ABDUL RAZAK & ORS. A

v.

THE STATE OF KARNATAKA REP. BY SHO, HUTTI PS

(Criminal Appeal No.795 of 2015 etc.)

MAY 15, 2015 B

[T. S. THAKUR, R. K. AGRAWAL AND ADARSH KUMAR GOEL, JJ.]

Penal Code, 1860: s.304 Part II – Appeal against C
conviction – Allegation against appellants that they caught hold of the victim-deceased, tied his hand behind his back and assaulted him with a club of stone resulting in injuries on his head and other parts of body leading to his death – Trial court held that the brother and mother of the deceased D
claiming to be eye witnesses instead of untying the deceased who was in a seriously injured condition returned home even after the assailants had fled away from the spot and that such conduct was unnatural and based on such finding acquitted the appellants – High Court reversed the finding of acquittal E
of trial court – On appeal, held: Conduct of prosecution witnesses did not inspire confidence not only because they did not interfere when the deceased was being assaulted but also because post the event, the witnesses did practically F
nothing to help the injured who was left to die with his hands tied for over 4 hours without any succor coming from any quarter – The prosecution case that mother and brother waited for police to reach and untie the hands of deceased is also not convincing – Investigating officer admitted that the G
report received by him about the incident was destroyed by him after fardbeyan of PW-1 was recorded on the spot – It is difficult to appreciate how Investigating officer could have destroyed the original complaint given to him by PW-1 – Conclusion by trial court that the prosecution had not proved H

A *the charges against the appellants beyond reasonable doubt was correct.*

Allowing the appeals, the Court

B **HELD: 1. The trial court appraised the version given by the two witnesses but came to the conclusion that the same was unreliable. The trial court gave more than one reason for its view. In the first place, the trial court found the conduct of PWs 1 and 4 who are closely related** C **to the deceased unnatural. The trial court held that if their version that they were witnesses to the occurrence was correct, there was no reason why they would not intervene to rescue the deceased from the clutches of the assailants. More importantly, the trial court held that** D **PW1, brother and PW4, mother of the deceased, instead of untying the deceased who was in a seriously injured condition, returned home even after the assailants had fled away from the spot. What is worse is that even after returning home PWs. 1 and 4 accompanied by PW-3 who** E **is none other than the father of the deceased had gone back to the place of occurrence where they found the deceased in an injured condition with his hands tied behind his back, his leg broken/fractured and eyes burning with chilly powder, but made no effort to untie** F **his hands or rush him to the hospital for treatment. Instead PW-3 father of the deceased went to lodge a report with the police leaving the injured in a hapless condition on the spot where he was lying only to wait till 10.00 p.m. at night for the police to arrive. If the** G **prosecution version is correct, it is only after instructions were given by the Sub-Inspector to PW-1 to untie the hands of the deceased that he does so. The injured was then put in the police Jeep for being taken to the hospital** H **where he reached only after he had died. The trial court found the story, the sequence of events and the conduct**

of the prosecution witnesses who claim to be eye witnesses to the incident to be wholly unnatural and unreliable. The trial court was perfectly justified in taking that view. The High Court has made light of these aspects and thereby fallen in an error. [Para 9] [7-A-H; 8-A]

2. PW-19 admitted that the report received by him about the incident was destroyed by him after the fardbeyan of PW-1 was recorded on the spot. This implies that the first version regarding the incident was totally obliterated by the Investigating Officer and Exb. P-1 recorded in its place. This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely demolishing the prosecution case and rendering its version wholly unacceptable. The conclusion drawn by the trial court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was correct. [Para 10] [8-G-H; 9-A-B, E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 795 of 2015.

From the Judgment and Order dated 19.11.2012 of the High Court of Karnataka, Circuit Bench at Gulbarga in Criminal Appeal No. 1926 of 2007.

WITH

Crl. A. No. 796 of 2015

H. Chandra Sekhar, Anwesha Saha, Sharanagouda Patil, S-legal Associates for the Appellants.

Anitha Shenoy, Ritwik Parekh for the Respondents.

The Judgment of the Court was delivered by

A **T.S. THAKUR, J.** 1. Leave granted.

2. These appeals by special leave call in question a judgment and order dated 19th November, 2012 passed by the High Court of Karnataka at Gulbarga whereby Criminal B Appeal No.1926 of 2007 has been allowed, judgment and order of the Trial Court acquitting the appellants set aside, and the appellants convicted and sentenced to undergo rigorous imprisonment for a period of seven years under Section 304 Part II read with Section 34 IPC. A fine of Rs.5,000/- each and C a default sentence of imprisonment for a period one year has also been awarded to the appellant.

