



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE C M JOSHI

CRIMINAL APPEAL NO. 1513 OF 2019 (C)

C/W

CRIMINAL APPEAL NO. 1515 OF 2019 (C)

IN CRL.A.NO.1513 OF 2019

BETWEEN:

SRI. SURYA AKASH @ SURYA
S/O.TAMILARSAN
AGED ABOUT 21 YEARS
R/O NO.1,
FOREMAN QUARTERS
CHAMPION REEF,
K.G.F-563 101.
NOW R/AT. AKASH NAGAR
NEAR SAIBABA TEMPLE
B. NARAYANAPURA
BENGALURU 560 015.

...APPELLANT

(BY SRI. VEERANNA G TIGADI, ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY
CIRCLE INSPECTOR OF POLICE
CHAMPION REEF CIRCLE POLICE STATION
TALUKA K.G.F., DISTRICT KOLAR
REPRESENTED BY
STATE PUBLIC PROSECUTOR



HIGH COURT OF KARNATAKA
BENGALURU-560 001.

...RESPONDENT

(BY SRI.VIJAYKUMAR MAJAGE, SPP II)

THIS CRIMINAL APPEAL IS FILED U/S. 374(2) CR.P.C
PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT OF
CONVICTION AND ORDER OF SENTENCE DATED 22.07.2019
PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS
JUDGE, KOLAR (SITTING AT K.G.F) IN S.C.NO.67/2018 -
CONVICTING THE APPELLANT/ACCUSED NO.3 FOR THE
OFFENCE P/U/S 120B, 302, 201 R/W 34 OF IPC.

IN CRL.A.NO. 1515 OF 2019

BETWEEN:

1. PRASANNA KUMAR @ BABLU
S/O MOHAN
AGED ABOUT 27 YEARS
R/O NO.70,
NEW WEST GILBERTS
MARIKUPPAM,
K.G.F 563 101.
2. SRI ASHOK KUMAR D @ ASHOK
S/O DEVASAGAYAM
AGED ABOUT 28 YEARS
R/O. NO.101,
G BLOCK
CHAMPION REEF
K.G.F. KOLAR 563 101.

...APPELLANTS

(BY SRI. HASHMATH PASHA, SR. ADVOCATE FOR
SRI. KARIAPPA N A, ADVOCATE FOR APPELLANT NO.1;
SRI. M. SHASHIDHARA, ADVOCATE FOR APPELLANT NO.2)



AND:

STATE OF KARNATAKA
REPRESENTED BY
CIRCLE INSPECTOR OF POLICE
CHAMPION REEF CIRCLE POLICE STATION
TALUKA K.G.F.
DISTRICT KOLAR
REPRESENTED BY
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HIGH COURT OF KARNATAKA
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PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS
JUDGE, KOLAR (SITTING AT K.G.F.) IN S.C.NO.67/2018,
CONVICTING THE APPELLANT/ACCUSED NO.1 AND 2 FOR THE
OFFENCE P/U/S 120B, 302, 201 R/W 34 OF IPC.

Date on which the appeals were reserved for judgment	20.06.2024
Date on which the judgment was pronounced	09.08.2024

THESE APPEALS, HAVING BEEN HEARD & RESERVED,
COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT
WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE C M JOSHI

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

These two appeals arise from judgment of III Additional District and Sessions Judge, Kolar (sitting at KGF) ('trial court' for short) in S.C.No.67/2018. Six accused persons faced trial for the offences punishable under sections 120B, 143, 144, 147, 148, 302, 201 and 212 of Indian Penal Code ('IPC' for short). The trial court convicted accused 1, 2 and 3 for the offences under sections 120B, 302 and 201 read with section 34 of IPC and acquitted them of the rest of the offences; likewise accused 4, 5 and 6 were acquitted of all the offences. Aggrieved by judgment of conviction, accused No.3 has preferred Criminal Appeal No. 1513/2019 and accused Nos. 1 and 2 have preferred Criminal Appeal No. 1515/2019.



