial Court was wrong in disbelieving the evidence of the eye witness, P.W. 2, who was a natural and probable witness and the defence failed to shake her credibility inspite of lengthy cross-examination. The trial Court discarded the testimony of P.W. 2 holding that there were F discrepancies between the evidence of P.W. 2 and other witnesses. The discrepancies referred to are so insignificant and inconsequential that they should not have been considered at all as they no way impaired the prosecution case. [539-A-B]

G 2.2. Another reason advanced by the trial Court for discarding the evidence of P.W. 2 was that no other witness had spoken of her presence on the spot at the material time. If the observation of the trial Court is taken to the logical conclusion, it would mean that no conviction can be recorded on the basis of a solitary eye witness, however reliable the testimony may be. One of the tests to judge the credibility of a witness is the H intrinsic quality and worth of the evidence, independent of other evidence

and if such evidence, measures upto court's satisfaction, it can itself form the basis of conviction. It is only when such evidence does not pass muster that the court seeks corroboration to draw its conclusion therefrom. [538-C-E] A

2.3. The trial Court also disbelieved P.W. 2 on the ground that she contradicted herself from the statement recorded under Section 161 Cr. P.C. The contradictions referred to by the trial Court are mere minor omissions. The trial Court ought not to have allowed the defence to bring the purported contradictions on record, much less rely upon the same to discredit the evidence of P.W. 2. [538-E-F; H] B

3. The trial Court was not at all justified in entirely discarding the evidence of P.W. 1, who was declared hostile. The entire evidence of a hostile witness can not be discarded altogether. The evidence of P.W. 1 regarding the presence of P.W. 2 at the time of the incident, the appearance of the accused on the scene and the deceased later found bleeding is trustworthy but as it stands corroborated not only by the evidence of P.W. 2 but also by the recovery of blood-stained gunny beg, groundnut shells and the axe. On this point, it is also pertinent to mention that inspite of a searching cross examination the defence could not discredit the evidence so far as it sought to support the prosecution case. [541-A-C] C D

Bhagwan Singh v. *State of Haryana,* AIR (1976) SC 202 and *Satpaul* v. *Delhi Administration,* AIR (1976) SC 294, relied on. E

4. The trial Court was not at all justified in disbelieving the evidence of P.Ws. 4, 5, 6, 8 and 11, who saw the severed head of the deceased being carried by the two appellants who tied it to the village gate. They are all independent witnesses and nothing was brought out in cross-examination to indicate that they were interested in the cause of prosecution or inimically deposed towards the appellants. Moreover, the contradictions referred to by the trial Court in their evidence were too insignificant to be taken notice of. The trial Court did not give any reason whatsoever to discard the evidence of P.W. 4. A careful scrutiny of the evidence of these witnesses clearly proves that there is no justifiable ground to disbelieve their testimony. [544-B-D] F G

5. Another ground canvassed by the trial Court to disbelieve the prosecution case was that there was material discrepancy regarding the H

A actual time as to when the incident took place. The trial Court pointed out that in the charge framed against the appellants it was mentioned that the incident took place at 1.00 P.M. but according to PWs. 1 and 2 the incident took place at or about 10 A.M., while the witnesses who spoke about the carrying of the severed head claimed to have seen it at or about 12 noon. In making these comments the trial Court gave undue importance to a mis-
B take in the charge, ignoring both the ocular evidence and the medical evidence. It is also not clear on what basis it was stated in the charge that the incident had occurred at 1 P.M., nor was it necessary to refer to the time of incident therein. Be that is it may, the record does not indicate that the appellants capitalised on it nor can it be said that they were prejudiced
C thereby. There is no contradiction whatsoever regarding the time of the incident when the witnesses have consistently stated that the actual assault was around five hours after sun-rise. [544-E-G; 545-B]

