

C. MAGESH AND ORS.

v.

STATE OF KARNATAKA

(Criminal Appeal Nos. 1028-1029 of 2008)

APRIL 30, 2010

**[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]**

*Penal Code, 1860:*

*s.302 - Charge sheet against 49 accused persons - Conviction of 7 accused - Upheld by High Court Four accused additionally found guilty by High Court - On appeal, held: There was consistency in evidence regarding role played by 5 of the accused in the commission of offence - Concurrent finding of facts by courts below against them not interfered with - However, as there was inconsistency, improper identification and absence of specific role attributed to the other 2 accused, their conviction is not sustained.*

*s.302 - Acquittal of four accused by trial court - High Court ordered conviction relying on dying declarations - Held: Dying declarations were not in question-answer form and endorsement by the doctors not made in the beginning of the statements that the declarants were mentally fit - Moreover, no reason given as to why dying declarations were not recorded in the presence of Magistrate - Since legality and correctness of dying declarations was doubtful, High Court erred in relying on the same in ordering conviction of the 4 accused - Code of Criminal Procedure, 1973 - s.380 - Evidence Act, 1872 - s.32.*

*FIR - Evidentiary value of - Discussed.*

*Code of Criminal Procedure, 1973: s.378 - Appeal against acquittal by trial court - Scope of interference - Discussed.*

- A ***Criminal jurisprudence:*** *Evidence to be evaluated on the touchstone of consistency – Consistency is the keyword for upholding the conviction of an accused.*

- B Prosecution case was that the accused persons and the deceased were employees of BPL Company. There was labour unrest in the company. The accused persons were active members of trade union. Some of the workers of the company were not taking part in the demonstration and in the strike called by the Union and were attending to their work. They were provided transport and police protection by the company. On the day of incident, a bus carrying some of the loyal employees of the company was stopped. A-1 and A-2 shouted slogans in favour of Union and against the loyal employees of the company. A-6 and A-47 and others pelted stones on the bus. A-46 stood at the door of the bus to prevent employees from getting out of the bus. A-15 and A-33 were supplied kerosene by A-32 which was sprinkled on the bus and the passengers. A-33 put bus on fire. Some of the passengers of the bus sustained serious burn injuries and were shifted to hospital. Dying declarations Exh. P29 and P30 were recorded in the presence of doctor. Charge sheet was submitted against 49 accused. Trial court convicted in all only 7 accused i.e. A-1, A-2, A-15, A-25, A-32, A-33 and A-46 under Sections 302, 307, 435, 427, 143 and 148 r.w. Section 149 IPC and awarded life sentence. The convicted accused filed appeal before High Court. State also filed appeal for enhancement of sentence of life imprisonment to death sentence and against the acquittal of other 42 accused persons. High Court upheld the conviction of 7 accused and also convicted A-4, A-8, A-16 and A-34 for the same offence. Hence the appeals.

- G Dismissing the appeals of A-1, A-2, A-15, A-32, A-33 and allowing the appeals of A-4, A-8, A-16, A-25, A-34 and A-46, the Court

H

HELD: 1. It is settled law that an FIR is not a substantive piece of evidence. However the FIR cannot be given a complete go-by since it can be used to corroborate the evidence of the person lodging the same. On careful examination of the deposition of PW-42, informant, it was found that even though he had denied lodging of complaint with the police, but examination of deposition of PW-56, Circle Inspector of Police showed that PW-42, had come to the police station along with a typed complaint, which was then registered and FIR was lodged. Subsequently it was sent to the court of Magistrate. Thus it was not possible on account of the said discrepancies in the evidence to ascertain the origin of the typed complaint. Thereby, the possibility of the complaint being dictated by the company officials cannot be totally negated. Moreover, there was no secondary evidence led to ascertain the veracity of the FIR. Under such circumstances, it would not be correct to wholly place reliance on the same. [Paras 26,27] [636-G-H; 637-A-D]

*Baldev Singh v. State of Punjab* (1990) 4 SCC 692, relied on.