2. Briefly stated the prosecution case is as follows:

On 10.12.2017 PW7-Manjula celebrated her birthday in front of her house situated near High Grounds football ground at KGF. Kiran-the deceased, participated in the function. After PW7 cut the birthday cake, Kiran smeared the cake on the face of accused No.2. For this reason both of them entangled into a fight during the course of which Kiran assaulted accused No.2. In the background of this incident accused No.2 met accused 1, 3, 4 and 5 and all of them decided to kill Kiran. On 29.12.2017 accused 1 to 5 assembled near football ground and asked Kiran over the phone to come to that place at 4.45 pm. When Kiran came to that place riding his motor cycle, in front of the house of PW7, accused No.1 gave a blow on the head of Kiran with a kaththi and accused No.4 assaulted with a machete on the



hands and fingers of Kiran. When Kiran started running to save himself, he fell down in front of the house of PW12. Then accused No.2 assaulted him with a machete and accused Nos.3 and 5 with choppers. Seeing that Kiran was still breathing, accused No. 1 dropped a stone on his head. Thereafter all the accused fled that place.

3. We have heard the arguments of Sri Veeranna G Tigadi, learned counsel for the appellant in Crl.A.No.1513/2019 and Sri Hashmath Pasha, learned counsel for appellant No.1 and Sri M.Shashidhara, learned counsel for appellant No.2 in Crl.A.No.1515/2019 and Sri Vijayakumar Majage, learned SPP-II for the respondent/State in both the appeals. We have perused the entire records including the evidence, both oral and documentary.

4. The incident occurred on 29.12.2017. PWs.1, 3, 4, 5, 8 and 9 are the eyewitnesses. The



other witnesses, namely, PW6, PW7, PW10, PW11, PW12, PW13 and PW17, were examined to establish some related circumstances. It may be noted in the beginning itself that the witnesses PW1, PW4, PW5 and PW9 did not support the prosecution in entirety and only two witnesses namely PW3 and PW8 supported the prosecution. Therefore it is necessary to scrutinize the evidence of PW3 and PW8.

5. Before referring to the oral testimonies of PW3 and PW8, the oral evidence of PW2 may be referred here. She is the mother of the deceased, but she was not an eyewitness. Her testimony discloses that when she was in the house, two boys came and told her, and her brother Purushotham and daughter about the assault on her son. Very soon she rushed to the spot and saw her son lying in a pool of blood. She gave him water to drink, but he did not survive and



breathed his last. Thereafter she made a report of the incident to the police based on which FIR came to be registered. She has also deposed about drawing up of spot panchanama as per Ex.P3 and seizure of a stone and a sickle marked MO1 and MO6 respectively. She has stated that when she was at the spot, she came to know the names of the assailants. Except to this extent, her testimony is not helpful in any way.

6. PW8-Umesh is a cable TV operator at KGF. His evidence is that on 29.12.2017 at about 4.45 p.m, he went for checking the cables drawn near Married Quarters situate near High Ground field, KGF. He saw four persons standing at that place. Identifying them in the court to be accused Nos.1 to 4 he stated further that they had sickles in their hands. He also saw the deceased namely, Kiran, coming to that place riding his motorcycle. All the four picked up quarrel with Kiran, and



accused No.2 started shouting at him. Accused No.1, Bablu assaulted Kiran with a sickle on the back of his head and as a result, there was bleeding from the head of Kiran. Accused No.2 Ashok gave a blow on the right side portion of his forehead as a result of which there was a bleeding injury. Then accused No.3 also gave a blow to Kiran with a sickle on his ear. Accused No.4 gave a blow on the back of right shoulder. By that time, a woman came and asked accused No.3 to come with her, but he refused to go with her and then assaulted the deceased with a sickle on different parts of the body. He stated that seeing the deceased still alive, the first accused took a stone and dropped on the latter's head. After this, all the four accused left that place riding the motorcycle of the deceased. While leaving that place, the sickle which accused No.3 had held fell there itself. By that time, PWs.1 to 4 came to that place. PW2 gave water to the deceased, but he



died. He came to know that the quarrel that had taken place during the birthday celebration was the reason for this incident to take place. Since PW3 did not identify the weapons in the court and did not state anything against accused No.4, he was treated hostile by the prosecution and cross examined. In the cross-examination, he refused to have given statement before the police that he implicated accused No.4 to the effect that he too assaulted the deceased and inflicted injury on his hands. He admitted the suggestions that the incident was seen by PW1 and PW4. However, he asserted his stand that he was not able to identify the weapons marked as MO2 to 5.

