

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 999 OF 2013

Y.S NATARAJA

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

O R D E R

1. This appeal arises from the judgment and order passed by the High Court of Karnataka at Bangalore dated 30<sup>th</sup> June, 2008 in Criminal Appeal No. 1760 of 2001 by which the High Court allowed the appeal filed by the State of Karnataka and thereby reversed the judgment and order passed by the First Additional District and Sessions Judge, Tumkur in Sessions Case No. 146 of 1998 acquitting the appellant herein of the offence of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short the "IPC").

2. The case of the prosecution may be summarized as under:-

(A) The appellant herein was in love with the deceased viz. Mamatha.

(B) PW-1 is the father of the deceased. It is the case of the prosecution that the appellant used to persistently request PW-1 to give the hand of his daughter Mamatha in marriage to him.

(C) The PW-1 rejected the proposal of marriage put forward by the appellant herein.

(D) On 22.8.1998, the deceased was heading towards Yaliyur Gate which connects the National Highway no.4. Since the PW-1 declined to give his daughter Mamatha in marriage to the appellant herein he had some spite towards the family.

(E) It is the case of the prosecution that the appellant herein stalked and accosted the deceased. Initially there was some conversation between the two and at the end of it the accused is alleged to have hit the deceased with a chopper three to four times.

(F) According to the prosecution, PW-2 Gangamma is one of the eye witnesses to the incident. It is also the case of the prosecution that PW-3 at the relevant point of time was nearby the place of occurrence as he was sitting to answer nature's call. PW 2 & 3 at the relevant point of time was studying in Chikkanahalli School. The incident occurred early in the morning at around 7.45 am. The PW-2 was coming back from school as holiday was declared abruptly.

G). According to PW-2 after she reached school, she was informed by the school authorities that the school would

remain closed being Bhimana Amavasya. Therefore, PW-2 was returning home from her school.

(H) It is the case of the prosecution that the PW-2 while on her way to home witnessed the assault.

(I) After witnessing the assault, the PW-2 first reached the house of PW-1 and informed him about the incident. Thereafter, PW 2 reached her own house and informed about the assault to her family members.

(J) In such circumstances, referred to above, the PW-1 lodged the First Information Report as regards the incident at the concerned police station.

(K) On FIR being registered, the Police started with the investigation. The inquest Panchnama of the dead body was carried out in presence of the Panch Witnesses. The dead body was sent for post-mortem. The clothes worn by the deceased at the time of incident were collected and sent to the Forensic Science Laboratory for chemical analysis.

(L) The appellant herein came to be arrested. At the time of his arrest a Panchnama of his person was drawn.

(M) The clothes worn by the accused at the time of the incident were recovered and collected by the Investigating

Officer. The clothes contained blood stains. The clothes were sent to the Forensic Science Laboratory for chemical analysis.

(N) In the course of the investigation, discovery panchnama of the weapon of offence i.e. the chopper, was drawn in presence of two independent Panch witnesses in accordance with Section 27 of the Evidence Act.

(O) At the end of the investigation, charge sheet came to be filed. The case was committed to the Court of Sessions under the provisions of Section 209 of the Criminal Procedure Code, 1973 (for short the "Cr.P.C."). Upon committal the case came to be registered as Sessions Case No. 146 of 1998.

3. The Trial Court proceeded to frame charge against the appellant herein for the offence of murder to which the appellant pleaded not guilty and claimed to be tried.

4. In the course of the trial the prosecution examined the following witnesses:-

"PW-1 Chandrappa,  
PW-2 Gangamma,  
PW-3 Channabasappa,  
PW-4 Umesha,  
PW-5 Basavaraju,  
PW-6 Narasimhamurthy,  
PW-7 Puttaraju,  
PW-8 Siddalingaiah,  
PW-9 Lakshmaiah,  
PW-10 Y.N. Nanjundaiah,

**PW-11 Rajanna,  
PW-12 C.K.Ramaswamy, Junior Engineer,  
PW-13 Govindanaika, Police Constable,  
PW-14 Mudduveerappa, PSI,  
PW-15 Dr. Shylaja,  
PW-16 Manjunath and  
PW-17 Srinivasamurthy, C.P.I."**

