

(2011) 08 KAR CK 0021
In the Karnataka High Court
Case No : Criminal Petition No. 4157 of 2011

Bommegowda

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3 (i) (x), 3 (v)

Citation : (2011) 08 KAR CK 0021

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : G. Suresh, for the Appellant; Rajasubramanya Bhat, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar

1. Petitioner who is arraigned as accused in Crime No. 132/2011 by Tumkur Rural Police for the offence punishable u/s 302 IPC and Section 3(i)(x) of clause II and 3(v) of SC and ST (PA) Act is before this Court seeking for being enlarged on bail

2. The gist of the prosecution case is that the deceased Huchappa was working in the agricultural lands belonging to the Petitioner as a coolie and on 28.4.2011 at about 8.00 am. the said Huchappa was picked up by Petitioner on his motorcycle and was brought to the agricultural land belonging to the Petitioner and was asked to work along with other labourers. It was stated that during the lunch time, one of the co labourer by name Govindappa. was called by the wife of the Petitioner for lunch along with other coolies and as such, both the said Govindappa and deceased Huchappa were proceeding to lunch and in the mid way Huchappa felt uneasiness and suddenly was taking rest under the tree and as such, the said Govindappa alone came to house for lunch and he had also informed the wife of Huchappa Smt Puttamma who enquired with him and every

one was under the belief that he was taking rest on account of tiredness and lack of sleep and as such, they did not worry about this aspect and in the evening when the Petitioner Bomegowda, returned at about 6.00 PM, it was found that said Hutehappa was still sleeping at the same place from where he was taking rest in the afternoon and same was informed to Bommegowda and all of them attempted to wake him up by providing him water and buttermilk and he did respond positively and was shifted to Tumkur hospital which was at a distance of 10 km. in a Tatasumo belonging to the brother of Bommegowda and on being shifted to the hospital, it was reported by the doctors that said Huchappa had already expired and was declared as brought dead. On the next day i.e. on 29.4.2011, Sri Srinivas Murlhy. CW 5 lodged a complaint suspecting the cause of death of Huchappa, which came to be registered as UDR No. 19/2011. On 30.4.2011. on the basis of the complaint made, by Smt. Nagamma W/o. deceased suspecting the cause of death of Huchappa, Crime No. 132/11 came to be registered for offence punishable u/s 302 IPC and Section 3(i)(x) of clause II and 3(v) of SC and ST (PA) Act. and police apprehended the Petitioner on 19.5.2011 produced him before the jurisdictional Magistrate who remanded him to judicial custody.

3. The case of prosecution is that deceased was belonging to Scheduled Caste and he had died under suspicious circumstances in the light of the deceased sustaining injuries. It was contended that both the deceased and his wife are working as bonded labourers and were paid meager wages by the Petitioner. It is also the case of prosecution that deceased and his wife demanded to raise their wages and as such accused threatened them on 28.4.2011, and accused dragged the deceased brought him on his motor cycle to his land and thereafter he has expired in the land of the Petitioner under suspicious circumstances and complainant Smt. Nagamma i.e. the wife of the deceased learnt that her husband had expired after two days and his body was kept at mortuary in a Government Hospital and as such, she suspected foul play. On these grounds, the charge was laid against the accused person. During the course of investigation, statement of witnesses have been recorded, inquest has been done and post mortem report was also obtained. However, final opinion was not given by the doctor who conducted Post Mortem at the first instance and brain, both lungs, heart, spleen and other parts of the body referred including blood and viscera samples were sent for Histo-pathological report and after obtaining the same final opinion has been given that death is due to cumulative effect of pressure, injuries to neck structures i.e. soft tissue around hyoid bone and anterior of trachea. Petitioner filed a petition for bail before Sessions Judge, Tumkur and same was rejected by order dated 21.7.2011 and hence, Petitioner is before this Court.

4. Heard the learned counsel appearing for the Petitioner Sri Suresh and learned High Court Government Pleader appearing for the Respondent - State and perused the records produced by the learned High Court Government Pleader.

5. Learned Counsel for the Petitioner Sri. G. Suresh contended that on previous day of the incident, deceased admittedly had watched drama whole night at village and had consumed liquor and was suffering from lack of sleep. He would rely upon the statement made by wife of the deceased to evidence this fact and contends that after deceased came to the agricultural lands of the Petitioner, he had worked almost for half day and even according to the co-employee Govindappa, CW-2, when he called him for lunch in the afternoon, he had seen deceased had suddenly felt uncomfortable and sat below a Arecanut tree to take rest and when this statement read along with postmortem report, would go to show that there was no overt act on the part of the Petitioner for cause of death as evidenced from the postmortem report which is not attributable to "he Petitioner and as such medical evidence available on record would establish that, deceased (Huchaiah) had died on account of congestion of the lungs, edema resulting in the stoppage of the heart. As such he contends that suspicion expressed by deceased wife, does not point out of any acts against the Petitioner which caused his death and based only on suspicion he is falsely implicated. As such, he prays for the Petitioner being enlarged on bail.

6. Per contra, learned HCGP appearing for the State would submit the fact that deceased and his wife were working in the agricultural lands of the Petitioner is not in dispute and on the date of death of Huchaiah, Petitioner had come to the house of the deceased and had taken him and while working in the land of the Petitioner, he had expired under suspicious circumstances and some of the witnesses have also stated that deceased was a bonded labour and Petitioner being a rich landlord he was responsible for his death and in the event of he being enlarged on bail, there is every likelihood of he pressurising prosecution witnesses and prays for dismissal of the petition.