7. The testimony of PW3 Ravichander alias Kullappa shows that on 29.12.2017 at about 4:30 p.m, when he was sitting in the High Ground football stadium, situated near Champion Reefs area quarters, he saw accused Nos.1 to 3 speaking



over the phone having weapons in their hands. Kiran came to that place on his motorcycle. A quarrel broke out between Kiran and accused Nos.1 to 3. During the quarrel, accused No.1 assaulted Kiran on the back of his head, accused No.2 assaulted on the back of the shoulder; and accused No.3 assaulted on his face. Having sustained injuries, Kiran started running from that place to save himself. By that time, two other accused, namely, Magesh, and Khan i.e., accused No.5 came from opposite direction, accused Nos. 1 to 3 followed Kiran and started assaulting the latter who had fallen on the ground. Accused No.1 took a stone and dropped it on Kiran's head. Thereafter, accused Nos.1 to 3 fled that place riding the motorcycle of Kiran. He stated that this incident was seen by PW8 and some others. He identified the stone-MO1 dropped on the head of Kiran and also the weapons marked as MOs 3 to 5. Since he did not implicate the other two accused,



namely, accused Nos.4 and 5, he was treated hostile and cross examined by the public prosecutor. In the cross-examination, though he did not implicate accused Nos.4 and 5, however, he admitted the suggestions that a woman by name Shanti, relative of accused No.3 asked him to go away from that place and that PW1 and her husband, PW5 also saw the incident, and further that the quarrel that had taken place a few days before during the birthday celebration was the reason for the incident of killing Kiran.

8. PW14 and PW15 are the sisters of Kiran and PW16 is his uncle. The evidence of PW15 may not be of much help because she was a resident of Kanchipuram and came to KGF only after she came to know about the death of her brother. However, PW14 and PW16 stated that when they were in the house, two boys came and informed about the assault on Kiran and immediately they rushed to



that place with PW2. They stated that PW2 gave water to Kiran, but he died, and came to know that Kiran had been assaulted by accused Nos.1 to 3. Since they did not implicate accused Nos.4 and 5, they were treated hostile by the public prosecutor and in the cross-examination, they did not admit the suggestion that they came to know about the participation of accused Nos.4 and 5 in assaulting Kiran.

9. PW20 is not an eyewitness, all that he has stated is that about a year back at about 4 p.m, he saw many people running towards high grounds and when he too went to that place, he saw a stone and a sickle. He also saw the dead body of Kiran and the injuries on the dead body. Actually the prosecution wanted to prove from him that he came to know from the people who had gathered there that accused Nos.1 to 4 had assaulted Kiran with sickles and when Kiran



started running to save his life, they chased him and again assaulted and thereafter accused No.1 dropped a stone on his head. Though PW20 was treated hostile and cross examined by the public prosecutor to elicit from him about these aspects, it may be stated that even if he had admitted the suggestions, he would become hearsay witness and thereby his testimony is of no use at all.

10. In order to record conviction against accused Nos.1 to 3, the trial court has arrived at conclusions that the testimonies of PW3 and PW8 are very much believable. The other witnesses, namely, PW2 and PW14 to 16 also support the case of prosecution to some extent. The ocular evidence is supported by the medical evidence given by the doctor PW46 and the FSL report established by PW52. Referring to some decided cases of the Supreme Court, the trial court has arrived at a conclusion that in spite of some discrepancies in



the evidence of eyewitnesses, still they are believable.

11. Assailing the findings of the trial court, it was the common point of argument of Sri Veeranna G Tigadi, Sri Hashmath Pasha and Sri M.Shashidhara that the trial court has erred in placing reliance on the testimonies of PW3 and PW8 inasmuch as they were chance witnesses and there is no explanation as to for what reason they were present at the place when the incident occurred and saw the incident. They argued that in the first report given by PW2, the names of the witnesses do not find a place; the names of two boys who gave information to PW2 are also not mentioned and that those boys were not examined by the prosecution. The two witnesses have stated that they were very much present when the inquest was held, but their names do not find a place in the inquest panchanama. If really these



two witnesses were present at the time when the incident occurred, they should have been examined when the inquest was conducted. This indicates that PW3 and PW8 might have been planted at a later stage. Particularly with reference to PW3, it was sought to be pointed out that he was a resident of Chennai, but he stated that he had come to KGF as his daughter was pregnant and he also stated that his wife was pregnant. Thereby, there is no consistency in his evidence as to why he came over to KGF. From this, it can be very much made out that PW3 was planted at a later stage to project him as an eyewitness. Both PW3 and PW8 have proved themselves to be untrustworthy witnesses.