6. As regards the criticism of the trial Court that the failure on the part of the prosecution to explain the injuries found on the person of the
D two appellants by the doctor on the night of the incident made its case suspect, it must be said that in the facts and circumstances of the instant case the prosecution owed no such duty. The simple and minor injuries on the person of the accused could not outweigh the evidence of the large number of independent witnesses examined by the prosecution who consis-
E tently deposed about the ghastly crime committed by them. The appellants attacked the deceased with deadly weapons and inflicted twenty injuries on his person. When such a ghastly murder is committed, it was not unlikely that the two appellants sustained those injuries accidentally or owing to resistance which the deceased must have offered. There is nothing on record to show that the deceased caused or could have caused those injuries
F more so, when he was not armed with any weapon. Therefore, it can be concluded that the reliance of the trial Court on the superficial injuries on the accused person to distrust the prosecution case was wholly unjustified. [545-C-F]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 90 of 1994.

From the Judgment and Order dated 8.10.93 of the Karnataka High Court in Crl.A. No. 149 of 1989.

H S.S. Javeli and S.N. Bhat for the Appellant.

M. Veerappa and Ms. Manjula Kulkarni for the Respondent. A

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. This appeal under Section 379 Cr.P.C. is directed against the judgment of the Karnataka High Court in Criminal Appeal No. 149 of 1989 whereby it set aside the acquittal of the two B appellants of the charge under Section 302 read with Section 34 IPC recorded in their favour by the Additional Sessions Judge, Bijapur in Sessions Case No. 39 of 1987 and convicted and sentenced them thereunder.

C

2. Put briefly, the prosecution case is as under :

(a) The appellants are the sons of the elder sister of Hanamappa Sabappa Halagalo (the deceased) of village Arakert in Bilgi Taluka of the district of Bijapur. After the death of his first wife, the deceased married Erawwa, the elder sister of the two appellants, i.e. his own sister's daughter, D the deceased and Erawwa however did not have a happy conjugal life and, within a month of their marriage, he deserted her and started living with Lakshmawwa (P.W. 1), a widow. The two appellants however were insisting upon the deceased to bring Erawwa back but he refused to oblige them.

E

(b) In the morning of December 16, 1986 the deceased went to cultivate his land in the outskirts of their village along with Sunderawwa (P.W. 2) a daily labourer. At or about 10 A.M. Lakshmawwa (P.W. 1) reached there carrying the food for the deceased and a basket containing groundnuts. After P.W. 1 reached there all three of them started shelling the groundnuts. While they were so engaged accused Nagappa (since F absconding) reached there with a *rampige* in his hand and when questioned told the deceased that he was in search of his she-buffalo. Nagappa then sat nearby and started eating groundnuts. A little later appellant Lakshmappa (hereinafter referred to as 'A2') also reached there armed with an axe and started gossiping with the deceased and others present there. After sometime A1 arrived there with a knife and stabbed the G deceased on his chest. A2 and Nagappa also joined him in the assault with their respective weapons.

(c) Seeing the assault both P.Ws 1 and 2 raised a hue and cry and the latter snatched away the axe from the hands of A2 and threw it away. H

A Both P.Ws. 1 and 2 then left the place and proceeded towards the village. On the way they met Bhagawwa (P.W. 3) near a *nala* and apprised him of the incident. A little later they found A1 and A2 coming behind them with A1 holding the severed head of the deceased in his hand. Both of them (A1 and A2) then went to the *agasi* (village gate) and tied the severed head to that gate.
B

(d) On seeing A1 and A2 carrying the severed head of the deceased and then tying it to the village gate, Hussain Saheb (P.W. 6), a peon of the local Panchayat office, rushed to the village Post Office and gave an intimation to the Kaladagi Police Station about the murder of Hanamappa
C over telephone. On receipt of that information Sub-Inspector Hemanth Jaganneth Jahagirdar (P.W. 20) made an entry in the Station House Diary book and left for Arakeri with some constables. Reaching there they first went to the Panchayat office and met P.W. 6, and then, accompanied by him, went to the village gate. After getting photographs of the severed head taken, P.W. 20 sent the constables to the spot where the torso of the
D deceased was lying. In the meantime he (P.W. 20) secured the presence of P.W. 1 at the Panchayat office and recorded her statement (Ext. P-1). Treating the same as the F.I.R. he took up investigation of the case and went to the place of occurrence. He held inquest on the body of the deceased. Meanwhile Ramachandra Benakappa Mane (P.W. 21), Circle
E Inspector of Police reached the village gate and got the severed head brought down. The head was then taken to the site of the incident and inquest held thereupon. The trunk and the head were then sent for post-mortem examination. P.W. 21 then took over the investigation from P.W. 20 and seized an axe, a pair of *chappal,* a *rampige,* a *tatta* (a sack) some
F groundnut shells and groundnuts and some blood stained earth from the place where the dead body was found.