2. It is not in dispute that Exh. P29 and P30 was statement recorded under Section 161 Cr.P.C. in the hospital by I.O. There was no need at that time to have obtained signatures on the same as it was prohibited by Section 162 Cr.P.C. Doctors certified only at the end of recording of their statements that the deceased were in a fit state of health to have their statements recorded. No such certificate was issued by the Doctors at the time their statement commenced to be recorded. It was not in question-answer form. The incident took place as far back as on 25.3.1999 in a metropolitan city like Bangalore, where several magistrates were available, however prosecution did not get their dying declarations recorded

- A in the presence of a magistrate. There is nothing on record even to suggest that magistrate was not available from 25.3.1999 to 11.4.1999 when the deceased 1 finally succumbed to the injuries and between 25.3.1999 to 22.4.1999 when deceased 2 succumbed to the injuries.
- B The High Court in a cryptic manner, without properly discussing the legal and factual aspect of the matter held the said 4 accused guilty for commission of the said offence in addition to the conviction of seven accused who were already found guilty by trial court. In an appeal
- C preferred under Section 378 CrPC, no doubt, it is true that High Court has ample powers to go through the entire evidence and to arrive at its own conclusion but before reversing the finding of acquittal, following conditions should be always kept in mind namely, (i) the
- D presumption of innocence of the accused should be kept in mind (ii) if two views of the matter are possible, view favourable to the accused should be taken; (iii) the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanor of witness; and (iv) the accused is entitled to benefit of
- E doubt. But the doubt should be reasonable that is the doubt which rational thinking man with reasonable honesty and consciously entertained, more so, when the larger question with regard to treating Exh. P29 and Exh. P30 as dying declarations itself had become
- F questionable. There was no occasion for the High Court to have passed order of conviction on the same, that too without removing the doubts with regard to correctness, legality and propriety of two dying declarations. Thus, appeal filed by the said four accused, convicted by High
- G Court for the first time deserves to be allowed. [Paras 36 41] [639-G-H; 640-A-H; 614-A-C]

3. There was a great consistency in the evidence of PW 1 to PW15 with regard to different roles attributed to A-1. He was identified by the witnesses as one of the

H

instigators who started shouting slogans against management of the Company and loyal workers, moreover PW- 12 and 14 attributed "pelting of stones" on A-1. A-2 was also attributed more or less the same role as that of A-1 by the PWs. A-15 was correctly identified by all the witnesses, who deposed about him. He was attributed role of "pouring kerosene on the bus"; except PW 4 and 14 did not depose about the same role played by him. He was further attributed with the "role of shouting slogans" and "preventing remaining occupants from alighting from the bus". A-32 was assigned with similar role as that of A-15 with the only difference that PW2 and 11 could not identify him correctly. He was attributed the role of "passing of kerosene jars", "blocking the exit of the bus" and "pelting of stones". A-33 has been correctly identified by all the PWs, in deposition before Court. Further majority of the witnesses assigned him the role of "pouring of kerosene" and PW-15 also mentioned that "he set the bus on fire". In addition to this, A-33 was assigned the role of "pelting stones", "shouting slogans" and "blocking the exit of the bus" as well. Thus, there cannot be any escape for the said 5 accused from avoiding conviction and sentence awarded to them by Trial Court and confirmed in appeal by High Court. Even otherwise, there were concurrent findings of fact recorded against them, which cannot be interfered with in the present appeal. However, on account of inconsistency, improper identification and in absence of specific role being attributed to A-25 and A-46, their conviction cannot be upheld. PW2, PW5, PW6, PW10 did not identify A25 correctly. PW7, PW13 and PW14 did not identify him at all. PW8 identified him but does not assign any role to him. PW1, PW2, PW4, PW9, PW12, PW13, PW14, PW15 assigned him the role of shouting slogans. However PW4, PW12, PW13, PW14, assigned him further role, in addition to shouting slogans. PW3, PW5 and PW11 assigned him some other roles,

- A different from shouting slogans. Regarding the case of A46, all identified him correctly but PW3, PW4, PW5, PW6, PW8, PW10, PW12 and PW14 did not depose about him at all. The majority of witnesses assigned him the role of assaulting with clubs. However, PW9, PW13 assigned
- B different role to him but Doctor's evidence did not disclose anywhere that the injuries sustained by any of the injured persons could have been caused with clubs, meaning thereby there was no mention with regard to
- C cause of injury. Thus, he can also be given benefit of doubt. In view of the said inconsistencies available on record, it would not be safe to convict him. [Paras 43, 44, 46-48] [641-E-H; 642-A-D, E-H; 664-A-B]

4. In criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency.
- D Consistency is the keyword for upholding the conviction of an accused. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated
- E principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the
- F evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. Normally, it is not in practice to consider each and every individual evidence available; however an exception is made in this case since it involved certain
- G alleged odious deeds of few individuals. Criminal jurisprudence entails that a thorough appreciation of records needs to be done in order to do complete justice. [Paras 49-52] [643-C, E-H; 644-A-B]

- H *Suraj Singh v. State of U.P.* 2008 (11) SCR 286, relied on.