5. The prosecution also relied upon a few pieces of documentary evidences as under:-

1. "Ex.P1 complaint,
2. Ex.P1 (a) and (b) signatures on it;
3. Ex.P2 statement of PW4;
4. Ex.P3 Seizure mahazar,
5. Ex.P3(a) to (c) signatures on it;
6. Ex.P4 consent letter;
7. Ex.P5 inquest mahazar,
8. Ex.P5(a) to (d) signatures on it;
9. Ex.P6 statement of PW8;
10. Ex.P7 statement of PW9;
11. Ex.P8 seizure mahazar,
12. Ex.P8(a) signature on it;
13. Ex.P9 another seizure mahazar,
14. Ex.P9(a) and (b) signatures on it;
15. Ex.P10 sketch,
16. Ex.P10(a) signature on it;
17. Ex.P11 F.I.R.,
18. Ex.P11(a) signature on it;
19. Ex.P12 passport;
20. Ex.P13 post mortem report,
21. Ex.P13(a) signature on it;
22. Ex.P14 requisition letter,
23. Ex.P14(a) signature on it;
24. Ex.P15 sketch,
25. Ex.P15(a) signature on it;
26. Ex.P16 and
27. Ex.P17 Property forms;
28. Ex.P18 F.S.L. Report;
29. Ex.P19 requisition letter;
30. Ex.P20 Serology report and
31. Ex.P21 F.S.L. report are marked for the prosecution.

32. M01 chopper,
33. M02 three books,
34. M03 small purse;
35. M04 handkerchief;
36. M05 one pair of chappals;
37. M06 one Langa;
38. M07 one Frack,
39. M08 petty coat;
40. M09 Bicycle;
41. M010 cash of Rs.50/- 50 paise;
42. M011 one Kacha;
43. M012 one blood stained shirt;
44. M013 blood stained panche;
45. M014 four black and white photos,
46. M015 negatives and
47. M016 colour photos are also marked for the prosecution."

6. On closure of the recording of the oral evidence the further statement of the appellant was recorded under Section 313 of the Cr.PC. The appellant in his further statement claimed to be innocent and said to have been falsely implicated in the alleged crime.

7. The Trial Court upon appreciation of the oral as well as the documentary evidence on record, more particularly, after looking into the oral evidence of the eye witnesses to the incident came to the conclusion that the prosecution had failed to establish its case beyond reasonable doubt. The Trial Court disbelief the presence of all the eye witnesses at the time of the incident.

8. In such circumstances, the Trial Court acquitted the appellant herein of the offence of murder. The Trial Court in its impugned

Judgment more particularly while appreciating the oral evidence of the eye witnesses observed thus:-

"18. PW2's actual presence at the spot would be doubtful on account of her inconsistent versions with regard to the actual assault by the accused on the deceased. As deposed by PW2, the accused assaulted the deceased from her back side and it is her evidence that the accused was coming from the back side of the deceased Mamatha. She states that one blow was given by the accused on Mamatha from her back side. Her further evidence goes to show that the accused assaulted the deceased on her left side of her forehead with a chopper and on her left hand fingers. Then while she was bent to fall on account of such assault, the accused had assaulted on back side of the neck of the deceased. Such evidence of PW2 goes to show that first assault by the accused on the deceased was on her forehead with chopper. It is no doubt the deceased had an injury on her left fore head, but as deposed by PW 15 the Doctor, who conducted the post mortem examination on the dead body of Mamatha, such an injury on the fore head of the deceased could not be caused if the assailant was at the back side of the injured while causing such injury. The said injury on the fore head as mentioned in Ex.P13 the P.M. report is at Sl.No.3 and injury on the fingers is at Sl.No.4 therein. It is categorically deposed by PW15 that the said injuries 3 and 4 could be caused by assaulting from the front side and not from back side. This inconsistency in the testimonies of PW2 and PW15 has remained unexplained by the prosecution. In view of the evidence given by PW15 the Doctor, the testimony of PW2 cannot be accepted in absence of any corroborative evidence. On the other hand, the testimony of PW2 is inconsistency with the evidence of PW15 and the documentary evidence contained in Ex.P.13.