(e) Both A1 and A2 were arrested in the same night and as some injuries were found on their person they were sent to the Medical Officer, Kaladagi for examination. On the following day P.W. 21 interrogated them
G and pursuant to the statement of A1 recovered one *jambia* (MO2) which was kept hidden in thorny bushes. Thereafter the *dhotis*, which A1 and A2 were wearing, were seized as they were found to contain blood stains.

(f) P.W. 21 sent all the articles seized for examination by the Forensic
H Science Laboratory (FSL) and on completion of investigation submitted

charge-sheet against A1, A2 and Nagappa (showing him as absconding). A

3. Both the appellants pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated. A1 also took a specific defence that Sundarappa and Mangalappa of their village had got them implicated in the case with a view to getting the land of the deceased. B

4. To give an ocular version of the incident the prosecution examined P.W. 1 and P.W. 2. Though P.W. 2 fully supported the prosecution case P.W. 1 did not, for which she was declared hostile. Besides, it examined Laxman (P.W. 4) Irayya (P.W. 5), Husensaneb (P.W. 6), Ganganna (P.W. 8) and Pandappa (P.W. 11), who claimed to have seen the two appellants taking the severed head of the deceased along the village road and then tying it to the village gate. The other witnesses examined by the prosecution were the doctor who held autopsy upon the deceased and examined A1 and A2, some villagers in whose presence the different panchanamas were prepared, and the two Investigating Officers Hemanath Jaganneth Jahagirdar (P.W. 20) and Ramachandra Benakappa Mane (P.W. 21). The prosecution also tendered in evidence reports of the FSL. No witness was however examined on behalf of defence. C D

5. On perusal of the judgment of the trial Court we find that the reasons which weighed with it for discarding the prosecution case were, that no reliance could be placed on the evidence of P.W. 2 as she materially contradicted herself with reference to her statement recorded under Section 161 Cr.P.C., that the evidence of P.Ws. 4 to 6, 8 and 11 were contradictory to each other, that the medical evidence did not fit in with the ocular evidence as regards the time when, and the manner in which, the assault took place, that the investigation was tainted, and that the prosecution did not give any explanation as to how the two appellants sustained injuries during the incident. E F

6. In reversing the order of acquittal the High Court first observed that the trial Court ought not to have given undue importance to minor contradictions appearing in the evidence of the eye-witnesses who were all disinterested persons and had given a graphic picture of the different parts of the macabre incident. The High Court next observed that the trial Court entertained doubt regarding the time of the murder when none existed. The reluctance on the part of the trial Court to place reliance upon the G H

A evidence of independent witnesses, which according to the High Court was corroborated by circumstantial evidence, was also much commented upon. Lastly, the High Court observed that in the facts and circumstances of the case the prosecution owed no duty to explain the injuries found on the persons of the two appellants.

B 7. Mr. Javeli, the learned counsel for the appellants took us through the entire evidence on record and the judgment of the learned Courts below to contend that the findings recorded by the trial Court were based on detailed discussion and proper appreciation of the evidence and therefore the High Court was not at all justified in upsetting the same by taking C a different view of it. Mr. Javeli futher contended that having regard to the fact that the evidence of Sundrawwa (P.W. 2) as also that of the witnesses who claimed to have seen the two appellants going with the severed head of the deceased bristled with contradictions and improbabilities, the trial Court was fully justified in observing that no reliance could be placed upon the same. Mr. Veerappa, the learned counsel for the State on the other D hand fully supported the judgment of the High Court.