**Case Law Reference:**

(1990) 4 SCC 692      relied on      Para 26

2008 (11) SCR 286      relied on      Para 49

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1028-1029 of 2008.

From the Judgment & Order dated 14.11.2007 of the High  
Court of Karnataka at Bangalore in Criminal Appeal No. 189  
of 2004 and Criminal Appeal No. 1624 of 2003.

Sushil Kumar, V.K. Biju Aditya, Meenakshi, Anand and  
Dinesh Kumar Garg for the Appellants.

Anitha Shenoy and Rashmi Nandakumar for the  
Respondent.

The Judgment of the Court was delivered by

**DEEPAK VERMA, J.** 1. Narration of facts of the aforesaid  
criminal appeals arising out of common judgment and order  
passed by High court of Karnataka, Bangalore, in three criminal  
appeals, one preferred by convicted accused, other two by  
State of Karnataka, would reveal shocking and sad plight as  
to how a labour dispute can turn hostile culminating into a civil  
disobedience, thus, snatching away lives of two young women  
and injuring several others all working in BPL Engineering Ltd.  
(hereinafter shall be referred to as 'BPL')

2. Before coming to the prosecution story, it is necessary  
to give background facts of the case so as to appreciate as to  
how charter of demands, of workers of Trade Union had taken  
an ugly shape causing death of two employees and injuries to  
several others.

3. BPL has eight units spread over different parts of  
Bangalore city, carrying on its business activities. It appears,  
looking to the nature of activities that are carried on by BPL,

- A large numbers of workers, mostly women, were engaged on temporary basis. They were apparently not satisfied working on temporary basis for long number of years. Employees of all the units of BPL Engineering Ltd. formed a common trade union. Thereafter, they applied for registration of the Union.
- B Management of BPL opposed the registration. The Union was still registered and management filed an appeal against the said order of registration with the Assistant Labour Commissioner, in which show cause notice was issued to the Union. However, on challenge being raised by the Union to the said show cause notice by filing a petition, purportedly under
- C Articles 226 and 227 of the Constitution of India, High Court of Karnataka, Bangalore, was pleased to quash the said show cause notice. Thus, the registered Union of BPL and its employees affiliated to CITU came into existence.

- D 4. The registered Trade Union, thus, as was expected, placed charter of demands before the management for regularization of all temporary employees who had been working for long number of years. As the prayer of the Union was not acceded to by the BPL management, the members of
- E the Union held Dharnas, protests and meetings, outside factory premises at different units of BPL. It is on record that A1 R. Srinivas and A2 T.K.S. Kutti were the President and Secretary respectively of the said Union and A3 to A47 and other accused were said to be active members of the said Union.
- F According to prosecution, they had been actively participating in the activities of the Union, making demands, which the BPL management did not accede to.

5. Since the initial demands made by members of the Union were not acceded to, and did not bring required results
- G for the Union, they adopted hostile tactics in their activities.

6. On 19.11.1998, there was serious protest demonstration by the leaders, office bearers and other active members of Union, persuading employees not to attend to the
- H work at BPL's Basavapura Unit. This led to lodging of



C. MAGESH AND ORS. v. STATE OF KARNATAKA 631  
[DEEPAK VERMA, J.]

complaint/FIR by Lalitha, an employee of BPL with Hebbagodi Police Station, bringing aforesaid facts to the notice of police. Consequently, a charge sheet was filed against accused A6, A15, A33 and A36, on the complaint filed by Lalitha. There were as many as three lady accused also named in the said complaint.

7. However, some of the employees who were loyal to the management continued to attend work.

8. Sensing the gravity of the situation, BPL management thought it fit and proper to take help of police so as to provide sufficient protection to its loyal employees and to escort them to and from their respective residences to different units of BPL. On the basis of the complaint having been lodged by Lalitha, BPL management also lodged a complaint against A6, A15, A33 and A36 and A47.

9. Protest demonstration by the members of Union of BPL either within the premises or outside different units continued. Since despite doing their best, BPL was not able to control and manage hostile attitude of the Union, it was constrained to file Civil Suits on 30.11.1998 and 2.12.1998 against the striking Trade Union members with a prayer that the members be not allowed to hold any demonstration within the factory premises or units. An order of injunction was passed against the members of the BPL Group of Companies Karmikara Sangha (hereinafter shall be referred to as 'Sangha') not to hold any demonstration within a radius of 100 meters from the factory premises.

10. Even thereafter, protest demonstration and the strike continued for about a week. Some of the employees went on hunger strike.