19. The other aspect relating to the testimony of PW2 is concerned is that she is the relative of the deceased and interested witness, as gathered from the cross examination of PW1, wherein he has deposed that Rajanna, the son of his uncle has married to younger sister of PW5 Basavaraju, the father of PW2. Having regard to such relationship and for the aforementioned reasons, this Court has to find out from the evidence available on record as to whether there in any cogent and corroborative evidence to establish that the accused had assaulted the deceased with chopper and caused her death, as the testimony of PW2 has to be considered by this Court with great care and caution for the said reasons.

20. The other evidence available on record is that of PW3 Channabasavaiah. This witness is an eye witness, according to the case of the prosecution and with regard to his presence near the spot of the incident is concerned, it is the case of the prosecution that this witness was sitting near the spot for answering natures call the while so sitting, he has witnessed the incident. PW3 in this regard, has deposed that he had gone to answer the natures call and while he was sitting by the side of the road for the same, he had seen the deceased Mamatha going from village side to Yaliyur gate side through the road. At that time, the accused was also going from her back side from Yaliyur village. He further deposes that the accused had stopped his bicycle in front of Mamatha across the road and called upon her to accompany him. Mamatha had refused to accompany him and told him that she did not wish to have his acquaintance. The accused assaulted Mamatha with a chopper on her fore head and when she had raised her hand to resist that assault, it was hit to her fore head and also on her left hand fingers. Mamatha sustained bleeding injuries and when she had bent, the accused assaulted her with a chopper on back side of her neck on account of it, she sustained bleeding injuries, fell on the ground and died. The accused throwing the chopper there had gone away on his bicycle.

21. It is gathered from the cross examination of this witness PW3 that usually to answer the natures call, one would sit near the place where the water would be available. But the spot where he was sitting for the same, there was no water facility. The spot where he was sitting for answering the natures call was. behind the Hullukoppalu of Rajanna and the said Hullukoppalu was 100 feet in length and 3 feet in height with Hullu Mede. The said Hullu koppalu was fenced with Lantana bushes. He has categorically admitted that while he was sitting to answer the natures call, he was not able to see the persons going on the road and actual conversation between the accused and the deceased was not heard by him. He further admits that the road there at was at higher level and he was sitting in Taggu place. He states further that he did not rush to the spot questioning the accused as to why he was assaulting Mamatha. He is not in a position to speak as to how many blows were given to the deceased by the accused, because of the intervention of the Hullu Mede. His further version is that on hearing the cry, he saw at spot of the incident. This goes to show that because of the intervention of the Hullukoppalu as deposed by this witness, he was not in a position to witness the actual overt acts of the accused. He had seen the spot of

the occurrence only after hearing the cry. This makes clear that this witness has not actually witnessed the alleged overt acts of the accused assaulting the deceased Mamatha with chopper. With regard to the conduct of this witness PW3 is concerned, it is pertinent to note from his evidence that he did not inform about the incident to any person in the village. It is the natural human conduct, if at all PW3 had witnessed such an incident of accused assaulting Mamatha and causing her death, he would have informed the same to the persons in the village and in absence of any explanation in this regard by this witness, such conduct of this witness leads to a serious doubt with regard to his actual presence near the spot as stated by him. It is pertinent to note from his cross examination that he was not in a position to see the persons going on the road while he was sitting for answering natures call. He has not whispered during his evidence that he has got up and saw the alleged overt acts of the accused during the incident. For these reasons, the testimony of PW3 becomes untrustworthy of acceptance. More so, his evidence reveals that one blow was given by the accused to the fore head of the deceased which had hit her fore head and as well her left hand fingers. Such blow, as deposed by PW2 was given from the back side of the deceased. Such evidence of PW3 is again inconsistent to the evidence of PW15 Doctor, who has deposed that such injury to fore head and fingers cannot be caused from back side of the deceased. It is therefore, this Court finds that in absence of any satisfactory explanation on the part of the prosecution and in absence of any cogent evidence on record, the testimony of PW3 is as well is not worthy of credence.

