



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 15TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100506 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA,
BY THE DEPUTY SUPERINTENDENT OF POLICE,
BALLARI, RURAL SUB-DIVISION, BALLARI,
REP. BY ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA, DHARWAD BENCH.

...APPELLANT

(BY SRI M.B.GUNDAWADE, ADDL.SPP.)

AND:

1. EDIGARA SURESH S/O. RUDRAPPA,
AGE: 27 YEARS, OCC: AGRICULTURIST.
2. ANJINI S/O. PEDDARAMA ADIVEPPA,
AGE: 45 YEARS, OCC: LABOUR,

BOTH ARE R/O. KENCHANAGUDDA VILLAGE,
SIRUGUPPA TALUK, DISTRICT: BALLARI-583121.

...RESPONDENTS

(BY SRI J.BASAVARAJ, ADVOCATE FOR R1;
APPEAL AGAINST R2 ABATED)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) (3) OF CR.P.C.,
PRAYING TO SET ASIDE AND GRANT LEAVE TO APPEAL AGAINST
JUDGMENT AND ORDER ACQUITTAL DATED 07.01.2020 PASSED BY
THE 1ST ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL
JUDGE, BALLARI IN S.C.NO.06/2014 FOR THE OFFENCES
PUNISHABLE U/S 302 R/W SECTION 34 OF IPC AND U/S 3(1), (X),
3(2)(V) OF SC AND ST (PREVENTION OF ATROCITIES) ACT, 1989.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

The acquittal judgment dated 07.01.2020 in Spl. Case No.6/2014 on the file of 1st Addl. District and Sessions Judge, Ballari, has given rise to this appeal by the State. Accused faced trial for the offences punishable under Section 302 r/w Section 34 of Indian Penal Code and Section 3(1)(x), 3(2)(v) of Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989 (for short, 'SC & ST Act').

2. Rank of the parties shall be referred to as per the status before the Trial Court.

3. Brief facts of the prosecution case are, on 13.09.2013 at 8.00 p.m., there was a procession of immersion of Ganesha Idol at Kenchanagudda village, Siruguppa Taluk, Ballari District. The procession was commenced at 8.00 p.m. wherein accused No.1 was holding fire stick (panju) (torch) and performing in the procession. At that time, one Hussainappa, the complainant, the deceased,



approached the accused No.1 and asked him to give fire stick to perform in the procession. The accused No.1 gave the fire stick to the hands of the deceased, who after taking it performed one round, as the fire was extinguished, he requested the accused No.1 and 2 to pour kerosene on the tip of the panju. The accused No.1 and 2 instead of pouring kerosene on the tip of the panju by taking the name of the caste that he has come to hold the fire stick in their procession, with an intention to kill him, they threw kerosene on the body of the deceased. Due to which, the deceased caught fire and sustained burn injuries, immediately he rushed to the pond and extinguished the fire. The deceased was taken to Government Hospital, Siruguppa and then to VIMS Hospital, Ballari.

3.1 The police set the law into motion by recording the statement of the deceased at the hospital as per Ex.P6 and by registering the FIR as per Ex.P4. Unfortunately on 17.09.2013, the deceased succumbed to death due to burn injuries at VIMS Hospital, Ballari. After investigation, the charge sheet laid against the accused No.1 and 2 for the



offences under Section 302 r/w Section 34 of IPC and Section 3(1)(x) of SC & ST Act. The accused pleaded not guilty of the charges. During trial, the prosecution has examined 13 witnesses as PWs.1 to 13 and got marked 12 documents as per Exs.P-1 to P-12 and 04 material objects as per MOs. 1 to 4. The accused No.1 and 2 did not led any defence evidence.

4. On appreciation of the evidence, the trial Court recorded the acquittal giving reasons that the ingredients of the offences under the SC & ST Act are not proved by the prosecution. The deceased sustained burn injuries in an accidental fire. PWs.4 and 5 who are the star witnesses have improved their version in the evidence. PW3 is not an eyewitness. The prosecution evidence could not be believed as they are not trustworthy. The evidence relied upon by the prosecution creates a doubt and the accused are entitled for the benefit of doubt.

5. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP and Sri J.Basavaraj, learned counsel for respondent No.1. Appeal against respondent



No.2/accused No.2 is abated as is reported to be dead during the pendency of the appeal.

6. It is contended by the learned Addl.SPP that the caste of the deceased is not in dispute. The deceased was dead on account of the burn injuries. The deceased has sustained burn injuries on account of strewing of the kerosene on his body. The evidence is clear that a person belonging to the SC-ST community came to participate in the procession arranged by the community people of the accused. With an intention to commit murder, the accused strewed the kerosene on the body of person of the deceased. Due to which he sustained burn injuries and succumbed to death. The Trial Court has failed to appreciate the evidence of the prosecution in this angle and given reasons which are not forthcoming from the evidence and therefore there is a case for interfering with the impugned judgment.

7. On the other hand, learned counsel for the accused has contended that there is no dispute regarding the caste of the deceased as well as the accused. The Ganesha immersion procession was conducted by the people



belonging to the caste of the accused. There was no previous ill-will between the deceased and the accused. The deceased himself voluntarily came and participated in the procession and requested for allowing him show fire stick performance which was conceded by the accused No.1. Without any objection he has offered him the fire stick, allowed him to perform in the procession. Since the deceased was inexperienced, the fire extinguished. It was the deceased who requested the accused No.1 and 2 to pour kerosene on the tip of the sticks. While pouring kerosene accidentally the deceased might have come in contact with fire. As it was a dark at 8.30 p.m., procession consisted of more than 150 members, the persons participated in the procession were all intoxicated, under such circumstances, accidental fire was broke out and the deceased sustained injuries. There is no evidence on record that the accused insulted the deceased taking the name of his caste. The fire was extinguished immediately, the deceased was taken to Government Hospital, Siruguppa and then to VIMS Hospital, Ballari and



he was provided with treatment. Even the police ascertained that the deceased suffered injuries in an accidental fire.

7.1 It is further contended that, since the deceased belonging to the SC-ST community only for the sake of gaining compensation from the Government by taking aid of PWs.3, 4 and 5, false complaint was filed by creating statement of deceased, which lead the accused to face the trial. The Trial Court has rightly appreciated the facts, the circumstances under which the deceased sustained burn injuries, the prosecution evidence is untrustworthy and extended the benefit of doubt. The Trial Court is justified in recording the acquittal and supported the impugned judgment.

8. We have perused the entire evidence. There is no dispute regarding the caste of the deceased that he belonged to the ST community. The accused belongs to the Ediga caste. There was a Ganesha immersion procession on the date of alleged incident where the persons belongs to community of accused were carrying the Ganesha idol in a procession. The accused No.1 and 2 were performing the fire



stick art which is a skilled art. The deceased voluntarily came and requested accused No.1 for an opportunity to perform fire stick art. Accused No.1 conceded and gave the fire stick to him, the deceased performed one round and for the lack of experience in turning the torch, the fire went off. Till this time, there was a clear harmony, there is no intention or motive attributed against the accused persons that they had any intention to insult the deceased taking the name of his caste or they had any intention to commit murder of the deceased.

9. The evidence on record clearly goes to show that soon after the deceased performed one round of fire stick turning, the fire extinguished. It is the deceased who requested the accused No.1 and 2 to light the fire stick by pouring kerosene. It is alleged that the accused Nos.1 and 2 instead of pouring kerosene to the tip of the stick had strewn the kerosene on the body of the person of the deceased. Contrary, the evidence speaks that, it was dark and in a huge gathering of 150 people, most of them had taken the alcohol. There was dancing to DJ sound. In that mob the



deceased got fire and sustained burn injuries. Medical evidence ratifies burn injuries sustained by the deceased and it was the cause for death.

10. Only point is whether there was an intention on the part of the accused to insult the deceased taking the name of his caste and they had intention to commit murder of the deceased.