12. In regard to the evidence given by PW8, it was argued by all the counsel that the investigating officer obtained two statements from him which are contrary to each other. They



referred to Ex.D1 and argued that in that statement he was not shown as an eyewitness. The investigating officer also obtained his statement under section 161 of Cr.P.C, and a portion of it was marked as Ex.P13. PW8 deposed in the court on the basis of the statement under section 161 Cr.P.C. PW8 has clearly admitted that he did not give statement before the police as per Ex.D1 and this contradiction has been proved through the investigating officer also. Therefore there are two contradictory versions of PW8, which make him an untrustworthy witness. The trial court has not discussed the evidentiary value of oral testimony of PW8 with reference to Ex.D1 and thereby the findings of the trial court in this regard cannot be sustained.

13. Sri Hashmath Pasha in particular argued that since PW3 and PW4 were treated hostile by the prosecution itself and cross examined,



whatever they stated in the examination-in-chief in regard to overt act of accused Nos.1 to 3 cannot be believed. They were cross examined by the public prosecutor to impeach their testimonies in accordance with section 155 of Indian Evidence Act. When the prosecution itself treated them hostile, they proved themselves to be untrustworthy witnesses and therefore the evidence of PW3 and PW8 should have been rejected by the trial court. Sri Veeranna G Tigadi argued that one infirm witness cannot corroborate the testimony of another infirm witness. He also argued further that if sickles or choppers had been employed for implicating injuries, lacerations would not occur, and therefore the medical evidence also does not support the prosecution.

14. Now if the oral testimonies of PW3 and PW8 are put to analysis, the obtaining picture is this. PW3 is questioned about the reason for his



being present at the place of occurrence and his answer is that on the day he had been to a mutton shop, and since he was asked to wait for sometime, he came to the football ground and sitting there. Though this answer is sought to be disbelieved by Sri Veeranna G Tigadi and Sri Hashmath Pasha, it is not possible to say that this answer of PW3 is to be disbelieved. It is true that PW3 has answered that he was working at Chennai as a coolie, but it does not mean that he was a permanent resident of Chennai and thereby his presence on the date of incident is to be doubted. It is true that he has given two answers, firstly that he came to KGF as his daughter was pregnant and at a later stage he stated that his wife was pregnant. This is no doubt a discrepancy, but by this alone, no inference can be drawn that he has not stated the truth before the court. He has given full description of the incident that he saw. Apart from the questions relating to incident, he was



questioned about murder of his uncle by the first accused, Bablu and he being a witness in that murder case. He admitted that a case had been registered against the first accused in connection with the murder of his uncle, but denied to be a witness in the said case. However he admitted that the other two witnesses of this case namely, PW24 and PW33, were the witnesses. He made it clear that he did not know PW8-Umesh. Then a contradiction as per Ex.D3 was brought to fore. This is with respect to what he came to know about the background or motive for the incident that culminated in the killing of Kiran. If the entire cross examination of PW3 is assessed, it is not possible to infer that whatever he stated in the examination-in-chief that he saw the incident cannot be discarded. It might be a fact that he was working at Chennai as a coolie, it does not mean that, he had no occasion to come over to KGF inasmuch as he was ordinary resident of KGF



and it appears that he was living at Chennai only in connection with his occupation. His two answers with regard to pregnancy also does not shake his testimony. Ex.D3 is actually with regard to the motive for the incident which he might not be aware of. It was recorded by the police and if he stated that he did not give such a statement, it does not take away the testimonial value in his oral evidence. What is important is whether he was present at the time of incident and he saw it. He only implicates accused Nos.1 to 3. He does not take the names of accused Nos.4 and 5, and that is the reason for which he was treated hostile. If he was able to see only three accused persons and did not see two others who have been acquitted, it cannot be said that he has not supported the prosecution case. Therefore we find that testimony of PW3 can be acted upon.