11. BPL management also initiated disciplinary proceedings against A6-P.A. Bharathkumar, A15-N.V. Ravi @ Ravinanda Kumar and A33-S. Jagadish, for their alleged acts

- A of misconduct in one of its units. Since on account of police protection having been provided to the loyal workers of the BPL, its business activities continued, which were not palatable to the accused. They were, therefore, hatching a plan to somehow or the other create terrorism and civil disobedience amongst the loyal workers so that they may be afraid of attending to their work. The chronological events put herein under would show as to how the prosecution story commenced.

12. However, this fight between Trade Union and the management took an ugly turn on 25.3.1999, when a private chartered bus carrying some of the employees of BPL, was stopped at Annepalya so as to allow the workers to alight. At that time, A1 to 49 formed an unlawful assembly. A1 and A2 were shouting slogans in favour of the Union and against the loyal employees of the factory. A6 and A47 and others pelted stones with the result glass panes of the bus were broken. A46 stood at the only gate available at front part of the bus along with others to prevent the workers from getting down. A15 and A33 were supplied kerosene in two cans by A32, which was sprinkled not only on the remaining passengers of the bus but also on rear left side of the bus. The bus was then put on fire by A33. This incident took place at about 6.40 p.m. In the said inferno, several passengers of the bus sustained burn injuries and the rear left side of the bus was also badly damaged by fire.

13. C.W.98 Suresh Naidu, Circle Inspector of Police Ashoknagara Police Station (hereinafter shall be referred to as 'I.O.') received telephonic message in respect of the aforesaid incident at about 6.45 p.m. Taking clue from the said message, I.O. immediately proceeded to the spot and found bus bearing registration No. TN 28B 6999 still under flames and fire fighting staff was extinguishing fire. The passengers in the said bus who had sustained burn injuries were initially taken to the house of C.W.42 Smt. Renuka thereafter were admitted in a Hospital in Patrolling Van popularly called as Hoysala Van, named after

C. MAGESH AND ORS. v. STATE OF KARNATAKA 633  
[DEEPAK VERMA, J.]

one of the Rulers of the State. CW1 N. Ashwathappa, after being given first aid treatment in Bowring Hospital, lodged written complaint Exh. P81. Crime No. 273/1999 was registered. Subsequently, the concerned judicial magistrate was also informed at about 11.45 p.m. Thereafter, photographs of the ill-fated bus from outside were taken. I.O. seized kerosene can, stones, clubs, half burnt vanity bags, chappals, rubber sheet, covers, glass pieces and one can with kerosene oil. CW.98, I.O. prepared a spot Mahazar Ex.P1.

14. Thereafter, I.O., C.W. 98 went to Victoria Hospital at about 10.45 p.m. and found some of the workers with severe burn injuries. He recorded statement of one Devaki. He also recorded statement of other prosecution witnesses. Thereafter, on the same night, he went to DG Hospital and recorded statement of Latha Maheshwari. On instructions from senior police officer, some of the accused were arrested.

15. On 2.4.1999, he recorded statement of Sinija, an injured passenger of the bus, in the presence of doctor which was marked as Exh. P.29. Sinija succumbed to burn injuries on 11.4.1999. Her dead body was sent for postmortem examination. Similarly, on 20.4.1999 he recorded statement (Exh. P30) of Smt. Nagarathna another injured passenger of the bus in presence of the doctor but she also succumbed to burn injuries on 22.4.1999. Thus, the case, initially registered under Section 307 was converted into one under Section 302 of the Indian Penal Code (IPC) along with other allied sections. On 19.6.1999 I.O. sealed all the articles pertaining to this case and forwarded it to the Forensic Science Laboratory for analysis through Head Constable 660.

16. After completion of usual investigation, he submitted charge sheet against 49 accused. They were charged and prosecuted for commission of offences punishable under Sections 120B, 302, 307, 324, 326, 332, 148, 435, 427, 147, 148, 143, 506 read with Section 149 of the IPC.

- A 17. The prosecution, in order to bring home the charges levelled against accused examined PW1 to PW56, marked documents P1 to P121 as exhibits and M.Os 1 to 41 in support of the prosecution version. The statement of the accused as contemplated under Section 313 Cr.P.C. was recorded.
- B Accused also examined themselves as DW 1 to 31 and got marked Exh. D1 to D328 in support of their defence.

