Supreme Court of India
B. Vishwanath vs State Of Karnataka on 13 February, 2008
Author: D A Pasayat
Bench: Dr. Arijit Pasayat, P. Sathasivam

CASE NO.:
Appeal (crl.) 306 of 2008

PETITIONER:
B. Vishwanath

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 13/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NOS. 306 OF 2008 (Arising out of S.L.P. (Crl.) Nos.6893-6894 of 2007) DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Karnataka High Court. Before we deal with the appeals in detail, it is necessary to highlight certain disturbing features.

3. The appeal filed by the appellant was disposed of on 1.7.2006. There was no indication in the order as to whether the appeal was dismissed or allowed. Only certain directions were given to the Secretary, Home Department and Director General of Police to strictly comply with the observations that the Investigating Officers were to refer the blood stained articles and blood samples of the victim/accused, as the case may be, to the Medical College Hospital in the District or in the neighbouring District which have Forensic Science Laboratory to give report regarding the blood group. It was further directed that the Police Manual needs to be suitably amended to incorporate the suggested procedure for mandatory compliance in the protocol of investigation.

4. When it was pointed out to the learned Judge that there was no result of the appeal, the matter was listed under the heading "For being spoken to" and on 31.3.2007 it was observed that for the reasons and discussions made, the order of conviction and sentence is confirmed and appeal is dismissed. To say the least, the procedure adopted is clearly not appropriate.

5. Coming to the facts of the case, the only thing that needs to be observed is that the impugned judgment and order of the High Court has one characteristic i.e. brevity. It has no other characteristic. It does not even refer to the various aspects and briefly refers to the evidence of the witnesses.

6. It needs no emphasis that the Appellate Court exercising appellate powers has not only to consider various points but objectively and critically analyse the evidence. That has not been done in the present case.

7. The case of the prosecution was that on 27.9.2000 at about 8.30 P.M. the accused trespassed into the house and assaulted his sister-in-law PW1 with sickle and also assaulted his mother PW2 with sickle.

8. The Trial Court framed charges against the appellant for offences punishable under Sections 307, 427 and 448 of the Indian Penal Code, 1860 (in short 'IPC').

9. The accused pleaded innocence. However, on consideration of thee evidence, the Trial Court found the appellant guilty of offence punishable under Sections 307, posed 427 and 448 IPC. Different sentences were imposed which were directed to run concurrently.

10. The accused-appellant preferred an appeal before the High Court. As noted above, the High Court dismissed the appeal. The only discussion about the merits of the case made by the High Court is in the following words:

"The case of the prosecution is that on 27.9.2000 at 8.30 p.m. the accused trespassed into the house, assaulted his sister-in-law PW- 1 with sickle and also assaulted his mother P.W.-2 with sickle.

2. The wound certificate of P.W. 1 discloses hat an incised wound on the right hand, leniar abrasion on the back of trunk over the region of left scapula and leniar abrasion on the right scapula region.

3. The wound certificate of P.W.2 discloses incised wound on the occipital region of scalp and tenderness at the left clavicle resulting in fracture of left clavicle and first metatarsal bone.

4. P.W. 1 and 2 testified to the overt acts of the accused in causing injuries on them. P.W. 3 is an eye witness and sister of P.W.1. She supports the prosecution version. The wound certificate and evidence of the doctor also corroborate the version of P.Ws I and 2."

11. The observations on the procedure to be followed read as follows:

"In some of crimes, the blood stains on incriminating articles serve as corroborative piece of evidence to prove the guilt of the accused by establishing that the blood group of the stains tally with that of blood group of the victim or the accused as the case may be. In such cases, it is necessary that I.O. should send blood stained articles and also the blood sample of the person with whom the blood stains on the articles is to be connected. In my career as a Judge in innumerable cases, I have come across that the investigation done in this regard is wholly incomplete. The blood samples of the victim or the accused as the case may be is not sent along with blood stained articles, to prove the connectivity. I have also found that in the post mortem report, there is no mention of blood group of the deceased. This type of lop sided investigation virtually renders a valuable scientific corroborative evidence incomplete and ineffective. I have also found that for determination of the blood group of

the stains, the articles are sent to FSL at Bangalore for determination of the blood group. The District Hospital Laboratory is quite competent to give medical opinion regarding the blood group. The reference of the articles of FSL, Bangalore does result in delay in placing complete evidence before the Court. In most of the cases, at the time of evidence, the FSL reports are produced by the prosecution. In order to avoid delay, it is expedient that I.O. should refer the blood stained articles and blood samples of the victim/accused as the case may be to the Medical College hospitals in the district or in the neighbouring District which have Forensic Science Laboratory to give report regarding the blood group.

The Home Secretary and Director General of Police should issue necessary instructions to the Superintendent of Police of the Districts and S.H.Os of the police stations for strict compliance of the above observations regarding blood stained articles. It is further directed that the Police manual be suitably amended to incorporate the suggested procedure for mandatory compliance in the protocol of investigation."

12. Next comes the order dated 31.3.2007. Same reads as follows:

"ORDERS ON FOR BEING SPOKEN TO For the reasons and discussions made above, the order of conviction and sentence is confirmed & appeal is dismissed."

14. The manner in which the appeal has been dealt with is not a correct way to deal with the appeal. No serious attempt appears to have been done by the High Court to appreciate the rival stand and/or to analyse the evidence in its proper perspective. Above being the situation, we set aside the impugned judgment of the High Court and remit the matter to the High Court for fresh consideration and disposal in accordance with law.

15. The appeals are allowed.