15. It is true that PW8 has given rise to a contradiction by disowning statement as per Ex.D1. The investigating officer PW50 has given an admission that PW8 made statement before him as per Ex.D1 and thereby it is proved. Now if Ex.D1 is read, it appears that he was not an eyewitness and he reached the place of occurrence after it was over and saw the dead body. But his evidence before the court is totally contrary to his earlier statement Ex.D1, which appears to have been taken during the time when inquest was drawn. The investigating officer has stated that PW8 gave the statement as per Ex.D1 at the time of inquest panchanama. The investigating officer has also stated that he obtained statement of PW8 under section 161 of Cr.P.C on the same day i.e., 30.12.2017. That means there are two statements. PW8 has given evidence before the court in accordance with his later statement. But the clear answer of PW8 is that after the dead body was



shifted to the mortuary, he did not go to hospital and did not give any information to the police on that day. His voluntary answer was that he went to police station on the next day and revealed about the incident to the police. If this is his version, a doubt arises as to how Ex.D1 came into existence. Be that as it may, in the cross-examination, he has stuck to his stand that he did see the incident and clearly stated about the participation of accused Nos.1 to 4. He has admitted that three criminal cases had been registered against him at KGF police station, and he was a rowdy sheeter. He was also questioned about the criminal antecedents of the deceased. Merely for the reason that he had criminal background, it is difficult to state that his testimony as regards the incident is to be disbelieved.

16. If for any reason, testimony of PW8 is not reliable because of his former statement as



per Ex.D1, which is opposite to his evidence in examination-in-chief, there remains the testimony of PW3, which cannot be discarded for any reason. We may pertinently mention here the evidence of PW2, PW14 and PW16, who were not eyewitnesses but their evidence assumes relevancy in such a way that as soon as they came to know about the incident from two boys, they rushed to the place of incident and saw the deceased. They have also taken the names of PW1, PW3 and PW8, stating that they saw them being there at the time. They have also stated that the husband of PW1 was present. The trial court has held that the evidence of these witnesses is relevant as their coming to the place of incident falls within the scope of section 6 of the Indian Evidence Act. We have to concur with this finding. It may also be stated that if PW1 and her husband turned hostile, because PW2, PW14 and PW16 have taken their names, a clear inference can be drawn that PW1 and her



husband might have deposed falsehood intentionally. We find that because of the presence of PW8 is spoken to by PW2, PW14 and PW16, the contradiction as per Ex.D1 does not assume significance.

17. Sri Veeranna G Tigadi has placed reliance on two decisions. ***Sher Mohammed and Others Vs. State of Rajasthan***¹ is the decision of Rajasthan High Court, where it is observed that one infirm witness cannot corroborate the testimony of another witness. Needless to say that Sri Veeranna G Tigadi has placed reliance on this decision to discard the testimonies of PW3 and PW8, as both these witnesses, according to him are infirm witnesses. Inference based on this proposition can be drawn in the factual background only. We have gone through the entire text of this judgment. It can be stated that the Division Bench of Rajasthan High Court arrived at

¹ 1998 SCC ONLINE RAJ 715



that conclusion in the given set of circumstances.
This judgment is of no use in the present context.

18. ***Bahal Singh Vs. State of Haryana***² is the judgment of the Hon'ble Supreme Court where the discussion is with regard to value to be attached to the testimony of a chance witness. What is held in this judgment is that chance witness is one who happens to be at the place of occurrence at the time when it is taking place, and if such a witness happens to be a relative or friend of the victim or inimically disposed towards the accused, then his being a witness is to be viewed with suspicion. This proposition enunciated by the Supreme Court does not state that the evidence of a chance witness should be discarded outrightly; what is required is strict scrutiny in order to arrive at a conclusion that testimony is not tainted with interestedness. In this case, we do not find that the witnesses, more particularly PW3 has given

²(1976)3 SCC 564



false evidence and the reason he has given for being present at the place and time of incident can be very much accepted.

19. Sri Hashmath Pasha has placed reliance on two judgments of the Supreme Court, namely, ***Karunakaran Vs. State of Tamil Nadu***³. In this case para-7 was emphasised by Sri Hashmath Pasha. Therefore we have extracted para-7 here.

"7. It will be seen that at the time of lodging of the first information report only the present accused was implicated. Even so, later on four eye witnesses were produced implicating not only the present accused but also two other accused. The High Court after appreciating the entire evidence rejected the evidence of these eye witnesses, namely, PWs.1, 2, 3 and 5 and described them as "a bunch of liars", "unashamed liars and perjurers". The High Court, therefore, acquitted the second accused, Jabamani Nadar alias Kanyakumari Comrade alias Ramu and also observed that necessarily no case would lie on this kind of testimony against

³ [(1976)1 SCC 434]



even the absconding accused."

20. It is needless to say that the above observations are to be understood in the background of the factual position therein, and it is wondering as to how PW3 can be branded a liar when there is no material to arrive at such a conclusion.