22. Though it is the case of the prosecution that PW4, PW8 and PW9 are the eye witnesses and as submitted by the learned Public Prosecutor for the State, PW2 has spoken to their presence at the spot, these witnesses have not supported the case of the prosecution. They speak that they did not witness any incident at the spot. Though the said witnesses are cross examined by the prosecution treating them hostile, and Ex.P2, Ex.P6 and Ex.P7 are got marked as respectively their statements, this court finds no any substance during their cross examination to show that the said witnesses though had actually witnessed the incident, have deposed falsely for any reason. It is therefore, though it was submitted by the learned Public Prosecutor placing reliance on the decision reported in 1997 Crl.L.J. 3055 that the hostility of the said witnesses does not demolish the case of the prosecution, this court finds that in view of the testimonies of PW2 and PW3 as discussed above, the evidence let in by the prosecution is not sufficient to

establish the overt acts of the accused. It is therefore, the evidence of PWs.4, 8 and 9 is not helpful to the case of the prosecution.

23. The circumstantial evidence available on record adduced by the prosecution is that of the, evidence of PW5 and PW6. PW5 Basavaraju who is the father of PW2, has deposed in his evidence that he after staying during night at Yaliyur gate had started for his village at 7 a.m. through the road from Yaliyur gate to Yaliyur and on the way he had seen the deceased going towards Yaliyur gate from the village and the accused was going on his bicycle with a Machu at the handle of the bicycle from village side to Yaliyur gate side. He further speaks that he came to know through his daughter PW2 about the accused committing murder of Mamatha. As discussed above, the testimony of PW2 is not worthy of acceptance. and on account of it, the testimony of PW5 who gathered information about the murder of the deceased having committed by the accused, is not acceptable. Further, it is gathered from the evidence of PW5 that his daughter had gone to the school and on account of the Holiday she was returning from the school. Such evidence is belied by the testimony of PW17 the I.O., who has deposed that as on the date of the incident, there was no holiday for the school. It is therefore, this court finds that the evidence of PWS does not avail any support to the case of the prosecution."

9. The State being dissatisfied with the Judgment and Order of the acquittal passed by the Trial Court went in appeal before the High Court. The High Court upon re-appreciation and re-evaluation of the oral as well documentary evidence on recorded a finding that the Trial Court committed a serious error in acquitting the accused.

10. In such circumstances, the High Court allowed the appeal filed by the State and reversed the Judgment and the order of acquittal.

11. The appellant herein stood convicted of the offence of murder and was sentenced to life imprisonment.

12. The impugned Judgment and Order passed by the High Court is very short. We quote the relevant portion of it:-

"4. The analysis of evidence of PW3 discloses that his evidence is not credible, because, PW3 states that after seeing the incident, he went back to the village and did not inform anybody and his statement was recorded a day after the incident. Assuming for a moment that PW3's evidence is excluded, yet the evidence PW2 would convincingly establish the case of the prosecution. P.W.2 has stated that herself and CW3 went to the school by about 7.15 a.m., the teacher told that a holiday is declared for the day on account of 'Bhimana Amavasya' festival. Therefore, they took a private transport to go to Yaliyur Gate from there they were going towards the village and that she saw the incident from a distance of 50 ft. It would have been better for the prosecution to examine CW3. *But* non-examination of CW3 is not is not a reason to reject the testimony of PW2 which is clinching and convincing.

5. Sri. A.H.Bhagavan strernously argued that Sri Seetharamaiah, the teacher who is supposed to have told PW.2 and CW.3 that holiday is declared for the school is not examined. PW.2's presence at the scene within about 20 minutes while going back from the school is also an improbable circumstance. PW2 is only a chance witness and that the relative of PW1. Therefore, the trial court has rightly rejected the evidence of PW2 as unreliable.