8. Having considered the judgment of the trial Court in the light of the evidence on record we have no hesitation in concluding that the findings recorded by it in favour of the appellants are patently wrong and E perverse and the High Court was fully justified in reversing the same.

9. That Hanamappa met with his gory death on his land and that his severed head was found tied to the village gate stand conclusively established by the uncontroverted evidence of the two Police Officers, namely, P.W. 20 and 21, who visited the spot soon after P.W. 6 gave the phone F message, the panch witnesses and other witnesses. The photographs of the severed head and the torso (Ext. P3 to P6) which were taken by the photographer (P.W. 16), who accompanied the above police officers fully corroborate their version. Dr. R.N. Nadagounda (P.W. 10), who held autopsy on the trunk and the severed head of Hanamappa found as many G as twenty injuries. From the above facts and circumstances which stand established there cannot be any manner of doubt that Hanamappa was brutally murdered. Indeed, this part of the prosecution case was not seriously challenged by the defence and both the Courts below recorded a concurrent finding in this respect.

H 10. The next and the vital question that falls for our determination is

whether the prosecution has been able to conclusively prove that the two appellants are the authors of the ghastly crime. As earlier stated, the main stay of the prosecution in this regard is P.W. 2 who claimed to have been cultivating the land of the deceased on the fateful day. She testified that since about ten to twelve days prior to that day she was working in that land as a daily labourer. As before, she went to that land in the morning of December 16, 1986 and engaged herself in uprooting the dried up tomato plants. The deceased reached there sometime later and tethered the bullocks, that he had brought with him, near the haystack. At or about the same time P.W. 1 also reached there with a bag of groundnuts and a *butti* (tiffin box) containing the meal for the deceased. After spreading a gunny bag all of them sat over it and started gossiping, while selling the groundnuts. While they were gossiping accused Nagappa reached there with a *rampige*, and on being asked by the deceased about the purpose of his visit said that he was in search on his buffalo which was missing from the previous night. Nagappa then sat with them and started gossiping. After sometime A2 came there and joined them. While they were talking to each other P.W. 1 left the place to answer a call of the nature. By the time she reached the heap of stones lying nearby A1 appeared there with his hands held behind his back. Immediately thereafter A1 caught the deceased and stabbed him with a knife he was carrying and A2 assaulted him with the axe he had with him. P.W. 2 however managed to snatch the axe from the hand of A2 and threw it away. Before however P.W. 1 could raise a hue and cry Nagappa also assaulted him with his *rampige*. Then both P.W. 1 and P.W. 2 went towards the village to inform the villagers.

11. P.W. 2 went on to say that when he was going towards the village she heard sound of foot steps from behind and on turning back saw accused Nagappa coming towards them. When she requested him to rescue the deceased he replied that he had not come to rescue him and ran towards the *nala*. P.W. 2 next stated that then she followed P.W. 1, who was proceeding ahead, towards the village and on the way when she (P.W. 2) met P.W. 3 she told him that all the three accused had killed the deceased. Then she found A1 and A2 following them with A1 carrying the severed head of Hanamappa. The above scene struck terror in her mind and she along with P.W. 1, ran towards the village and stayed back in her house till Police came. P.W. 2 identified the knife, axe and *rampige* with which the three accused had assaulted the deceased, the clothes of the deceased and the pairs of chappals that the deceased and P.W. 1 were

A wearing.