3. The prosecution case in brief is that three years before the date of incident CW-11 Md. Shafi sold two acres of land to D CW-2 Lingappa. The accused-appellants herein were upset by the said sale transaction and are alleged to be picking up quarrels with CW-2 besides causing obstruction in the free flow of water to the fields owned by the complainant from a distributory at Narayanapur. The appellants are alleged to be E insisting that they will let water for irrigation flow only if the land purchased by the complainant was transferred in their favour. Lingappa was on that count coerced to sell the said two acres of land purchased from Mohd. Sahfi to accused-Abdul Razak. Despite this, however, the obstruction in the flow of water F continued as the appellants started demanding money for letting the water flow. It was in the above background that on 19th September, 2006 at about 7.30 p.m. the appellants are alleged to have caught hold of Lingappa's son Basavaraj-deceased while he was returning home, tied his hands behind G his back splashed chilly powder on his face and assaulted him with a club of stones causing injuries on his head and other parts of body leading to his death. The incident is alleged to have been witnessed by Hanumantha (PW-1), brother of the deceased, and Mannamma (PW-4), mother of the deceased. H In connection with the incident Crime No.168 of 2006 was

registered at Hutti Police Station for an offence punishable under Section 302 read with Section 34 IPC against the appellants herein. A

4. A charge-sheet, after completion of investigation, was filed against the appellants before the jurisdictional Court for their committal. The appellants pleaded not guilty before the Additional Sessions Judge, Fast Track Court-II, Raichur, to whom the case was made over for trial. At the trial the prosecution examined as many as 22 witnesses besides placing reliance upon several documents produced on its behalf. B C

5. In their statements under Section 313 Cr.P.C., the appellants denied the incriminating circumstances appearing against them, but led no evidence in their defence. The Trial Court on an appraisal of the prosecution evidence came to the conclusion that the prosecution had failed to bring home the guilt of the accused for the offences allegedly committed by them. Aggrieved by the order of acquittal the State preferred an appeal before the High Court of Karnataka which was heard and allowed by a Division Bench of that Court holding the appellants guilty of the offence punishable under Section 304 Part II read with Section 34 of the IPC and sentencing them to undergo imprisonment for a period of seven years with fine and default sentence mentioned above. The present appeal assails the correctness of the said order. D E F

6. We have heard learned counsel for the parties who have taken us through the orders passed by the courts below.

G

7. The prosecution case primarily rests on the depositions of Haumantha (PW-1), brother of the deceased, who was also the first informant and Mannamma (PW-4), mother of the deceased both of whom claimed to be eye witnesses to the occurrence. H

A 8. In his deposition before the Trial Court PW-1 refers to the purchase of land and resultant enmity between the appellants and the complainant party. He also refers to the dispute regarding the irrigation channel and the civil litigation between the two sides before the Sindhanaur Court. According
B to the witness, on the fateful day the deceased-Basavaraj had gone to a restaurant (dhaba) owned by PW-6 Basappa. At about 6.00 p.m. he heard Basavaraj shouting for help whereupon he and his mother PW-4 rushed towards the land of one Swami from where they saw Pathe Sab (A-3) throwing
C chilly powder towards Basavaraj whose hands had been tied behind his back. He also saw A-3 assaulting deceased-Basavaraj on the head and A-2 and A-4 also doing so with a stick and stone. When he stepped forward to rescue Basavaraj, his mother-PW4 dissuaded him from doing so. The accused
D persons then left the spot whereafter the witness and his mother went near the injured but returned home. Sometime later they again went to the field with PW3-Lingappa who too saw his son Basvaraj in an injured condition. PW-3 is then
E said to have gone to Gurgunta police post to inform the police about the incident and returned at about 6.00 p.m. It was only at about 10.00 p.m. that a Sub Inspector from Hutti police station came to the spot in a Jeep. PW-1 Hanumantha presented to him a written complaint about the incident. He
F also narrated the incident to the police Sub Inspector which was reduced to writing by him and treated as the first information report marked as Ex.P-1 at the trial. The witness further states that it was the ASI of police who directed him to untie the ropes from the hands of deceased-Basavaraj which
G he accordingly did. Deceased-Basavaraj was then shifted in an injured condition to Government Hospital at Lingasugur. PWs. 1 and 3 also accompanied the injured, but the injured Basavaraj breathed his last on the way. The deposition of PW-4 mother of the deceased-Basavaraj is also on the same
H lines.