21. Another point argued was that because the names of PW3 and PW8 are not mentioned in inquest panchanama as eyewitnesses, their testimonies cannot be believed. The trial court has held that it is not necessary that the witnesses are to be examined at the time of drawing of inquest panchanama. We also hold the same opinion.

22. It is true that the two boys who gave information to PW2, PW14 and PW16 about the incident are not examined. Learned counsel for the appellants made it a point of argument that because of non-examination of these two boys, the



prosecution case cannot be accepted based on the testimonies of PW3 and PW8. If the boys had been examined they would have certainly thrown light on the prosecution case, but the investigator-PW51 has got an explanation. He has stated that he enquired for securing the presence of the boys but he couldn't. So it is not as if PW51 deliberately left out to gather important piece of evidence.

23. So far as PW3 and PW8 are concerned, it was the argument of Sri Hashmath Pasha that, PW3 and PW8 were treated hostile by the prosecution and cross-examined. That means they were discredited according to section 155 of the Indian Evidence Act. For this reason whatever they stated against accused 1 to 3 cannot be believed. It is difficult to accept this line of argument. It is a settled principle of law that the testimony of a hostile witness cannot be discarded in entirety, all that is required is to scrutinize their evidence



strictly and such part of the evidence as it supports the prosecution case can be relied upon. The principle of *falsus in uno, falsus in omnibus* is not applicable in India. No doubt section 155 of the Evidence Act deals with impeaching credit of a witness. Merely for the reason that a witness is treated hostile, it does not mean that their entire evidence is to be rejected. It is to be examined as to in relation to what a witness has not supported the prosecution. In this context section 154 of the Indian Evidence Act may be referred, it reads as follows :

"154. Question by party to his own witness. (1) *The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.*

(2) *Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness."*



Sub-section (2) clearly states that, that part of oral evidence supporting the prosecution can be relied upon. So there is no scope for discarding entire evidence whenever a witness is treated hostile. In this case, PW3 implicated accused 1 to 3 in particular and he is consistent in his testimony in giving no evidence against accused No.4. Merely because he was an eyewitness, it does not mean that he should have seen the participation of all the accused or else his testimony even against the accused whom he implicates is to be disbelieved.

24. The investigation shows many panchanamas being drawn in connection with various aspects. Exs.P3, P5, P6, P23, P24, P25, P28, P29, P30, P31, P32, P33, P34 and P35 are the various panchanamas. Ex.P20 is the inquest panchanama. Though drawing up of inquest as per Ex.P20 is not disputed, it was the argument of Sri



Hashmath Pasha that it was not drawn at the spot rather it was drawn after the dead body was shifted to mortuary. Investigating officer has got an explanation that since the situation at the spot was tense, he took a decision to immediately shift the dead body to mortuary. No infirmity can be found in conducting inquest panchanama in the mortuary. Inquest was also sought to be assailed for the reason that it did not contain the names of the eyewitnesses. It has been answered already that if the names of the eyewitnesses are not mentioned in the inquest report, it is not a ground for discarding it; inquest is drawn for prima facie assessment of cause for death. Here in Ex.P20 it is not as though the name of no eyewitness is written, but at serial number 4 the name of Umesh, i.e., PW8 is mentioned.

25. Ex.P3 is the first panchanama drawn soon after the incident. PW2 and PW24 have



supported this panchanama. Though PW22 and PW23 have not supported, their evidence has least impact as drawing up of panchanama-Ex.P3 cannot be disputed. At the time of drawing of this panchanama the investigating officer seized two incriminating articles namely MO1-stone and MO6-sickle. This seizure is in fact not disputed by the defence. After accused 1 to 4 were taken to police custody they too showed the place of incident on 10.01.2018 and in that regard a panchanama as per Ex.P23 was drawn. PW24 has supported drawing up of this panchanama. PW32 has not supported and it is of no consequence.

26. Since these appeals are filed by accused 1 to 3 only, it is enough to scrutinize the evidence in regard to the panchanamas Exs. P24, P25, P28, P29, P30 and P31. The trial court has believed these panchanamas and the recoveries effected under Exs.P24, P29 and P30. It was the argument



of Sri Hashmath Pasha that there was a great delay in effecting recoveries of the weapons and the blood stained clothes and for this reason they are to be rejected. Again this line of argument is not acceptable, for accused 1 to 4 voluntarily surrendered before the Magistrate on 08.01.2018. PW51 has stated that after he came to know the voluntary surrender of accused 1 to 4, he made an application to the court on 09.01.2018 seeking their police custody. Accused 1 to 4 were given to police custody on 10.01.2018. Thereafter he conducted panchanamas and recovered incriminating articles based on the disclosures made by the said accused. This answer of PW51 is very much acceptable and there was no delay at all.