12. One of the reasons for which the trial Court disbelieved her evidence was that though she claimed to have uprooted tomato plants from the land no such plant was seized by the police. The trial Court ought not to have laid any stress on this aspect for her claim about her presence is B furnished by the fact that groundnuts, groundnut shells and a gunny bag were seized from the site of the incident and all those articles together with the wearing apparels seized from the person of the deceased were found by the F.S.L. to contain human blood of Group 'B'. Another reason advanced by the trial Court to disbelieve her - which in our view is an C absurd one - was that though according to her the deceased had fallen on the gunny bag blood stains were found on the earth also. Considering the weapons used and the number and nature of injures inflicted therewith it can be legitimately inferred that blood spurted out to cover an area beyond the gunny bag on which the deceased had fallen down. The next ground canvassed by the trial Court for disbelieving her was that no other witness D had spoken about her having been present at the spot at the material time. If the above observation of the trial Court is taken to its logical conclusion it would mean that no conviction can be recorded on the basis of the evidence of a solitary witness, howsoever reliable his testimony may be. One of the tests to judge the credibility of a witness is the intrinsic quality and worth of his evidence, independent of other evidence and if such E evidence measures up to the Court's satisfaction it can itself form the basis of conviction. It is only when such evidence does not pass muster that the Court seeks corroboration to draw its conclusion therefrom. The trial Court also disbelieved P.W. 2 on the ground that she contradicted herself with her statement recorded under Section 161 Cr.P.C. Having gone F through the contradictions we are of the view that the trial Court ought not to have allowed the defence to bring those purported contradictions on record - much less rely upon the same - for they are only minor omissions. To avoid prolixity we refrain from referring to each of them except one to demonstrate the trial Court's unjustified reliance upon them. As earlier noticed, P.W. 2 testified that when A2 tried to give a second G blow on the deceased with an axe he snatched the axe from him. The omission to which her attention was drawn in this regard was that before the police she did not state that she snatched away the axe when the second blow was about to be given. The omission here was not in respect of her failure to state about the snatching away of the axe but about the stage of such snatching. It is obvious that this was not a material omission and, H therefore, the trial Court ought not to have permitted the prosecution to

prove the said omission, far less relied upon it to discredit P.W. 2. Lastly, the trial Court observed that as there were discrepancies between the evidence of P.W. 2 and the other witnesses, the former could not be relied upon. On perusal of the discrepancies referred to by the trial Court we are of the opinion that it should have ignored them as insignificant and inconsequential. After having carefully gone through the evidence of P.W. 2 we find no reason to disbelieve her as we find that she was a natural and probable witness and inspite of lengthy cross examination the defence could not shake her credibility.

13. That brings us to the evidence of the other eye witness namely, Lakshmawwa (P.W. 1). While admitting that she was living with the deceased as his mistress, she testified that in that morning she went to the field at or about 10.00 A.M. with a basket of groundnuts and a tiffin box containing the food for the deceased. Reaching there, she found Sunderawwa (P.W. 2) plucking tomato plants. She (P.W. 1) spread out an empty gunny bag on the ground and all three of them started shelling the groundnuts. While they were sitting, Nagappa (the absconding accused) came there. When deceased asked him as to why he came there he replied that he came in search of his missing she-buffalo. She then asked the deceased for some groundnuts and started eating them. While all of them were talking A2 came there with an axe on his shoulder and they started talking to each other. A little later she (P.W. 1) left the place to ease herself. She then saw A1 approaching the deceased. When she came back after easing herself she found the deceased bleeding near the place where they were shelling the groundnuts. She then became afraid and ran towards the house. She, however, did not speak about the actual assault on the deceased by the three accused persons for which she was contradicted by the Public Prosecutor, with the permission of the Court, with her statement recorded by P.W. 20, (which was treated by the police as the FIR but was found by both the Courts as a statement recorded during investigation) wherein she had supported the prosecution case fully.

14. In dealing with the evidence of P.W. 1 the trial Court first detailed her testimony to the extent it was legally admissible and then made the following comments :

> "So from the statement of P.W. 1 recorded by the Court what act these two accused had committed in causing the death or assaulting the deceased has not been spoken to by P.W. 1. So her evidence

A so as to connect the accused with the assault on the deceased is concerned cannot be of any help to the prosecution. Mere presence of the accused persons in the land at the alleged spot itself will not sufficient to come to the conclusion that it is the accused persons who are responsible for the assault on the deceased."