6. On thorough scrutiny, we find that the reasons given by the counsel for respondent-accused to reject the evidence of P.W.2 is untenable. The evidence of PW2 clearly states that when they were told that holiday is declared, they got a private transport to go to the Yaliyur Gate which is 12 Kms. from the school. It is quite possible that within 5 to 10 minutes, PW.2 and CW3 went to Yaliyur Gate and they were walking from the village to the gate, the incident has taken place. The presence of PW2, at the spot is convincingly explained and nothing is elicited

in the cross examination of PW2 to show that she is falsely implicating the accused. PW1 has lodged complaint immediately after being told by PW2 and that FIR allegations also show that PW1 got information from PW2, which lends corroboration to the evidence of PW2. The P.M. report corroborates the evidence of PW2 that accused had dealt blows with chopper and the death is homicidal. The evidence of PW2 is convincing."

(quoted verbatim from the paper books)

13. In such circumstances, referred to above, the appellant is here before this Court with the present appeal.

14. Mr. Shekhar G Devasa, the learned senior counsel appearing for the appellant vehemently submitted that the High Court committed a serious error in reversing the acquittal and holding the appellant guilty of the offence of murder. He would submit that there are certain set principles of law when it comes to dealing with a judgment of acquittal passed by a trial court. According to the learned counsel, if the view taken by the Trial court is found to be plausible, then even if a different view is possible for the Appellate Court to take acquittal should not be easily disturbed. He would submit that the Trial Court assigned cogent reasons to disbelieve the very presence of the Pws 2 and 3 respectively.

15. The learned counsel would submit that the High Court rightly disbelieved PW-3 whereas fell in error while believing PW-2.

16. The learned counsel would further submit that if PW-2 is to be disbelieved being the solitary eye witness to the incident, then

the only evidence left to be considered would be in the form of discovery Panchnama of the weapon of offence & the recovery of blood stains clothes of the accused i.e. the appellant herein.

17. The learned counsel invited the attention of this Court to the cross examination of the Investigating Officer i.e. PW-17. The Investigating Officer in his cross examination, more particularly, in para 17 has deposed that on the day of the incident the school was not closed.

18. Relying upon a part of the oral evidence of the Investigating Officer, the counsel submitted that if the school was not closed then the entire story put forward by PW-2 should be disbelieved.

19. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed.

20. On the other hand, Mr. Prateek Chadha, the learned counsel appearing for the State submitted that no error not to speak of any error of law could be said to have been committed by the High Court in reversing the acquittal and holding the appellant herein guilty of the offence of murder.

21. He would submit that the High Court was justified in placing reliance on the oral testimony of PW-2.

22. He would submit that even if the entire case of the prosecution hinges on the evidence of a solitary eye-witness, and if such solitary eye-witness is found to be wholly reliable, conviction can be based on such evidence.

23. The learned counsel submitted that over and above, the oral evidence of the eye-witness i.e. PW-2, there are other pieces of incriminating circumstances pointing towards the guilt of the accused in the form of discovery Panchnama of the weapon of offence that is the chopper drawn under the Section 27 of the Evidence Act and recovery of blood stained clothes of the accused.

24. He pointed out that number of incriminating circumstances were put to the appellant herein in his further statement recorded under Section 313 of the Cr.PC., but the appellant failed to give any satisfactory explanation to the same.

25. In the last, the learned counsel appearing for the State invited our attention to some part of the cross examination of PW-2.

26. He drew our attention to few suggestions which were put by the defence counsel to the PW-2 and more particularly the answer to those suggestions. According to him, the answers given by the PW-2 to the suggestions are going against the appellant and those can be relied upon against the accused.

27. In such circumstances referred to above, the learned counsel appearing for the State prayed that there being no merit in this appeal, the same may be dismissed.

#### ANALYSIS

28. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in reversing the acquittal and holding the appellant guilty of the offence alleged?

29. We take notice of the fact that the entire case of the prosecution is based on the testimony of two eye-witnesses, i.e., the PWs 2 and 3 respectively.

30. As noted, aforesaid PW-3 has been disbelieved even by the High Court &, therefore, we need not look into the evidence of the PW-3. We are now left with the evidence of PW-2. We proceed on the footing that the case hinges on the evidence of a solitary eye-witness to the incident. An accused can be held guilty, even on the evidence of a solitary eye-witness provided the evidence is found to be true, trustworthy and reliable. The evidence of a solitary eye-witness can be classified into three categories:-

(i) Wholly reliable

(ii) Wholly unreliable

(iii) Neither wholly reliable nor wholly unreliable.

