Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 1366 OF 2007**

Shivasharanappa and others ... Appellants

Versus

State of Karnataka ..Respondent

With

**CRIMINAL APPEAL NO. 508 OF 2007**

Jagadevappa and others ... Appellants

Versus

State of Karnataka and others ..Respondents



**J U D G M E N T**

**Dipak Misra, J.**

The two appeals have been preferred by the accused- appellants against the common judgment dated 28.10.2005 in Criminal Appeal No. 937/1999 by the High Court of Karnataka at Bangalore whereby the Division Bench has overturned the judgment of acquittal passed by the learned Ist Addl. Sessions Judge, Gulbarga, in S.C. No. 100/1995 acquitting all the accused persons of the offences under Sections 143, 147, 448, 302, 201 read with Section 149 of the Indian Penal Code (for short 'IPC') and convicted the accused-appellants for the said offences. For the offence punishable under Section 302 read with Section 149 of IPC, each of them was sentenced to undergo imprisonment for life, and to pay a fine of Rs.5,000/-, in default of payment of fine, to undergo rigorous imprisonment for a period of one year. In respect of other offences, no separate sentence was imposed by the High Court.

2. Sans unnecessary details, the prosecution case is that the deceased, Karemma, was the wife of Mallinath, son of Ningawwa. After the unfortunate demise of Mallinath, dispute arose between Ningawwa, the mother-

in-law of the deceased, and deceased Karemma, relating to certain landed property, which initially stood in the name of Mallinath, and subsequently, the entries were made in name of deceased Karemma as she was in possession. The dispute relating to property which is dear to the human race as it stands in contradistinction to poverty, which is sometimes perceived as a cause of great calamity, eventually led, as alleged by the prosecution, to morbid bitterness. In the intervening night of 12th and 13th June, 1994, accused- Ningawwa, along with her relatives formed an unlawful assembly in front of the house of Shankarappa, father of the deceased, with the common object to commit the murder and in execution of the said common object, they trespassed into the house of Shankarappa during his absence where deceased Karemma was sleeping with her daughter, Jagadevi. After entering into the house, the accused persons assaulted the deceased, threatened the eleven year old girl, Jagadevi, and forcefully took the deceased away. After the mother was forcibly removed from the house, Jagadevi proceeded to inform her grandmother, Chandamma, who,

at that juncture, was residing in the house of another daughter. Being informed by the granddaughter, Chandamma came to the house of the deceased, searched for her daughter, but, eventually, it turned to be an exercise in futility.

3. As the prosecution story would further uncurtain, the accused persons committed murder of the deceased Karemma and threw her dead body in a well situate at Benur village. The dead body was found on 15.6.1994 and thereafter, one Dasharath, PW-10, informed the fact at the concerned police station. On 16.6.1994, the Investigating Officer went near the well, removed the dead body of the deceased from inside the well, held the inquest of the dead body as per Ext. P-7, conducted the spot panchnama vide Ext Nos. 8 and 10, seized certain articles, recorded statements of certain other witnesses and, ultimately, about 8.00 P.M., registered suo motu case forming the subject matter of Crime No. 29/94 at Nelogi Police Station. After completing the investigation, the prosecution submitted the charge-sheet before the competent Court

which, in turn, transmitted the same to the Court of Session for trial.

4. The accused persons abjured their guilt on ground of false implication and claimed to be tried.

5. In course of trial, the prosecution examined 17 witnesses, brought on record Exts. P-1 to P-17 and M.Os. 1 to 9. The defence chose not to adduce any evidence, but got certain portion of the statements of PW-7 and PW-10 marked during the cross-examination. During the pendency of the trial, the accused Ningawwa, the mother-in-law of the deceased expired, as a consequence of which, the trial abated against her.

6. The learned trial Judge framed four principal points for consideration, namely, (i) whether the accused persons formed an unlawful assembly with the common object to commit the murder of Karemma; (ii) whether the accused persons had trespassed into the house of Shankarappa; (iii) whether the accused persons had thrown the dead body into the well situate at Benur village for causing disappearance of the evidence; and (iv) whether the

accused persons had any motive to commit the murder. After analyzing the evidence on record, the learned trial Judge came to hold that the death was homicidal in nature; that from the complaint Ext. P-6 lodged by PW-10, Dasharath, nothing was relatable how the deceased had fallen into the well; that it was not safe to record a conviction on the sole testimony of Jagadevi, PW-9, since there were number of circumstances due to which her version could not be given credence to; that the conduct of Chandamma, PW-7, could not be accepted to be in conformity with the expected normal human behaviour and, in fact, was quite unnatural since she did not intimate anyone about the incident after coming to know about it from her granddaughter; and that it was not safe to convict the accused persons for the offences alleged, regard being had to the totality of circumstances and, accordingly, acquitted them of all the charges.