27. Ex.P28 was the panchanama drawn on 30.12.2017 seizing the motorcycle belonging to Kiran. It is the testimony of PW51 that he received



information that the accused had left the motorcycle in the premises of Sebastian Church and therefore he went there with panchas PWs 30 and 31 and seized it. This panchanama is not disputed. MO12 is the motorcycle seized under this mahazar.

28. Ex.P24 was another panchanama drawn on 10.01.2018 at the same place after the arrest of accused 1 to 4. It is the evidence of PW51 that accused 1 to 4 themselves showed the place where they had left the motorcycle. That place was Sebastian Church premises. This panchanama is supported by PW24. Although PW30, PW31 and PW32 did not support this panchanama the testimonies of PW24 and PW51 are very much believable. It is true that this place was already known to police; if the accused also showed the same place, it only confirmed the panchanama-Ex.P28.



29. Exs.P29 and P30 are two important panchanamas about which Sri Hashmath Pasha argued vehemently that they are to be discarded because of joint recoveries there under. It was his argument that joint recovery was not permitted because section 27 of the Evidence Act does not permit such a recovery in the sense that there is no evidence as to which of the four accused first disclosed the place of concealment of the incriminating articles. It is highly impossible that they would have spoken in chorus about disclosures and thereby the joint recoveries cannot be believed. This is just a plausible argument, but not acceptable. Whenever two or more accused are arrested and if it is stated that they made statements voluntarily, it is not as if they would speak in chorus or simultaneously; it is quite obvious that such recording of confessions or voluntary statements is an impossibility and it must be understood that each of the accused



would give statement one after another. But there is nothing wrong in holding one panchanama for the recovery of incriminating articles if for any reason all the accused had concealed them at one place. This is quite possible and can be understood commonsensly. The Supreme Court has made this point very clear in ***Kishore Bhadke vs State of Maharashtra***⁴. It is held,

"35. In State (NCT of Delhi) Vs. Navjot Sandhu, [(2005) 11 SCC 600] this Court has held that a joint disclosure or simultaneous disclosures, per se, are not inadmissible under Section 27 of the Evidence Act. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact

⁴ [(2017) 3 SCC 760]



which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27. Whether that information is credible is a matter of evaluation of evidence. The Courts below have accepted the prosecution version in this behalf, being credible. Suffice it to say that the disclosure made by Accused No. 3 about the relevant fact, per se, is not inadmissible."

(emphasis supplied)

30. In this case PW51 stated that accused 1 to 4 gave voluntary statements and disclosed that they would show the place where they had concealed the blood stained clothes and weapons. Ex.P29 was the panchanama drawn on 11.01.2018 between 7.00 am and 9.30 a.m. PW51 has stated



that after the accused gave disclosure statement, he, his staff and the accused went to a place near the gold mine at KGF. The accused 1 to 4 showed a dilapidated water tank and near that tank a blue colour plastic bag was hanging to a branch of a tree. The accused showed that cover and on its opening, he found two pairs of jeans pants and two shirts stained with blood. Accused 2 and 3 identified their respective pants and shirts. In this connection panchanama was drawn.

31. Ex.P30 is another panchanama drawn on 11.01.2018 in between 4.00 and 6.00 p.m near bushes situated in an open place, A Block, Ward No.51, Vijnapura Main Road, near K.R.Puram. This panchanama was also drawn based on the disclosure made by accused 1 to 4. PW51 has stated that accused 1 to 4 showed this place. It is the evidence of PW51 that near the bushes there was a heap of soil and when it was scattered, he



found a cement bag, and on opening it he found three blood stained sickles (machetes), a blue colour jeans pant, a light pink colour full shirt, another with stripes of white, green and grey colours and a cream colour jeans pant. All these articles were seized and a panchanama as per Ex.P30 was drawn. MOs2, 4 and 5 were the weapons, MOs 16 and 20 were the pants and MOs 17 and 21 were the shirts seized. This panchanama is also supported by PW32 and PW34. Added to this there is testimony of PW49, the police head constable who was present at the time when this panchanama was drawn and seizure effected. He too has given good account of the panchanama-Ex.P30.