18. Learned trial judge, on appreciation of evidence available on record, convicted in all only 7 accused i.e. A1-R.Srinivas, A2- T.K.S. Kutti, A15-N.V. Ravi @ Ravinanda Kumar, A25-R. Ramesh, A32-Dharanesh Kumar, A33-S. Jagadish and A46-Sharath Kumar for commission of offences punishable under Section 302, 307, 435, 427, 143 and 148 read with 149 of the IPC awarding them maximum punishment of life imprisonment u/s 302 and ancillary sentences and corresponding fines in each case for other offences with a direction that sentences will run concurrently. All other accused were acquitted by the trial court.
- C
- D

19. Against the judgment of the trial court, Crl. A. No. 1624 of 2003 was filed by the aforesaid 7 convicted accused. On the other hand, Criminal Appeal No. 188 of 2004 was filed by State of Karnataka against aforesaid seven convicted accused for enhancement of sentences of life imprisonment to death sentence and Criminal appeal No. 189 of 2004 was also filed by the State of Karnataka, against that part of judgment and order of trial court whereby out of 49, 42 accused were acquitted.
- E
- F

20. All the appeals before the High Court were heard analogously and disposed of by a common judgment. These appeals have been preferred firstly by the seven accused convicted by the trial court and secondly by four other accused, viz., A4-C. Magesh, A8-Edwin Noyal, A16-S.Babu and A34-Nagaraj additionally found guilty and convicted for the same offence by the High Court. The fifth accused, viz., A6-P.A. Bharathkumar convicted by the High Court has not preferred
- G
- H

C. MAGESH AND ORS. v. STATE OF KARNATAKA 635  
[DEEPAK VERMA, J.]

any appeal, thus in this judgment/order, we are not dealing with his case. No further Appeal has been preferred by the State as well. A

21. We have heard learned senior counsel Mr. Sushil Kumar with Mr. Aditya, and Mr.V.K. Biju, advocates for the appellants and Ms. Anitha Shenoy and Ms. Rashmi Nandakumar, Advocates for the respondent at length and perused the records. B

22. At the outset, learned counsel for appellants strenuously contended before us that the whole story of the prosecution has been concocted and has been engineered only with an intention to take revenge from the accused, who were instrumental in causing strike and dharnas in BPL. It has been contended that all the so called injured persons whose statement was recorded by the police had stated in one voice that the fire was caused by some miscreants and at the first instance names of the appellants were not mentioned by them. It was only after typed written report Exh. P 81 was submitted to the police, names were disclosed for the first time meaning thereby that the same was concocted and prepared after meeting of minds as to who should be roped in as accused. C D E

23. It was also contended that in any case, the statements of Kumari Sinija and Mrs. Nagarathna Exh.P29 and P30 cannot be treated as dying declarations as the same were not recorded in accordance with rules formulated in Karnataka Police Regulations. The incident had admittedly taken place on 25.3.1999 but the statement of Kumari Sinija was recorded on 2.4.1999 and she died on 11.4.1999. Similarly, statement of Smt. Nagarathna was recorded on 20.4.1999 and she expired on 22.4.1999. Prosecution has failed to satisfy as to why for all these days, the statement could not be recorded by the Magistrate. Several other lacunae have been pointed out to us to show that the same cannot be treated as dying declarations as they do not fulfill the requirement of law. It was also contended that no signatures are required to be obtained on a F G H

- A statement recorded under Section 161 of the Cr.P.C. yet the same were signed which clearly violates mandate of Section 162 of CrPC.

24. The photographs of the accused were already shown to the witnesses who had admitted the same. Therefore, their identification did not have any legal sanctity. Evidence of the prosecution is required to be considered in whole so as to see its credibility but it is not permissible in law to say that for few of the accused, it would be looked into from one angle and for others it would be looked into from different angle. Names of the persons on the spot or their identity were not reflected. In other words, it was contended that the very genesis of the commission of the crime, FIR having been denied by the person lodging it. i.e., lodger PW 42 A.S. Aswathappa, nothing had in fact survived in the prosecution case and accused deserved acquittal on this ground alone.

25. It was further contended by Mr. Sushil Kumar, learned senior counsel that case could not have been proceeded against any of the accused as he was declared hostile and in any case, FIR not being a substantive piece of evidence and in absence of any other legally admissible evidence, they could not have been framed. Defence has not disputed the incident but what has been seriously contended was the identity of the accused, a burden which lay heavily on the prosecution but it failed to discharge it satisfactorily. In all the statements recorded earlier, names of none of accused were revealed. It was only after typed written report was submitted by Ashwathappa, the names appeared.