7. The High Court, after entertaining the appeal, opined that there was a property dispute in existence between the deceased and her mother-in-law; that motive for commission of the crime had been brought home by

the prosecution; that at the time of occurrence, Jagadevi, daughter of the deceased, was staying with the deceased; that the father of the deceased, Shankarappa, had left the village along with his son and was residing at Sholapur during the relevant time of the incident; that Chandamma, the wife of PW-6, who had been staying in the house of another daughter at the relevant time was informed about the occurrence by PW-9; that the learned trial Judge had erred by discarding the testimony of PW-7 on the ground that she had not informed about the incident to anyone in the village; that at the time when the deceased was removed forcibly from the house, PW-7 could not have anticipated that the deceased would be done to death and, therefore, they kept on searching for the deceased; that PW-9 had the occasion to see the accused persons as there was source of light which had been inappositely disbelieved by the learned trial Judge; that Jagadevi, an eleven year old girl, could not have raised hue and cry because of the threat given by the accused persons; that the evidence of PW-9 deserved to be given total credence and, hence, could safely be relied upon; that there was no

reason on the part of PW-9 to falsely implicate the accused persons including her paternal grandmother Ningawwa; that the reactions of PW-7 and PW-9 should not have been regarded as unnatural by the trial Court because every person reacts to a situation in a different manner, for human behaviour differs and varies from person to person depending upon the situation; that as PW-7 and PW-9 were terrified of the accused persons, they could not lodge the complaint against them and it got support from the fact that only after the recovery of the dead body, the Investigating Officer registered a suo motu case; that though there had been some delay in recording the statements of certain witnesses by the Investigating Officer, yet that should not have been regarded to have created a dent in the prosecution case; and that the appreciation and analysis of the evidence by the learned trial Judge was not correct and the view expressed by him not being a plausible one deserved to be reversed. Being of this view, the High Court unsettled the judgment, convicted the accused-appellants and imposed the sentence as has been stated hereinbefore.

8. We have heard Mr. P.R. Ramasesh, learned counsel for the appellants, and Ms. Anitha Shenoy, learned counsel for the respondent-State.

9. The first submission of Mr. Ramasesh, learned counsel for the appellants, is that the High Court has erroneously unsettled the decision of the trial court by holding that the view expressed by the learned trial Judge is unreasonable. It is his further submission that the High Court has reviewed the entire evidence in an unusual manner which is impermissible. Ms. Anita Shenoy, learned counsel for the State, would contend that the appellate power of the High Court against a judgment of acquittal cannot be curtailed if the finding based on appreciation of evidence is totally perverse. It is urged by her that the evidence of the sole eye witness, Jagadevi, PW-9, has been rightly relied upon by the High Court.

10. At this juncture, we may refer with profit to the dictum in ***Shivaji Sahebrao Bobade and another v. State of Maharashtra***[1], wherein a three-Judge Bench has opined thus: -

[1] AIR 1973 SC 2622

> ".....there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage of our jurisprudence owes to individual liberty constrains the higher court not to upset the finding without very convincing reasons and comprehensive consideration."

11. Similar view has been expressed in ***Girija Prasad (dead) by LRs. v. State of M. P***.[2] and ***State of Goa v. Sanjay Thakran***[3].

12. From the aforesaid authorities, it is clear as day that while dealing with an appeal against acquittal, the High Court has a duty to scrutinize the evidence and sometimes it is an obligation on the part of the High Court to do so. The power is not curtailed by any of the provisions of the Code of Criminal Procedure. It is also worthy to note that while reappreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be

[2] (2007) 7 SCC 625
[3] ( 2007) 3 SCC 755

borne in mind. The said aspects have been encapsuled in ***Chandrappa* v. *State of Karnataka*[4]** as under: -

> "(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

Quite apart from the above, the High Court is required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal. It has been so stated in ***State of Rajasthan* v. *Shera Ram @ Vishnu Dutta*[5].**

13. From the analysis of the High Court, it is discernible that it has not accepted the appreciation of evidence made by the learned trial Judge pertaining to the

[4] (2007) 4 SCC 415
[5] (2012) 1 SCC 602

testimonies of PWs-7 and 9 and has further based its reasoning on the bedrock that there was a property dispute between the deceased and her mother-in-law which provided motive for commission of the crime. The High Court has also expressed the view that conviction can be recorded on the basis of the sole testimony of a child witness. It is not in dispute that PW-9, Jagadevi, was eleven years old at the time of the occurrence. In ***Dattu Ramrao Sakhare and others*** **v.** ***State of Maharashtra***[6], while dealing with the reliability of witness who was ten years old, this Court opined that a child witness, if found competent to depose to the facts and reliable, such evidence could form the basis of conviction. The evidence of a child witness and the credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. Thereafter, the Court proceeded to lay down that there is no rule or practice

[6] (1997) 5 SCC 341

that in every case the evidence of such a witness should be corroborated before a conviction can be allowed to stand but, as a rule of prudence, the court always finds it desirable to seek the corroboration to such evidence from other dependable evidence on record.

