IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF MARCH, 2005

: PRESENT :

THE HON'BLE MR. JUSTICE B.PADMARAJ

AND

THE HON'BLE MR. JUSTICE V.JAGANNATHAN

CRIMINAL APPEAL NO.707/2004

Between:

STATE BY NANJANGUD RURAL POLICE

... PETITIONER

(By Sri:P.M.NAWAZ, HCGP.)

AND :

1 RANGASWAMY
S/O DODDALIAHNA RANGASWAMY
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

2 SHIVA S/O GURUSIDDAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

3 KASHINATH S/O KUDURE SIDDAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF

NANJANGUD TALUK

4 RAJU @ RACHA
S/O KUDURE SIDDAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

5 SHIVAKUMARA MADAIAH @ BOOTHALLI
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

6 REVANNA
S/O MADAIAH @ AREBETTINA MADAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

7 SHIVANNA S/O MOGGAIAH @ AREBETTINA
MADIAHA, MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

8 RANGASWAMY @ RANGAIAH
S/O MAHADEVAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

9 RAJU @ KULLA S/O R MAHADEVAIAH
@ BELLADA MAHADEVAIAH, MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

10 KRISHNAMURTHY S/O MALLAIAH
MAJOR
R/OF BADANAVALU VILLAGE OF
NANJANGUD TALUK

... RESPONDENTS

THIS CRL.A. FILED U/S 378(1) & (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT SPECIAL LEAVE TO FILE AN APPEAL AGAINST THE ORDER OF ACQUITTAL DT. 6/12/03 PASSED BY THE FAST TRACK COURT-II MYSORE,IN S.C.NO.114/95 ACQUITTING THE RESPONDETS-ACCUSED FOR THE OFFENCES P/U/Ss 143, 147,148, 341, 302 & 307 R/W SEC. 149 OF IPC.

THIS CRIMINAL APPEAL COMING ON FOR ADMISSION THIS DAY, **PADMARAJ J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

This Criminal Appeal by the appellant-State is directed against an order of acquittal passed by the trial court in favour of the respondents for the offences punishable under Sections 143, 147, 148, 324, 341, 302 and 307 read with Section 149 of IPC., wherein the State has sought for grant of leave to appeal against the order of acquittal.

2.The case of the prosecution in brief is:

That on 27.1.1995, the complainant-PW18 Naganna had gone to the house of the deceased Mahesh for coolie work and by about 6 p.m. in the

Mahesh for coolie work and by about 6 p.m. in the evening, the deceased Mahesh suggested to PW18 that they should both go to a place called Basavatti and accordingly, they were both proceeding on two different bicycles towards Basavatti. While so proceeding, they found the second accused standing at the bus stop. Thereafter, they both went to the house of Patel Basappa and since he was not available at his house, they were returning back to their village Badanavalu. On the way to their village near Hulihalla, it is stated that about 7 to 8 persons came from the side of the fence, blocking the road and that further they made the deceased Mahesh to fall down to the ground from bicycle and committed assault on him with certain deadly weapon. The deceased Mahesh sustained fatal injuries on account of such assault committed on him and died on the spot. It is the case of the prosecution that those 7 to 8 persons who came from the side of the fence and committed such an

assault on the deceased were none other than the respondents-accused who were made to stand trial before the trial Court. It is the further case of the prosecution that when the complainant PW18 cried for help, the accused No.8 while saying that he should also be killed committed assault on him with a club. The complainant-PW18 tried to avert that blow by stretching his hand and as a result, the blow landed on his left hand. Thereafter, it is stated that the complainant-PW18 went to the house of Patel and informed him of the occurrence and who in his turn asked his son Ramanna to inform the police over the phone. On the basis of these allegations, the respondents were put on trial before the trial Court for the above said offences.

In order to substantiate its case, the prosecution had examined at the trial PWs.1 to 22 and placed on record Exs.P1 to P25 and Mos.1 to 20. It would be of some relevance to note here itself that the complainant PW18 was the sole eye

witness to the occurrence and the case of the prosecution had mainly rested on the evidence given by the sole eye witness PW18.

The trial Court on consideration of the entire evidence placed on record and after hearing the submissions on both sides has acquitted the respondents-accused of the offences charged against them. Hence, this appeal is by the appellant-State against an order of acquittal with a prayer to grant leave to appeal.

3.We have heard the arguments of the learned Government Pleader in support of the appeal filed by the appellant-State and carefully perused the relevant case papers including the impugned judgment and order of acquittal made by the trial Court in favour of the respondents.

