

(2009) 12 KAR CK 0071
In the Karnataka High Court
Case No : Criminal Appeal No. 1697 of 2007

Banudas Dattu Pawar and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 143, 147, 148, 302

Citation : (2010) 5 KarLJ 293

Hon'ble Judges : Ravi Malimath, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : Bahubali A. Dhanawadi, for the Appellant; A.R. Patil, Additional State Public Prosecutor, for the Respondent

Judgement

1. The material facts of the prosecution case disclose that the appellants (appellant 1-A2, appellant 2-A3, appellant 3-A4, appellant 4-A5, appellant 5-A6, appellant 6-A7, appellant 7-A8, appellant 8-A9, appellant 9-A10, appellant 10-A11, appellant 11-A12) 1 to 11 are A2 to A12. The appellants 2 and 3 are brothers. The A3 to A12 are the supporters of A2 and A3. One Sambhaji (deceased) is the brother of P.W. 1-complainant. There were disputes between the appellants 1 and 2 with the family of the deceased over locating hutment in an area put up by the family of the deceased which was disputed by the appellants 1 and 2.

2. On 15-7-2001 in the evening the appellants/A2, A3 and the deceased A1 before the Trial Court had threatened the deceased with dire consequences. In that regard the deceased, P.W. 1-brother of the deceased, P.W. 2-father-in-law of the deceased and P.W. 3-cousin brother of P.W. 2 and father of the deceased-C.W. 12 on 16-7-2001 around 6.00 a.m. were going from their village to police station to give complaint. The A1, A2, A3 and A12 wielding axes, A6 to A9 wielding clubs along with A4, A5, A10 and A11 accosted the deceased and the others. The above accused wielding axes and clubs assaulted the deceased severely all over his body. A1 assaulted P.W. 2 with axe and A2 with axe, A9 with

club and A7 with club assaulted P.W. 3 when they attempted to intervene and rescue. The accused after causing deadly attack went away from the scene.

3. The P.W. 1 to P.W. 3 took the injured to the hospital at Athani and at 10.00 a.m. P.W. 1 gave a written complaint to police at Ex. P. 1. The P.W. 19-PSI on the basis of Ex. P. 1 registered the FIR. The autopsy report discloses that the death is due to shock and hemorrhage on account of multiple injuries. The death is homicidal death. The AI, A2, A3 and A12 are arrested at their voluntary instance. The axes-M.O. 6 to M.O. 9 have been recovered under seizer mahazar-Exs. P. 7 to P. 9 and P. 14. No recoveries are effected from other accused. The accused are charged for committing the offence under Sections 143, 147, 148, 109, 302, 307 read with Section 149 of the Indian Penal Code, 1860. The charge under Sections 143 and 147 is unnecessary and redundant when once accused are charged u/s 148 of IPC.

4. The P.Ws. 1 to 3 have supported the case of the prosecution. The P.W. 1 is an eye-witness to the incident. The P.W. 1 in the evidence stated that AI, A2, A3 and A12 assaulted with axes and A6 to A9 assaulted the deceased with clubs, A4 and A5 instigated and nothing is said about the role played by A10 and AI. It is further stated that the P.Ws. 2 and 3 were also assaulted by the accused. It is stated that the AI assaulted P.W. 2 with axe and A2, A9 and A7 assaulted P.W. 3 with clubs.

5. The evidence of P.W. 2 disclose that the A2, A3 and A12 assaulted the deceased with axe. The A6 to A9 assaulted the deceased with clubs. The A4, A5, A10 and AI instigated the accused. It is further stated that the AI assaulted him with axe and that the A2 with axe, A9 with club, A12 with axe and A7 with club assaulted the P.W. 3.

6. The P.W. 3 in his evidence stated that AI to A3 assaulted the deceased with axe, AI, A2, A9 and A12 assaulted him with axe and A7 assaulted with club. The P.W. 3 do not state about instigation by the other accused. The P.W. 3 in his evidence further states that all the accused persons are strangers for him and he has seen them for the first time at the time of offence.

7. The evidence of P.W. 4-the other eye-witness discloses that the AI to A3 assaulted the deceased with axes, A6 to A9 assaulted the deceased with clubs, A4, A5, A10 and AI instigated the accused to assault. He further states that AI to A3 assaulted P.Ws. 2 and 3.

8. The Trial Court on the basis of above evidence convicted the AI to A12 under Sections 302, 109 read with Section 149 of IPC for causing death of Sambhaji and all the accused are convicted for an offence u/s 307 read with Section 149 of IPC on two counts for attempting to cause death of P.Ws. 2 and 3. The convicted accused are in appeal.

9. The Trial Court conducted the trial of both the case and counter simultaneously. The material placed on record in the evidence in the instant case

disclose that after the pronouncement of judgment AI died in the Court. Therefore the case abates against him. The A2 to A12 are in appeal.