B

15. In *Satpaul* v. *Delhi Administration,* A.I.R. (1976) SC 294 this Court had occasion to consider the question whether the entire evidence of a prosecution witness, who turns hostile and is cross examined by the Public Prosecutor with the leave of the Court, is to be discarded altogether. C After discussing the law on the subject and the decisions of this Court and High Courts on that aspect the Court observed as under :

"From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his D evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds E that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, F and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

16. A similar view was expressed by a three Judge Bench of this G Court in *Bhagwan Singh* v. *State of Haryana,* A.I.R. (1976) SC 202 when it stated that the fact that the Court gave permission to the prosecution to cross examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction H upon his testimony if corroborated by other reliable evidence.

17. In view of the above tests laid down by this Court for appreciating the evidence of a hostile witness the trial Court was not at all justified in discarding the evidence of P.W. 1 altogether with the above quoted comments and it ought to have considered her evidence in the light of the other evidence on record. When so considered we find that her evidence regarding the presence of P.W. 2 at the time of the incident, the appearance of the accused on the scene and the deceased later on found bleeding is trustworthy as it stands corroborated not only by the evidence of P.W. 2 but also by the recovery of blood stained gunny bag, groundnut shells and axe. While on this point it is pertinent to mention that in spite of a searching cross examination the defence could not discredit her evidence, so far as it sought to support the prosecution case.

18. Now that we have found that P.W. 2 is a reliable and truthful witness and P.W. 1 does not stand wholly discredited, we may advert our attention to the testimonies of the five witnesses, namely, P.Ws. 4, 5, 6, 8 and 11, who saw the severed head of the deceased being carried by the two appellants and then tied by them to the village gate. To appreciate the reasonings of the trial Court to brand all of them as unreliable witnesses it would be necessary to discuss their evidence in some details. P.W. 4 claimed to have gone to the land of one Soragavi which was near the village stream, to water pomegranate plants. At or about 11 - 11.30 A.M. the supply of electricity failed, and with that the supply of water stopped, and so he want to the nearby pump-house to take his food. When he was about to open his lunch box, he saw P.Ws. 1 and 2 coming towards the stream screaming. When asked by him as to what had happened she told that Hanamappa had been backed by Pandya (A1) and Laxmya (A2). Then she and P.W. 2 went away running. He then went towards the field and stood there. At that time he saw A1 and A2 coming towards the village, with the former holding the severed head of the deceased. In cross examination he was contradicted with his statement recorded under Section 161 Cr.P.C. wherein he did not state that because the electricity had failed he had gone to take his food at or about 11 or 11.30 A.M. and that P.W. 1 told him that Pandapa and Laxmappa had cut Hanamappa. He asserted that both the accused persons were almost behind P.Ws. 1 and 2. He denied the suggestion that while committing theft in the land of A1 he was caught red-handed by A2 and then fined and out of that enmity he was giving false evidence.

A 19. P.W. 5, testified that after cultivating his land he went back to his home at or about 12 noon to take food. While he was in his house he saw both the accused persons coming to the village, with the severed head of the deceased in the hand of A1. He followed them to the village-gate where he saw A2 tying the head to the beam of the gate. Thereafter both went towards their house proclaiming their valour (shouting '*deen*'). At that time B he saw Gangappa Hadapad (P.W. 8) and others present there. In cross examination it was elicited from him that he used to go to the houses in the village, including that of the accused, to collect alms. It was suggested to him that about one year prior to the incident A1 had got prepared one *tayatha* from him for one of his bullocks and paid Rs. 50. It was further C suggested that because the bullock died A1 got that money recovered from him for which their relations deteriorated. The suggestions were however denied by him. He however admitted in the cross-examination that he did not see any one going towards the land of the deceased when he was returning home. His attention was then drawn to certain contradictions D with reference to his statement made before the police.