26. It is settled law on the point that FIR is not a substantive piece of evidence. However the FIR can not be given a complete go-by since it can be used to corroborate the evidence of the person lodging the same. In the judgment of this Court titled *Baldev Singh vs. State of Punjab* reported in (1990) 4 SCC 692, it was held that as far as the evidentiary value of the FIR is concerned it can only be used to for

corroboration of its maker, but the FIR can not be used as substantial evidence or corroborating a statement of third party. A

27. On careful examination of the deposition of PW-42, Ashwathappa, it is found that even though he had denied lodging of complaint with the police, but on examination of deposition of PW-56, Suresh Naidu, CPI Ashoknagar P.S., it is found that he has stated that PW-42, Ashwathappa, had come to the police station along with a typed complaint, which was then registered and FIR was lodged. Subsequently it was sent to the court of XI Additional Chief Metropolitan Magistrate, Bangalore. Thus it is not possible on account of the above said discrepancies in the evidence to ascertain the origin of the typed complaint. Thereby we can not totally negate the possibility of the complaint being dictated by the company officials. Moreover there is no secondary evidence led to ascertain the veracity of the FIR. Under such circumstances it would not be correct for us to wholly place our reliance on the same. B C D

28. Learned counsel for the appellants then contended, if FIR and dying declarations are discarded, then nothing would survive to hold the appellants guilty for commission of serious offence. It was also submitted that under Section 380 of the CrPC, Court has every power and jurisdiction to examine, re-appreciate and evaluate the evidence available on record and then only to record either finding of guilt or acquittal. E F

29. It was also brought to our notice that in the application for remand filed on 9.4.1999, no mention had been made with regard to recording of dying declaration of Kumari Sinija. Correctness and legal sanctity of the said dying declarations are challenged on the grounds that they were not in question-answer form and endorsement made by doctors at the end of the statements that they were mentally fit is not the requirement of law for proving the dying declarations. G

30. On the other hand, learned counsel for respondent M/ H

- A s Anitha Shenoy and Rashmi Nandakumar strenuously  
 contended that trial court had properly appreciated the evidence  
 available on record and thereafter only, convicted seven  
 accused. In appeal in the High Court, five more have been  
 found guilty for commission of offences mainly on the basis of  
 B dying declarations of Kumari Sinija, and Mrs. Nagarathna, who  
 had categorically named these five accused, ultimately having  
 succumbed to burn injuries sustained by them. Thus, their  
 statements recorded under Section 161 CrPC, after their death  
 would be treated as dying declarations and the High Court  
 C committed no error of law in doing so.

31. It was contended that all the accused were already  
 known to the witnesses and they had been working either in  
 the BPL or used to participate in protest of their demands. Thus,  
 holding of any identification parade in the facts and  
 D circumstances of the case was not required. They have further  
 denied that photographs were already shown to them before  
 they were identified in the dock in court. It was further submitted  
 by her that mere declaration of the lodger of the FIR hostile,  
 will not completely wash out the prosecution case, as it would  
 E still depend on the oral evidence of the witnesses coupled with  
 the Exhibits and M.Os (Material Objects). Similarly, even if  
 dying declarations are not taken into consideration, there is still  
 sufficient material on record to show that even those five who  
 have additionally been found guilty for commission of offences  
 F as mentioned hereinabove by the High Court, cannot be  
 acquitted.

32. It has also been submitted that it is neither the  
 requirement of law nor any legal obligation to record the cause  
 of incident by the Doctor at the time of admission of injured in  
 G the Hospital in M.L.C. PW1 to PW15 have consistently  
 deposed names of the accused in one voice, who were cross-  
 examined at length yet nothing could be elicited from them so  
 as to discard their evidence. In other words, it has been  
 contended that judgment and orders of conviction passed by  
 H



C. MAGESH AND ORS. v. STATE OF KARNATAKA 639  
[DEEPAK VERMA, J.]

the trial court for seven accused and confirmed by High Court and additionally, finding five more accused guilty by the High Court, cannot be interfered with and the appeal filed by four of them deserves to be dismissed. A

33. As already mentioned herein above, no Appeal has been preferred by the State against that part of the order by which others have been acquitted by the Trial Court and confirmed by High Court. Thus, in these Appeals, we are concerned with the conviction of 11 accused only i.e. A1-R.Srinivas, A2-T. K.S. Kutti, A15- N.V. Ravi @ Ravinanda Kumar, A25-R. Ramesh, A32-Dharanesh Kumar, A33-S.Jagadish and A46-Sharath Kumar convicted by both Trial Court and High Court and A4-C. Magesh, A8-Edwin Noyal, A16-S.Babu, A34-Nagaraj though acquitted by Trial Court but convicted by High Court. B C D