14. In ***Panchhi and others* v. *State of U.P.***[7], it has been held thus: -

> "Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law (vide *Prakash* v. *State of M.P.*[8], *Baby Kandayanathil* v. *State of Kerala*[9], *Raja Ram Yadav* v. *State of Bihar*[10] and *Dattu Ramrao Sakhare* v. *State of Maharashtra* (supra)."

15. Similar view has been expressed in ***State of U.P.* v. *Ashok Dixit and another***[11].

16. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record

[7] (1998) 7 SCC 177
[8] (1992) 4 SCC 225
[9] 1993 Supp (3) SCC 667
[10] (1996) 9 SCC 287
[11] (2000) 3 SCC 70

a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, applies to a child witness who is competent and whose version is reliable.

17. The trustworthiness of the version of PWs-7 and 9 are to be tested on the aforesaid touchstone and it is to be seen whether the other circumstances do support the prosecution case or to put it differently, whether the evidence brought on record proves the guilt of the accused persons beyond reasonable doubt. PW-9, the daughter of the deceased, has testified to have witnessed the accused appellants being exhorted by her paternal grandmother, Ningawwa, who had trespassed into the house and forcibly took out her mother. She had, as is reflected, immediately rushed to the house of her maternal grandmother and disclosed it to her. It has been elicited in the cross-examination that her maternal

grandmother was staying with her another married daughter and both the daughter and son-in-law were at home. She did not choose it appropriate to inform them about the incident. It is manifest, the grandmother, PW-7, came with her granddaughter, PW-9, to the house of the deceased and tried to search for her. Despite the search becoming a Sisyphean endeavour and non effective, she chose to remain silent and did not inform any one. The High Court has accepted the version of these two witnesses on two counts, namely, that the daughter was threatened and both of them were in state of fear. The learned trial Judge, on the contrary, had found the aforestated conduct of both the witnesses to be highly unnatural. In ***Gopal Singh and others* v. *State of Madhya Pradesh***[12], this Court did not agree with the High Court which had accepted the statement of an alleged eye witness as his conduct was unnatural and while so holding, it observed as follows: -

> "We also find that the High Court has accepted the statement of Feran Singh, PW 5 as the eye witness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have

[12] (2010) 6 SCC 407

> rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety."

18. In ***Rana Partap and others*** **v.** ***State of Haryana***[13], while dealing with the behaviour of the witnesses, this Court has opined thus: -

> "Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

19. In ***State of H.P.*** **v.** ***Mast Ram***[14], it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context

[13] (1983) 3 SCC 327
[14] (2004) 8 SCC 660

of given facts and circumstances of the case. Similar view has been reiterated in ***Lahu Kamlakar Patil and anr.* v. *State of Maharashtra*[15].**

20. Thus, the behaviour of witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance. In the case at hand, PW-9 was given a threat when her mother was forcibly taken away but she had the courage to walk in the night to her grandmother who was in her mid-fifties. After coming to know about the incident, it defies commonsense that the mother would not tell her other daughter and the son-in-law about the kidnapping of the deceased by her mother-in-law. It is

[15] 2012 (12) SCALE 710

interesting to note that the High Court has ascribed the reason that PW-7 possibly wanted to save the reputation of the deceased-daughter and that is why she did not inform the other daughter and son-in-law. That apart, the fear factor has also been taken into consideration. Definitely, there would have been fear because, as alleged, the mother-in-law had forcibly taken away the deceased, but it is totally contrary to normal behaviour that she would have maintained a sphinx-like silence and not inform others. It is also worthy to note that she did not tell it to anyone for almost two days and it has not been explained why she had thought it apt to search for her daughter without even informing anyone else in the family or in the village or without going to the police station. In view of the obtaining fact situation, in our considered opinion, the learned trial Judge was absolutely justified in treating the conduct of the said witnesses unnatural and, therefore, felt that it was unsafe to convict the accused persons on the basis of their testimony. It was a plausible view and there were no compelling circumstances requiring a reversal of the judgment of

acquittal. True it is, the powers of the appellate court in an appeal against acquittal are extensive and plenary in nature to review and reconsider the evidence and interfere with the acquittal, but then the court should find an absolute assurance of the guilt on the basis of the evidence on record and not that it can take one more possible or a different view.

21. In view of the aforesaid premises, the appeals are allowed and the judgment of conviction passed by the High Court in Criminal Appeal No. 937 of 1999 is set aside and the accused-appellants are acquitted of the charges. As the appellants are already on bail, they be discharged of their bail bonds.



.....J.
[K. S. Radhakrishnan]

.....J.
[Dipak Misra]

New Delhi;
May 07, 2013.