4.The trial Court on consideration of the entire material placed on record by the

prosecution found that the genesis of the FIR itself is in serious doubt and the evidence of the sole eye witness PW18 did not inspire confidence as the same was found to be highly artificial and unnatural. Further on a careful perusal of the contents of the FIR, it was found to have been lodged by the complainant PW18 after due deliberation and consultation. Thus, the trial Court found that it is highly unsafe to rely upon the solitary testimony of the complainant PW18 to record conviction of the accused persons. Admittedly, there was a communal dispute between the two parties. That apart, the prosecution evidence as discussed by the trial Court in paragraphs 12 to 16 would reveal that the FIR did not come into existence in the manner as sought to be putforth by the prosecution. There was serious doubt about the time and place of lodging of the complaint. Thus, the origin of the FIR itself was found to be not free from doubt. It would be highly

unsafe and dangerous to base a conviction upon the sole evidence of such a witness, especially, where there is abundant background to show the motive for the prosecution witness to foist a false case against the accused. The duty of the prosecution in proving the guilt of the accused in grave offence like murder and the responsibility of the Court in assessing and arriving at the truth, is very onerous, more so when a number of persons are implicated, the evidence will have to be carefully sifted and if the circumstances raise a reasonable doubt as to whether all the accused persons had participated or some alone had participated in the occurrence, and as to who among them had participated, all the accused persons will have to be acquitted by giving the benefit of doubt. Where several accused persons are implicated, the question is not one of mere arithmetic, acquitting some and convicting the rest, but whether the evidence which has been rejected as false or insufficient

as against the accused persons who had been acquitted, is sufficient and convincing to make out the guilt of the other accused; as against the latter, the Court should have no doubt whatsoever. As often said, motive operates as a powerful influence for commission of the offence; equally, motive operates as a powerful force to falsely implicate the hostile group. The fact that the parties and the witnesses belong to rival factions and are on terms of pronounced enmity and hostility is a circumstance in favour of the accused in a case where several accused persons are implicated. The legal position is well settled that as an abstract rule of law, the Court is not precluded from basing its conviction upon the evidence of a single witness; what is important is, the quality of the evidence and not the quantity of the evidence. In the instant case, it was found by the trial Court that the quality of the evidence given by the sole eye witness PW18 was not of such a nature so as to

place implicit reliance to base conviction upon several accused persons for such grave offences, including the offence of murder. Where the evidence of a sole witness does not inspire confidence, there should be corroboration in material particulars by independent and acceptable evidence. According to the complainant PW18, he was able to witness the occurrence in the torch light as well as in the moonlight, but strangely there was no mention made to moonlight in the FIR to identify the assailants and no torch had been recovered from the scene of incident. This would certainly create doubt about the identification of the assailants by the complainant-PW18 and also about the specific overtacts attributed to each of these accused. Apart from this, the trial Court found certain serious discrepancies in the evidence of the sole eyewitness PW18, which would create serious doubt about the version of occurrence given in the Court. Further, as we

have already indicated the very origin of the FIR had been rendered doubtful from the evidence placed on record by the prosecution, whereby casting of serious shadow of doubt on the prosecution case. It would appear as though the concoction had started at the stage of the FIR itself. The evidence as discussed by the trial Court would show that the FIR did not come into existence in the manner as alleged by the prosecution and on the other hand, it appears to have come into existence after due deliberation and consultation. If in the circumstances of the case, the trial Court is of the view that it is not at all safe to place implicit reliance upon the sole testimony of PW18, the said view taken by the trial Court cannot be said to be perverse or unreasonable.

5.We have gone through the material evidence placed on record by the prosecution which has been discussed by the trial Court in the Course

of its impugned judgment and having considered the material on record, we are quite satisfied that the view taken by the trial Court is a possible reasonable view on the evidence on record. It is now well settled that if on the same evidence, two views are reasonably possible, where the trial Court takes a view in favour of the accused, the Appellate Court will not reverse the order of acquittal unless it finds the findings recorded by the trial Court to be perverse, highly unreasonable, based on no evidence on record or made in ignorance of relevant evidence on record or for such other reasons. The order of acquittal made by the trial Court shall not be interfered with because the presumption of innocence of the accused, is further strengthened by an order of acquittal made in favour of the accused by the trial Court. The golden thread which runs through the web of administration of justice in criminal cases is that, if two views are possible on the evidence

adduced in the case, one pointing to the guilt of the accused and the other pointing to the innocence of the accused, the view which is favourable to the accused should be adopted. The principle to be followed by the Appellate Court considering the appeal against the judgment and order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. We find that in the instant case the trial Court has appreciated the evidence on record and recorded its finding which appears to be quite reasonable and based on a correct and proper appreciation of evidence on record. We therefore, find no good reason to interfere with the impugned judgment and order of acquittal made in favour of the accused, by the trial Court. Hence, we are not persuaded to grant leave to appeal against an order of acquittal made by the trial Court in favour of the respondent and the leave prayed for is accordingly refused.

In the result, the appeal filed by the appellant-State against the order of acquittal stands dismissed. Consequently, I.A.I also stands dismissed, as no useful purpose will be served in directing notice on I.A.I to the respondents. It is ordered accordingly.

Sd/-
Judge

S*

Sd/-
Judge