32. PW33 and PW34 actually supported panchanamas Exs.P29 and P30, but because of certain answers that appear to be not in consonance with the prosecution case, they were



treated hostile and cross examined by the public prosecutor. It is to be stated that their evidence actually appears to be very natural and the deviations that they made while giving evidence make their testimonies credible. There is no reason to disbelieve the evidence of PWs33 and 34. So far as PW33 is concerned it was sought to be argued that his testimony cannot be believed because he was an accused in a death case which was pending at Madanapalli court. Merely for this reason his testimony as regards the panchanamas cannot be disbelieved. There is no rule as such that the testimony of a witness against whom a criminal case is pending is to be disbelieved.

33. Ex.P31 is another panchanama drawn on the seashore on 14.01.2018 at Velangani. This was the place shown by accused 1 and 2 to PW51 stating that they had thrown their mobile phones into the sea. Though search was made the phones



could not be recovered. This panchanama is supported by PW49-police head constable although PWs35 and 36 have not supported.

34. Ex.P25 is panchanama dated 12.03.2018 seeing the shed where accused 1 to 4 had taken shelter. This shed was shown by accused No.6. Except the evidence of PW51 the other independent witnesses namely PWs28, 29, 44 and 45 did not support. In spite of their hostility, the testimony of PW51 can be acted upon.

35. As regards seizure of weapons and the blood stained clothes, the argument of Sri Hashmath Pasha was that evidence in that regard was inconclusive in as much as the evidence given by independent witnesses falls short of credibility in view of certain discrepancies which have been dealt with already, and they being interested witnesses. It was argued that the mandatory provisions were not followed while drawing up of



panchanama and in this regard, he has placed reliance on the judgment of the Supreme Court in the case of ***Rajesh and Another vs State of Madhya Pradesh***⁵. Sri Vijaykumar Majage met this argument by arguing that the investigating officer has offered explanation for not being able to secure witnesses from the locality and the said explanation is practically founded.

36. It is already opined by us that the discrepancy, if any, is trivial. The decision in ***Rajesh*** (*supra*) is a misplaced reliance in the context, for it relates to search under section 100 of Cr.P.C. Here the recovery was pursuant to disclosure made by accused in accordance with section 27 of the Evidence Act, which stands differently. It is true that in para 28 of the cited judgment there is a discussion on discovery of dead body and it shows that because of some lapse on the part of police in obtaining the

⁵ 2023 SCC Online SC 1202



statement of the accused before his arrest, the discovery was held to be fatal to prosecution. Same is not the position in this case. Confession that led to discovery was obtained when accused were in police custody. Therefore the case of **Rajesh** is not helpful to the appellants/accused.

37. The next point argued was that the investigation commenced before registration of FIR. This argument was put forward perhaps for the reason that police went to the spot. The trial court has held that investigation was undertaken only after registration of FIR. This finding of the trial court cannot be said to be incorrect. The clear evidence of PW50 is that PW2 came to police station to lodge first report of incident. PW51-the investigating officer came to police station on learning registration of FIR; PW2 was still present in the police station; and he went to the spot with PW2. Investigation began thereafter. If for any



reason, the police went to spot soon after the incident, it was only with a view to controlling law and order and to see that evidence was not destroyed. The courts should not assess evidence ignoring the empirical aspects that situation demands.

38. Another notable corroborative evidence is FSL report, which is marked as Ex.P64, testified by PW52 whose evidence shows many articles seized and collected during investigation were subjected to scientific examination. Her testimony shows that there were blood stains on the clothes belonging to accused and the weapons. 'A' group blood was detected. It is not the case of accused that they sustained bleeding injuries. It can be inferred that the blood group of the deceased was 'A' as he sustained profused bleeding injuries and his blood spilled on the motor cycle. Blood stains were detected on the petrol tank and seat covers.



FSL report contains those particulars. The accused have failed to offer explanation as to how and why their clothes stained with blood. Hence Ex.P64 and oral evidence of PW52 cannot be ignored.

39. Therefore from the above discussion we come to a conclusion that there are no infirmities in the impugned judgment. Conviction recorded against accused 1 to 3 and the sentence imposed on them need not be disturbed. Appeals are therefore ***dismissed***.

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

**Sd/-
(C M JOSHI)
JUDGE**

ckl/kmv

List No.: 19 Sl No.: 1