If the case falls within the first category, there should not be any difficulty in accepting the evidence and holding the accused guilty of the alleged offence. If the case falls within the second category, the Court should outright discard the entire case of the prosecution and acquit the accused. The difficulty arises when the case falls within the third category, i.e., neither wholly reliable nor wholly unreliable.

In such circumstances, the court must insist for corroboration in material particulars.

For the time being, we proceed on the footing that PW-2 falls in the third category.

31. The defence has not been able to say anything as regards the discovery of the weapon of offence, i.e., the chopper under Section 27 of the Evidence Act.

32. The evidence on record reveals that in the course of the investigation while the appellant was in police custody, he on his own free will and volition made a statement before the Investigating officer that he would be willing to show the place where the weapon of offence had been concealed.

33. The accused after being arrested was found to be wearing clothes which were stained with blood. The clothes were collected and sent to the FSL for chemical analysis.

34. This piece of incriminating circumstance has not been explained by the appellant accused as to how come his clothes were stained with blood.

35. He cannot maintain complete silence. He is obliged in law to explain the incriminating circumstances against him when an opportunity is given to him while recording of his further statement under Section 313 of the Cr.PC.

36. We now come to that part of the cross examination of PW-2 wherein certain suggestions were put to her and the answers given to such suggestions.

37. We quote para 7 of the trial court's order:-

7. It is true that during my statement before police I have not stated that some conversion was going on between Mamatha and accused. It is not correct to state that I have not stated before the police in my statement that the accused at the first instance assaulted with chopper on the left forehead of Mamatha and then on her left hand fingers, and when she had bent and cut with chopper on the back side of the neck. It is true that while Mamatha was going ahead the accused was coming on her back side with his bicycle. The accused assaulted Mamatha, from her back side. He had so given one blow. At the time of Inquest and my statement I did not identify the chopper at the spot. It is not correct to suggest that we left the school at 8.30 am., and by the time we would come to the school, the dead body was

lying and good number of persons were assembled there and also I did not witness the incident as stated by me. It is not correct to suggest that today I was being tuted by the police to give evidence. It is false to suggest that my father my father's sister's husband Rajanna and PW.1 together and advised the police to take my statement as person who was present at the spot at the time of the incident. It is true that at the time when, the accused Mamatha with chopper I was at a distance of about 50 feet from the spot. At that point of time, I did not identify the chopper in his hands. It is not correct to suggest that now at the instance of the PP, I have identified the chopper at MO. 1. It is true that the chopper like MO.1 would be usually available in all the agriculturist family. It is not correct to suggest that I did not witness incident and I have deposed falsely."

(Emphasis supplied)

38. The suggestions put by the defence counsel and the answers to those establish the presence of the appellant accused at the place of occurrence. Not only the presence but even the factum of assault by the appellant with a chopper.

39. The learned counsel appearing for the appellant submitted that suggestions made by the defence to a witness in his cross-examination have no evidentiary value. At times the defence counsel may put some suggestions as a part of his defence. Therefore, according to the learned counsel although certain suggestions were put and the answers to those are incriminating in nature yet those should not be taken into consideration for the purpose of deciding the guilt or the innocence of the accused.

40. It is now well settled that suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature, in any manner, would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admission against his clients. Any concession or admission of a fact by defence counsel would definitely be binding on his client, except the concession on a point of law.

41. This principle of Law has been explained by this Court in the case of *Balu Sudam Khalde & Anr. vs. State of Maharashtra* reported in (2023) 13 SCC 365) in paras 38 to 42, which are as under :-

“38. Thus, from the above it is evident that the suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on the point of law. As a legal proposition we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.