34. We would first like to take up Criminal Appeal No. 1028 of 2008 preferred by four of those accused who have been found guilty for commission of offences under Section 302 and other allied sections by the High Court solely on the strength of two dying declarations of Sinija and Nagarathna marked as Exh. P29 and P30. E

35. At the outset, for deciding the said appeal, it is first to be ascertained whether Exh. P29 and P30 can partake the character of dying declarations so as to hold those four guilty for commission of the said offences. F

36. It is not in dispute that it was their statement recorded under Section 161 of the Cr.P.C. in the hospital by I.O. There was no need at that time to have obtained their signatures on the same as it is prohibited by Section 162 of the Cr.P.C. Doctors have certified that they were in a fit state of health to have their statements recorded only at the end of recording of their statements. No such certificate has been issued by the Doctors at the time their statement had commenced to be recorded. It is not in question-answer form. G H

A        37. The incident having taken place as far back as on  
25.3.1999 in a metropolitan city like Bangalore, where several  
magistrates were available, prosecution never thought of  
getting their dying declarations recorded in presence of a  
magistrate. There is nothing on record even to suggest that from  
B        25.3.1999 to 11.4.1999 when Sinija finally succumbed to the  
injuries and between 25.3.1999 to 22.4.1999 when Nagarathna  
succumbed to the injuries magistrate was not available. Even  
if prosecution would have put forth such a ground it had only to  
be discarded at the threshold as the same is inconceivable.

C        38. We have also not appreciated the manner in which the  
High Court in a cryptic manner, without properly discussing the  
legal and factual aspect of the matter held the aforesaid 4  
accused guilty for commission of the said offence in addition  
to the conviction of seven accused who had already been found  
D        guilty by trial court. After all, it was an appeal by the State  
against order of acquittal recorded by trial court.

E        39. In an appeal preferred under Section 378 of the CrPC,  
no doubt, it is true that High Court has ample powers to go  
through the entire evidence and to arrive at its own conclusion  
but before reversing the finding of acquittal, following conditions  
should be always kept in mind namely,

F        (i) the presumption of innocence of the accused should be  
kept in mind;

(ii) if two views of the matter are possible view favourable  
to the accused should be taken;

G        (iii) the appellate court should take into account the fact  
that the trial judge had the advantage of looking at the  
demeanor of witness; and

H        (iv) the accused is entitled to benefit of doubt. But the doubt  
should be reasonable that is the doubt which rational  
thinking man with reasonable honesty and consciously  
entertained, more so, when the larger question with regard

C. MAGESH AND ORS. v. STATE OF KARNATAKA 641  
[DEEPAK VERMA, J.]

to treating Exh. P29 and Exh. P30 as dying declarations itself had become questionable. A

40. There was no occasion for the High Court to have passed order of conviction on the same, that too without removing the doubts with regard to correctness, legality and propriety of two dying declarations. B

41. Thus, in our considered opinion, Criminal Appeal No.1028 of 2008 filed by aforesaid four accused, convicted by High Court for the first time deserves to be allowed and is allowed. They be set at liberty if not required in any other case. C

42. Now, coming to the appeal of remaining 7 accused i.e. Criminal Appeal No. 1029 of 2008, we have critically gone through the evidence of PW1 to PW 15, remaining passengers of the ill-fated bus on the unfortunate date, having sustained burn injuries on account of overt acts of the accused as mentioned hereinabove. D

43. After having gone through the entire evidence critically, we have absolutely no doubt in our mind that there has been a great consistency in the evidence of PW 1 to PW15 with regard to different roles attributed to A1-R. Srinivas, he has been identified by the witnesses as one of the instigators who started shouting slogans against management of the Company and loyal workers, moreover PW- 12 & 14 have attributed "pelting of stones" on A-1 R.Srinivas A2-T.K.S. Kutti, was also attributed more or less the same role as that of A1- R Srinivas by the PWs. A15-N.V. Ravi, was correctly identified by all the witnesses, who have deposed about him. He has been attributed role of "pouring kerosene on the bus" except PW 4 & 14 did not depose about the same role played by him. He has further been attributed with the "role of shouting slogans" and "preventing remaining occupants from alighting from the bus". A32-Dharanesh has been assigned with similar role as that of A-15 with the only difference that PW2 & 11 could not identify him correctly. He has been attributed the role of "passing E F G H

- A of kerosene jars", "blocking the exit of the bus" and "p-ting of stones". A33-Jagadish has been correctly identified by all the PWs, in deposition before Court. Further majority of the witnesses have assigned him the role of "pouring of kerosene" and PW-15 also mentions that "he set the bus on fire". In
- B addition to this A-33 has been assigned the role of "pelting stones", "shouting slogans" and "blocking the exit of the bus" as well. Thus, there cannot be any escape for the aforesaid 5 accused from avoiding conviction and sentence awarded to them by Trial Court and confirmed in appeal by High Court. Even
- C otherwise, there are concurrent findings of fact recorded against them, which cannot be interfered with in this appeal.