10. The evidence of I.O. discloses that the AI had given complaint simultaneously against P.W. 1 to P.W. 4 and others. The AI to A3 had sustained injuries in the assault made by P.W. 1 to P.W. 4 and they were sent to hospital. The same I.O. investigated both the cases. However, at the time of filing the charge-sheet P.W. 19 filed charge-sheet in the counter case pertaining to complaint lodged by A1 in S.C. No. 29 of 2003.

11. The P.W. 17 has filed charge-sheet in the case in question. The Counsel for the appellant has filed an application u/s 391 of the Criminal Procedure Code, 1973 along with the certified copies of the depositions, wound certificates, charge-sheet, FIR, etc., for production of additional evidence. The State Public Prosecutor has no objection to receive the said documents in evidence, since the said documents pertains to counter case.

12. The Counsel for the appellants strenuously argued that there is false implication of the accused for sinister reasons:

(a) The prosecution was not explained the genesis of incident either in this case or in the counter as to show who is aggressor,

(b) The evidence on record discloses that there was fight between the accused group and the group of deceased, P.Ws. 1 to 4 and others. The AI to A3 have also sustained injuries in the assault. The injuries also stated to be simple in nature. AI to A3 have sustained head injuries and taken treatment in the hospital and inpatient for 10 days;

(c) The material on record suggests that the conviction of A4, A5, A10 and AI is bad in law since there is no evidence against them regarding their role and active participation that they instigated the other accused wielding weapons to carry on the assault. With regard to the accused who has assaulted, it is submitted that Exception 4 of Section 300 would attract. As a matter of self-defence they are not liable for conviction under Sections 302 and 307 of IPC much less for Section 148 read with Section 149 of IPC. However, in the alternative submitted that the AI to A3, A6 to A9 and A12 at the most could be held liable for an offence u/s 304(1) of IPC since Exception 4 of Section 300 of IPC would attract since the assault evidently has taken place in a state of sudden quarrel.

13. After carefully going through the evidence on record the FIR allegations disclose that AI to A3 and A12 wielding axes and A6 to A9 wielding clubs assaulted the deceased. A4 and AI instigated the accused. There is no mention of role played by A5 and A10 in the FIR. The evidence of P.W. 3 with regard to identification of the accused and their overacts no credence can be given because admittedly he is a stranger to all the accused and has seen them for the first time at the time of offence. The evidence of P.W. 2 and P.W. 1 clearly disclose that the AI to A3 and A12 wielding axes and A6 to A 9 wielding clubs caused the

assault on the deceased. It is quite natural that in a faction ridden villages there is a tendency to implicate all the supporters of the group. Therefore carefully going through the complaint contents and FIR, evidence of P.W. 1 and P.W. 2 we find that their evidence with regard to A1 to A3, A12, A6 to A9 regarding presence and participation in the assault is credible. The P.W. 4 also corroborates P.W. 1 to the effect that A6 assaulted the deceased with clubs.

14. In that view of the matter the A1 to A3, A12, A6 to A9 are to be held guilty. Since no role is attributed to A4, A5, A10 and All the conviction against them appears to be not sound and proper and the same is set aside. With regard to nature of offence the documentary material produced in the counter case in this appeal and the evidence of I.O. disclose that in a State of quarrel the incident has taken place. The contention that the accused in self-defence assaulted the deceased does not appear to be a credible version and there is no evidence in that regard. It appears to be a cause of a group clash between the accused on the one part and the deceased and others on the other part. Since the genesis is not explained and there is no plea of self-defence established, it is to be held that Explanation 4 of Section 300 would attract to the facts of the case.

15. In that view of the matter the conviction u/s 302 of IPC is set aside. The appellants 1, 2, 11, 5, 6, 7 and 8 (A1 to A3, A12, A6 to A9) are convicted for an offence u/s 304(1) of IPC and sentenced to undergo rigorous imprisonment for a period of six years with fine of Rs. 20,000/- each, in default of payment of fine to suffer simple imprisonment for a period of three years each for the offence u/s 304(1) of IPC.

16. The P.Ws. 2 and 3 have sustained grievous injuries. The wound certificate of P.W. 2 at Ex. P. 11 disclose that he had sustained fracture of wrist joint. The wound certificate of P.W. 3 at Ex. P. 10 disclose that he had sustained fracture of left knee joint. The injuries are not on vital parts of the body. Therefore conviction u/s 307 of IPC is bad in law. The accused are convicted u/s 326 read with Section 149 of IPC and each of them are sentenced to undergo simple imprisonment for a period of two years with a fine of Rs. 10,000/- each, in default of payment of fine to suffer simple imprisonment for a period of three years each.

17. In the fine amount P.W. 2 and P.W. 3 shall be paid compensation of Rs. 30,000/- each and in the fine amount collected wife of the deceased shall be paid compensation of Rs. 1,50,000/-.

18. The accused are entitled for the benefit of set off u/s 428 of Cr. P.C. The appellants 3, 4, 9 and 10 (A4, A6, A10 and All) are directed to be set free forthwith if not required to be detained in any other case. The operative portion shall be communicated to the Trial Court and the jail authorities forthwith for compliance.