9. The Trial Court appraised the version given by the two witnesses but came to the conclusion that the same was unreliable. The Trial Court gave more than one reason for its view. In the first place, the Trial Court found the conduct of PWs 1 and 4 who are closely related to the deceased unnatural. The Trial Court held that if their version that they were witnesses to the occurrence was correct, there was no reason why they would not intervene to rescue the deceased from the clutches of the assailants. More importantly, the Trial Court held that PW1, brother and PW4, mother of the deceased, instead of untying the deceased who was in a seriously injured condition, returned home even after the assailants had fled away from the spot. What is worse is that even after returning home PWs. 1 and 4 accompanied by PW-3 who is none other than the father of the deceased had gone back to the place of occurrence where they found the deceased in an injured condition with his hands tied behind his back, his leg broken/ fractured and eyes burning with chilly powder, but made no effort to untie his hands or rush him to the hospital for treatment. Instead PW-3 father of the deceased went to lodge a report with the police leaving the injured in a hapless condition on the spot where he was lying only to wait till 10.00 p.m. at night for the police to arrive. If the prosecution version is correct, it is only after instructions were given by the Sub-Inspector to PW-1 to untie the hands of Basavaraj that he does so. The injured Basavaraj was then put in the police Jeep for being taken to the hospital where he reached only after he had died. The Trial Court found the story, the sequence of events and the conduct of the prosecution witnesses who claim to be eye witnesses to the incident to be wholly unnatural and unreliable. The Trial Court was, in our opinion perfectly justified in taking that view. The conduct of the prosecution witnesses does not inspire confidence not only because they did not intervene when Basavaraj was being assaulted but also because post the event, the witnesses did practically nothing to help the

A unfortunate soul, who was left to die with his hands tied for over 4 hours without any succor coming from any quarter. The High Court has made light of these aspects and thereby fallen in an error.

B 10. Although the accused have alleged that Hanumantha PW-1 who had a dispute over money and land with the deceased was actually responsible for causing the injuries sustained by him, yet even assuming that there was no such bad blood between the two brothers, both PW-1 and his mother C PW-4 would have in the ordinary course rushed to intervene to save the deceased from being belaboured. No such attempt was made by any one of them nor even by PW-5 who happens to be chance witness. So much so, they do not make any attempt to help the injured after the alleged assailants had fled D from the spot. It is most unnatural for PW-4 mother and PW-1 brother of the deceased to return home leaving the injured in a hapless condition with his hands tied behind his back. Equally unnatural is the conduct of the father of the deceased who along with PW-1 and PW-4 came to the spot where the deceased E was lying injured but did nothing to help him. Instead, PW-4 the father of the deceased leaves the deceased in a critical condition to report the matter to the police. What makes the entire story unacceptable is that the mother PW-4 and the son F PW-1 wait till 10.00 p.m. when the police arrive to untie the hands of the deceased. That is not all. After the police arrived, PW-1 presents a written complaint about the incident. His statement (fardbeyan) is recorded by the Sub-Inspector in which Basavaraj is said to have died, meaning thereby that G Basavaraj was not alive when the police reached the spot. What is amazing is the admission made by PW-19 that the report received by him about the incident was destroyed by him after the fardbeyan of PW-1 was recorded on the spot. This implies that the first version regarding the incident was H totally obliterated by the Investigating Officer and Exb. P-1

recorded in its place. It is difficult to appreciate how PW-19 could have destroyed the original complaint given to him by Hanumantha PW-1. This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely demolishing the prosecution case and rendering its version wholly unacceptable. The only inference which can, in the circumstances, be drawn is that Basavaraj was done to death and his dead body left at the spot from where it was picked-up by the police after they arrived around 10.00 p.m. The complaint presented to Sub-Inspector perhaps did not say what the police intended to present as its case. The same was, therefore, destroyed and a new version brought in, according to which Basavaraj was shown to be alive when the police reached the spot. The fact of the matter, however, appears to be that Basavaraj was dead when his brother, mother and father discovered the body, for otherwise there was no question of the parents of the deceased and his brother leaving him alone in the condition, which they are alleged to have done. The conclusion drawn by the Trial Court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was, in our opinion, correct, no matter the judgment and order is not as happily worded as it ought to be, especially coming from a senior judicial officer of the level of Additional Sessions Judge. Inasmuch as the High Court has overlooked all these aspects, we are constrained to set aside the order passed by it and acquit the appellants of the charges framed against them. We, accordingly, allow this appeal, set aside the judgment and order passed by the High Court and acquit the appellants of the charges framed against them. The appellants shall be released from custody forthwith if not required in connection with any other case.

Devika Gujral

Appeals allowed.