44. However, on account of inconsistency, improper identification and in absence of specific role being attributed to A25-R. Ramesh and A46-Sharath Kumar, we are of the
- D considered view that their conviction cannot be upheld.

45. Then the question arises before us is whether a case has been made out for recording acquittal of A25-R. Ramesh and A46-Sharath Kumar. Following inconsistencies have been
- E noticed by us.

46. PW2, PW5, PW6, PW10 did not identify A25-Ramesh correctly. PW7, PW13 and PW14 did not identify him at all. PW8 identified him but does not assign any role to him. PW1, PW2, PW4, PW9, PW12, PW13, PW14, PW15 assigned him
- F the role of shouting slogans. However PW4, PW12, PW13, PW14, assigned him further role, in addition to shouting slogans. PW3, PW5 and PW11 assigned him some other roles, different from shouting slogans.

47. Coming to the case of A46-Sharath Kumar, all have identified him correctly but PW3, PW4, PW5 PW6, PW8, PW10, PW12 and PW14 did not depose about him at all.
- G

48. The majority of witnesses assigned him the role of assaulting with clubs. However, PW9, PW13 assigned different
- H

role to him but Doctor's evidence does not disclose anywhere that the injuries sustained by any of the injured persons could have been caused with clubs, meaning thereby there was no mention with regard to cause of injury. Thus, he can also be given benefit of doubt. In view of the aforesaid inconsistencies available on record, it would not be safe to convict him. A  
B

49. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasise, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled *Suraj Singh v. State of U.P.* reported in 2008 (11) SCR 286 has held:- C

*"The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy. The probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."* D

50. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. E  
F

51. As has already been mentioned hereinabove A6-P.A. Bharathkumar has not preferred any appeal as his whereabouts are not known. Thus, these appeals have no concern with his conviction. G

52. Normally, it is not in practice to consider each and every H

- A individual evidence available; however we had to make an exception in this case since it involved certain alleged odious deeds of few individuals. In order to impart full and substantial justice, we made this exception. Criminal jurisprudence entails that a thorough appreciation of records needs to be done in order to do complete justice.
- B

53. It would be apt to mention herein that interlocutory applications were filed by some of the accused in the trial court under Sections 91 and 233 of the Cr.P.C. The applications mainly pertained to securing of certain materials, documents and witnesses to establish their defence. At the very outset it is pertinent to mention that in this particular matter there has been an inordinate delay, despite the High Court granting six months for the completion of the trial and thereafter another three months' extension was sought by the trial court. As per Section 233, the trial court can refuse securing of defence evidence if it so feels that the same is being done to further delay the trial. The trial court had considered the judgment of the High Court of Karnataka in CrI. Rev. Petition No. 677/03, touching almost the identical issue, where in it was held that the defence evidence has to be led without summoning of any documents and the counsel for the defence has conceded to the said point. Thus, we are of the opinion that trial court has committed no error in rejecting the above applications. Even otherwise there seems to be no prejudice caused to the accused by mere rejection of these applications.
- C
- D
- E
- F

54. Only in the light of the aforesaid we have considered the case of each of the accused independently.

55. In Criminal Appeal No. 1029 of 2008, out of the seven accused appellants, we hereby confirm the conviction and sentence as awarded to them by the trial court and confirmed by High Court for the following 5 accused, viz., A1-R.Srinivas, A2-T.K.S. Kutti, A15-N.V.Ravi, A32-Dharanesh, A33-Jagadish, but record acquittal of A25-R. Ramesh and A46-Sharath Kumar.
- G

H

C. MAGESH AND ORS. v. STATE OF KARNATAKA 645  
[DEEPAK VERMA, J.]

They be released forthwith if not required in any other criminal case. A

56. For the reasons recorded above, Crl. Appeal No. 1028 of 2008 filed by aforesaid 4 accused namely, A4-C.Magesh, A8 - Edwin Noyal, A16 - S Babu and A34- Nagraj is hereby allowed and they are acquitted. They be set at liberty forthwith, if not required in any other criminal case. B

57. Thus, the appeals stand allowed to the aforesaid extent only as per the reasons recorded above. Judgments and orders of the Trial Court and High Court stand modified accordingly. C

D.G.

Appeals disposed of.