7. Having, heard the learned Counsel for the Petitioner and Respondent and on perusal of records, it is noticed that prosecution case is laid against Petitioner only on the suspicion expressed by wife of the deceased and brother of the deceased.

8. From perusal of material on record, it would go to show that; Petitioner herein arrived at the place where deceased was lying at about 6.00 p.m. Prosecution has to establish during the course of trial about presence of accused (Petitioner) between 10.00 a.m.. to 6.00 p.m and it is on a suspicion expressed by the wife and brother of the deceased, police have registered a case against Petitioner. In order to ascertain as to whether the said suspicion, prima-facie can be pointed out at the Petitioner, prosecution has relied upon the postmortem report and statement of witnesses Narasimha CW-4, Narasaiah-CW-17. Ramcsn-CW-I6, Gaviappa-CW-8. A combined reading of these statements along with the statement, of wife of the deceased, post mortem report, as also inquest report, it would emerge that deceased was suffering from certain ailments relating to lungs and heart.

9. At this juncture, it would be relevant to note the observation made in the

report of Pathologist dated 17.05.2011, wherein expression of the doctor (Pathologists) is noted as under.

i) LUNGS: Features are suggestive, of congestion, edema and patchy pneumonia with partial autolytic changes.

ii) NECK STRUCTURE: Features are suggestive of ante mortem pressure injury.

iii) HEART: Features are suggestive of Aortic atherosclerosis with autolysis of myocardium

10. In so far as the neck structure is concerned. Pathologist has opined as under:

External Surface Autolytic changes seen. Tongue and hyoid bone identified. Hyoid bone shows no discontinuity or fracture. Soft tissue anterior to trachea shows congestion.

11. On the basis of the Histopathology Report, final opinion regarding cause of death has been given as under:

FINAL OPINION: On perusal of autopsy findings, FSL report opinion and Histopathology examination report, I am of the opinion that, death is due to cumulative effect of pressure of lungs, i) neck structure i.e, soft tissue around the hyoid bone and anterior to trachea and ii) Tests i.e., Focal exhaustion of RBC's into tonic albuginea as suggestive by HPE findings.

12. By reading of statement of CW-2, Govindappa, who is Co-employee and a co-labourer who was working along with the deceased, it would go to show that on the date of death of Huchchaiah, deceased was going along with Govindappa-CW-2 for having lunch at the house of the Petitioner and in the midway, he has suddenly developed unrest and sat under a tree for taking rest as he was not feeling comfortable. This statement when read along/with the Histopathology Report and final opinion in the post mortem report would go to show that death of Huchchaiah has occurred on account of impression expressed by Pathologist as per his report dated 17.05.2011 None of the witnesses including the wife of the deceased at the first instance, have expressed any doubt or apprehension about the Petitioner having murdered Huchchaiah. It is only on a suspicion raised by them about cause of death of Huchchaiah, post mortem has been done and various parts of the body have been sent for histopathology analysis and said report as stated herein above reflects the cause of death. The features of heart of the deceased, as opined by the pathologist, which is extracted herein above Would go to show that there was thickening of edema with patchy degenerative changes in which fat crystals could be seen and in which calcium would be deposited involving large arteries.

13. The word "atherosclerosis" is defined in II Edition of Butterworth's medical dictionary:

Atherosclerosis - Nodular arteriosclerosis; the outer coat is hyperplastic, and there is fatty degeneration of the middle coat.

14. The pathologist has also opined that there are partial autolytic changes both in the lungs and in the heart and word "autolysis" in the same dictionary is defined as under:

Autolysis The process of spontaneous disintegration of cells and tissues resulting from the action of intracellular enzymes: it may occur locally in certain conditions and is generalized after death. It. results chiefly from the action of cathartic enzymes, and is favored by diminished oxygen supply and increased acidity.

15. "Myocardium" being the structure of the heart and thickening of the heart is the opinion expressed by Pathologist and based on this report at this stage it cannot be held that deceased expired on account of any act of the Petitioner. It is for the prosecution to establish during the course of trial about the overt act alleged to have been committed which admittedly is not forth coming from (he statement of the witnesses recorded by the prosecution. It is also made clear the Sessions Court shall not rake into consideration views expressed by this Court herein above at the trial since it is made for the limited purpose of considering Petitioner"s claim for being enlarged on bail.

16. In view of the above discussion, I am of the considered view that Petitioner cannot be detained during pre-trial stage by way of punitive detention. Hence, I am of the considered view that Petitioner is entitled to be enlarged on bail. However, to allay apprehensions expressed by the prosecution about Petitioner indulging in tampering prosecution witnesses it can be allied by imposing strict conditions on the Petitioner. Accordingly, petition is allowed. Petitioner is ordered to be enlarged on bail on execution of personal bond for 2,00,000/-(Rupees Two lakhs only) and on his furnishing two independent solvent sureties for the like sum, and subject to following conditions:

- 1) The Petitioner shall not indulge in inducing or terrorizing or threatening the prosecution witnesses in any manner whatsoever and if such incidents were to occur and brought to the notice of the Court, prosecution is at liberty to seek for cancellation of bail.
- 2) The Petitioner shall not leave the jurisdiction of the Court during pendency of the trial without express permission.
- 3) The Petitioner shall appear before the Trial court on all dates of hearing without fail and shall co-operated for expeditious disposal of the case.
- 4) The Petitioner shall appear before the Jurisdictional Tumku; Rural police station once in 15 days i.e., on every 2nd and 4th Monday between 10.00 a.m to 5.00 p.m., and mark his attendance till conclusion of the trial