11. The star witnesses to the prosecution case are PWs.3, 4 and 5. Law was set into motion on the basis of the statement of the deceased as per Ex.P6. PW3-Siddappa is the father of the deceased whose testimony apart from narrating the alleged incident speaks of his visit to VIMS Hospital, Ballari, his son informing him that the accused had strewn the kerosene on his body on the ground that a person belonging to lower caste came to perform the fire stick in the procession arranged by the people of the higher caste. According to him, his son succumbed to death at about 1.00 a.m. Contra we notice Ex.P6 statement of the deceased was recorded in the presence of the doctor by the police at 2.30 p.m. If the deceased died at 1.00 a.m. itself, how could his



statement was recorded at 2.30 p.m. This explains that PW3 is not the person who had visited the hospital and his son had not given any information. If really such information was given, nothing prevented him from filing the written complaint immediately. Statement given by PW3 before Investigating Officer did not point out these aspects. Though PW3 is not aware about the details of the alleged incident has made improvement in the witness box, hence his evidence lacks bonafides.

12. PW4-Devendra and PW5-Veeresh are said to be the eyewitnesses to the incident. We have carefully perused their testimony. They have admitted that there was a gathering of 300 people, it was at 8.00 to 8.30 p.m. the alleged incident took place during procession, there was a DJ music, all the persons gathering there were shouting and dancing, most of them were under the influence of alcohol.

13. The defence disputes presence of PWs.3 and 4 during incidence. The evidence of PW3 speaks of his son at VIMS Hospital at 1.00 a.m. informing about the incident. If so he ought to have mentioned the name of PW4 and 5 as



eyewitnesses but it is not so. Even in the 161 statement of PW3, nothing is mentioned about it.

14. PWs.4 and 5 claim to be the friends of the deceased, they did not file any complaint to the police. Only during the investigation, they were projected as eyewitnesses. Their evidence satisfactorily explained that a gathering of 300 people at 8.30 p.m. under the influence of the alcohol dancing to the tunes of DJ music in the Ganesha immersion procession and the deceased came in contact with the fire. If PWs.4 and 5 were present, they could have carried the deceased to the hospital, but the evidence did not speak of the same. It gives rise to doubt as to presence of PWs.4 and 5 at the place of incident. Evidence suggests that they were invented of build the prosecution version.

15. Interesting to know that when the deceased was admitted to the hospital at 1.15 a.m., the police gave a letter under Ex.P5 to the hospital authorities requesting to certify fit condition of the deceased to give statement. There is an endorsement that the deceased was fit to give the statement. Investigating Officer kept quite till 2.30 p.m. Only



at 2.30 p.m. i.e. 13.15 hours later, the statement came to be recorded. If the evidence of PW3 is to be accepted that the deceased died in the hospital at 1.00 a.m. itself, then cloud of doubt cast on the genuineness of Ex.P6, the statement of the deceased. This clearly goes to show that till 2.30 p.m. on 14.09.2013, the Investigating Officer was definite that the deceased sustained injuries in a fire accident on the previous night in the Ganesha procession while playing fire stick. Only at 2.30 p.m. in the form of statement of the deceased attribution and new aspirations came out that the accused had intention to commit his murder.

16. As we carefully scan through the evidence of the prosecution, nothing is found that there was an ill-will between the accused and the deceased at any previous point of time. Nobody in the procession objected for the deceased to show fire stick performance. It was the deceased who requested the accused to pour the kerosene on the tip of the stick as the fire was extinguished. Since everybody were under the intoxication, they were playing and dancing to the



tune of DJ music accidentally the deceased came in contact with the kerosene and sustained the burn injuries.

17. We have carefully perused the impugned judgment. The learned trial Judge has appreciated the evidence of the prosecution thread bear and came to the conclusion that the evidence is not trustworthy and held the prosecution has failed to bring home the guilt of the accused. As we re-appreciate the evidence and assess the circumstance as discussed above, we do not find any reason to interfere with the well reasoned order of the Trial Court in acquitting the accused from the charged offences. In this circumstance, appeal is devoid of merit and in the result, we pass the following:

ORDER

Appeal is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**

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