40. It is a cardinal principle of criminal jurisprudence that the initial burden to establish the case against the accused beyond reasonable doubt rests on the prosecution. It is also an elementary principle of law that the prosecution has to prove its case on its own legs and cannot derive advantage or benefit from the weakness of the defence. We are not suggesting for a moment that if prosecution is unable to prove its case on its own legs

then the Court can still convict an accused on the strength of the evidence in the form of reply to the suggestions made by the defence counsel to a witness. Take for instance, in the present case we have reached to the conclusion that the evidence of the three eyewitnesses inspires confidence and there is nothing in their evidence on the basis of which it could be said that they are unreliable witnesses. Having reached to such a conclusion, in our opinion, to fortify our view we can definitely look into the suggestions made by the defence counsel to the eyewitnesses, the reply to those establishing the presence of the accused persons as well as the eyewitnesses in the night hours. To put it in other words, suggestions by itself are not sufficient to hold the accused guilty if they are incriminating in any manner or are in the form of admission in the absence of any other reliable evidence on record. It is true that a suggestion has no evidentiary value but this proposition of law would not hold good at all times and in a given case during the course of cross-examination the defence counsel may put such a suggestion the answer to which may directly go against the accused and this is exactly what has happened in the present case.

41. The principle of law that in a criminal case, a lawyer has no implied authority to make admissions against his client during the progress of the trial would hold good only in cases where dispensation of proof by the prosecution is not permissible in law. For example, it is obligatory on the part of the prosecution to prove the post-mortem report by examining the doctor. The accused cannot admit the contents of the post-mortem report thereby absolving the prosecution from its duty to prove the contents of the same in accordance with law by examining the doctor. This is so because if the evidence per se is inadmissible in law then a defence counsel has no authority to make it admissible with his consent.

42. Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

42. We now proceed to deal with the last part of the argument of the learned counsel as regards the school not being closed on the date of the incident as deposed by the Investigating Officer. The Investigating Officer in para 17 has deposed thus:-

"17. On 22.08.98 there was no holiday to the school at Chikkanahallyt where Gangamma was studying. I do not know as to whether Bheemama Amavasyya falls on the last day of Ashada Mass."

43. If we read the aforesaid part of the deposition of the Investigating Officer, closely all that it could be said is that the I.O. himself was not sure whether on the date of the incident the school was closed or not.

44. By reading a portion of the cross examination of Investigating Officer, it is difficult for us to say that on the date of the incident, the school was closed and the PW-2 knew it in advance and therefore, she had no occasion to leave in the morning for school, so as to give her a chance to witness the incident.

45. In the overall view of the matter, we are convinced that the prosecution has been able to successfully prove the guilt of the accused beyond reasonable doubt.

46. We are informed that the appellant accused was released on bail by this Court vide order dated 18.10.2016.

47. Since this appeal is being dismissed today, the bail bonds furnished by the appellant stands cancelled.

48. He shall now surrender before the Trial Court for the purpose of serving out the remaining part of the sentence within a period of eight weeks from today.

49. In the result, this appeal fails and is hereby dismissed.

50. Pending application(s), if any, stand disposed of.

.....J.  
[J. B. PARDIWALA]

.....J.  
[R. MAHADEVAN]

New Delhi  
23<sup>rd</sup> January, 2025

ITEM NO.103

COURT NO.14

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 999/2013

Y.S NATARAJA

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date : 23-01-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) : Mr. Shekhar G Devasa, Sr. Adv.  
M/S. Devasa & Co., AOR  
Mr. Manish Tiwari, Adv.  
Mr. Pawan Shyam, Adv.  
Ms. Thashmitha Muthanna, Adv.  
Mr. Shashi Bhushan Nagar, Adv.  
Mr. Vishwanath Chaturvedi, Adv.

For Respondent(s) : Mr. Prateek Chadha, A.A.G.  
Mr. D. L. Chidananda, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1. The appeal is dismissed in terms of the signed order.
2. The relevant portion of the order is as under:-

"Since this appeal is being dismissed today, the bail bonds furnished by the appellant stands cancelled.  
He shall now surrender before the Trial Court for the purpose of serving out the remaining part of the sentence within a period of eight weeks from today."

3. Pending application(s), if any, stand disposed of.

(CHANDRESH)  
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)  
COURT MASTER (NSH)

(Signed order is placed on the file)