20. The star witness of the prosecution to prove the above fact is however P.W. 6 who deposed that about 12 noon that day he was sitting on the *katta* outside the Panchayat office. At that time both accused came towards the Panchayat Office with the severed head of the deceased and E then went towards the village-gate. He stood at a distance of about 20 *marus* and saw A-P tying a torn piece of towel to the hair on the head after taking the head from the hands of A-1 and then affixing it to the beam of the gate. Both of them then went towards the village shouting *deen*. At that time P.Ws. 5, 8 and 11 were present there. He then went to the *Dalapathy* F of the village but as he could not find him he sent a message to the Kaladagi Police Station from the local post office. A suggestion was put to him that Rs. 200 were paid as bribe at his instance to the *Talati* of the village by A1 to get a loan sanctioned and because the same was not sanctioned A1 was pressing his brother to get back the money, but he denied the suggestion. From his cross examination we find that nothing of consequence was G elicited in his cross examination to discredit him. It is of course true that he did not give all the details in the phone message but it is of no consequence because he did intimate about the murder of Hanamappa.

21. P.W. 8, a barber by profession, was near the village gate at about H 12 noon that day and he saw both the accused coming there with the

severed head of the deceased and tying it to the village-gate in the manner stated by other witnesses. He identified it as that of deceased Hanamappa. He also spoke of the presence of other witnesses referred to above. He denied the suggestion in the cross-examination that his elder brother Mutheppa had illicit connection with P.W. 1. Other suggestions to show enmity towards the appellants were also denied by him. From his evidence we find that nothing of consequence could be elicited in his cross-examination so as to doubt his veracity.

22. The last witness on the point is P.W. 11, who is also an agriculturist. He has his house about half a furlong away from the village gate. On getting the information that Hanamappa was murdered he along with Handigeri and Shivalingappa went towards the village gate at or about 12 noon and saw both the accused going there with the severed head of the deceased and then fixing it to the village gate. He admitted that he had not gone to his land that morning but stated before Police that he had gone to his land and returned by 12 noon. In cross examination he admitted that Bharamappa, a cow-boy, is the cousin of the accused persons but denied that in his marriage he had consumed liquor and misbehaved for which A1 had beaten him. He also denied that for that reason he and A1 were not in talking terms. On the contrary he asserted that they were in talking terms.

23. The principal ground which weighed with the trial Court to disbelieve the evidence of P.Ws. 5, 6, 8 and 11 was that while testifying before the Court they improved on their statements made before the police during investigation. On perusal of the improvements referred to by the trial Court, we find that they relate primarily to the manner in which the accused tied the severed head to the village gate details of which were not disclosed to the police. The other improvements also relate to insignificant omissions, some of which we may mention by way of illustration. While discussing the evidence of P.W. 5, the trial Court commented upon his having not stated before the police about the actual manner in which the head was tied - though he gave those details in evidence - and that while proceeding along the road with the head they (the appellants) raised slogans. Similarly, while criticizing the evidence of P.W. 6 the trial Court observed that while in his testimony in Court he stated only three persons had witnessed the tying of the severed head, in his statement before the police he stated that a number of persons had assembled near the village

A gate. The trial Court also laid much stress upon minor contradictions in the evidence of the above witnesses as would be evident from its comment that whereas P.Ws. 5 and 6 had seen only tying of the severed head with *pawada* to the hair of the severed head, P.Ws. 8 and 11 said that along with *pawada, cheri* was also used.

B

24. In our considered view the trial Court was not at all justified in disbelieving the evidence of the above witnesses : firstly, because, they were all independent witnesses and nothing was brought out in cross-examination to indicate that they were interested in the cause of the prosecution or inimically deposed towards the appellants and secondly, because, the C improvements and contradictions referred to by the trial Court in their evidence were too insignificant to be taken notice of. Before we part with this aspect of the matter we may mention that the trial Court did not give any reason whatsoever to discard the evidence of P.W. 4. We have carefully gone through the evidence of the above five witnesses and we are of the D opinion that there is no justifiable ground to disbelieve their testimonies.

25. As stated earlier, another ground canvassed by the trial Court to disbelieve the prosecution case was that there was material discrepancy regarding the actual time when the incident took place. The trial Court pointed out that in the charge framed against the appellants it was men- E tioned that the incident took place at 1 P.M., but according to P.Ws. 1 and 2 the incident took place at or about 10 A.M., while the witnesses who spoke about the carrying of the severed head claimed to have seen it at or about 12 noon. In making these comments the trial Court gave undue importance to a mistake in the charge, ignoring both the ocular evidence F and the medical evidence. It is also not clear on what basis it was stated in the charge that the incident had occurred at 1 P.M. nor was it necessary to refer to the time of incident therein. Be that as it may, the record does not indicate that the appellants capitalised on it nor can it be said that they were prejudiced thereby. P.W. 2 deposed that when Hanamappa was murdered it was about five hours after sun-rise and P.W. 1 said that she G went to the land at or about 10 A.M. According to P.Ws. 4, 5, 6, 8 and 11 it was about 12 noon, when both the appellants came to the village shouting "*deen*" and holding the severed head of the deceased. When considered in the context of the fact that the witnesses were village rustics, who do not testify about time by the watch, there is no contradiction, whatsoever H regarding the time of the incident. Another conclusion of the trial Court

that the incident must have taken place in the early morning of December 16, appears to have been influenced by the opinion given by the doctor, who held the autopsy. The Trial Court ought not have based its conclusion on the opinion so given, when the witnesses have consistently stated that the actual assault was round about five hours after sun-rise.

26. As regards the criticism of the trial Court that the failure on the part of the prosecution to explain the injuries found on the person of the two appellants by Dr. Nadagounda (P.W. 10) when he examined them in the night of the incident made its case suspect, it must be said that in the facts and circumstances of the instant case the prosecution owned no such duty. P.W. 10 found one incised wound on the thigh of A1 and one incised wound on the middle of the right palm of A2 measuring 1.1/4" x 1/4" and skin deep. Such simple and minor injuries on the persons of the accused could not outweigh the evidence of the large number of independent witnesses examined by the prosecution who consistently deposed about the ghastly crimes committed by them in severing the head of the deceased, parading with it along the village pathway and then tying it to the village-gate. We cannot lose sight of the fact that the appellants along with another attacked the deceased with deadly weapons and inflicted twenty injuries on his person. When such a ghastly murder is committed it was not unlikely that the two appellants sustained those injuries accidently or owing to the resistence which the deceased must have offered. In making this observation we have drawn inspiration from the fact that the injury that was suffered by A2 was on the right palm. At any rate there is nothing on record that the deceased caused or could have caused those those injuries, more so, when he was not armed with any weapon. We, therefore, find no hesitation in concluding that the reliance of the trial court on the superficial injuries on the accused persons to distrust the prosecution case was wholly unjustified.

27. On a conspectus of the entire evidence on record we are, therefore, in complete agreement with the following observations and findings recorded by the High Court, in setting aside the order of acquittal passed in favour of the appellants :

> "The learned counsel for the accused-respondents urged that we should be slow in interfering with the judgment of acquittal as the trial Court has adverted to all aspects of the case and has dis-

believed the testimony of the prosecution witnesses. We are aware that we should be slow when the accused have the benefit of acquittal in the hands of the trial Court. We have reappraised the evidence and found that the trial Court has grossly erred in disbelieving the testimony of the two eye witnesses and other witnesses in the village who actually saw the two respondents taking the severed head of the deceased and tying to the village gate. In such a situation from a small village like the one in question it may not be possible to expect any better evidence than the one given by the prosecution witnesses. When the two accused were carrying the severed head of the deceased it is rather impossible to conceive that any one could have interfered with this inhuman and ghastly act of theirs. Reaction of a witness in such a situation may not be uniform and one cannot expect the witnesses to behave in a particular manner. The entire incident is one and continuous from the stage of attack on the deceased till the severed head was tied to the village gate. Therefore the trial Court instead of hair-spliting evidence and depending on discrepancies which do not go to falsify the evidence of these witnesses ought not to have disbelieved them. Undue importance was attached to the difference in time factor referring to the one in the charge and the evidence of the prosecution witnesses. We have no hesitation in finding that the approach of the trial court to the evidence is perverse and unreasonable. No other conclusion than of guilt can follow from the prosecution evidence. It was therefore not justified in acquitting the accused."

In the result the appeal fails and the same is hereby dismissed.

H.K. Appeal dismissed.