

(2004) 09 KAR CK 0031
In the Karnataka High Court
Case No : Criminal Appeal No. 1622 of 2001

D. Narayanaswamy and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2005) 1 KCCR 177

Hon'ble Judges : S.R. Bannurmath, J; S.B. Majage, J

Bench : Division Bench

Advocate : Hashmath Pasha, for the Appellant; B.C. Muddappa, Additional State Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—The Appellants, who were accused Nos. 1, 2, 4 and 6 respectively in Sessions Case No. 137 of 1993, have challenged the judgment of conviction and sentence dated 24th September, 2001 passed by the learned Sessions Judge, Mysore, finding these accused guilty of the offence under Sections 302, 324 read with Section 34 IPC. It is to be mentioned here itself that even though in all 9 accused were charge sheeted, accused No. 8 died during the pendency of the trial itself and as such, the case against him stood abated. As already noted, though the trial Court convicted accused Nos. 1, 2, 4 and 6, it gave benefit of doubt and acquitted the accused Nos. 3, 5, 7 and 9. The State has not filed any appeal against acquittal of these accused.

2. The brief facts as per the prosecution case are as follows:

The accused are all members of one family headed by deceased-accused No. 8 Doddakempaiah. To be specific, accused Nos. 1 and 2, who are interse brothers, are sons of accused No. 8. Accused No. 6 is the son-in-law of accused No. 8 and accused Nos. 3 and 5 are his children. Accused No. 4 is another grand-son of accused No. 8, accused No. 7 is the brother of deceased-accused No. 8. Accused

No. 9 is the wife of accused No. 6. These accused on one hand and the deceased Marimadaiah, his brother PW-3 - Shivamallu, cousin PW-4-Muddumadaiah and other eye witnesses were all residents of Satyagal village in Kollegal taluk. According to the prosecution, adjacent to the house of A-8, there is a well situated, the water of which is stated to be used by all the villagers. As the same was disputed by accused No. 8 and in fact, the accused No. 8 tried to obstruct the other villagers from approaching the well by putting a compound wall. It is the prosecution case that the deceased and others objected for the same and when accused No. 8 did not listen to their request not to put up the wall, they approached Tahsildar, Police and B.D.O. few days earlier to the incident. According to the prosecution, two days prior to the incident, in fact, B.D.O. and Police had visited the place, inspected the well and its surroundings and had advised both the parties not to take any coercive steps as the matter would be decided after going through the material evidence placed before them. It is the case of the prosecution that aggrieved by the approach of the villagers to the Police, Tahsildar and B.D.O., the accused No. 8 got enraged and on the date of incident namely, 20.4.1993, in the evening, started abusing PW-4, who was passing by, as to how they dare to file a complaint before the authorities regarding the compound wall. At that time, attracted by the loud voices, other villagers including PW-3 and others staying nearby also came to the spot. According to the prosecution, when the deceased Marimadaiah tried to intervene in the quarrel, the accused No. 8 and his relatives - the other accused, who were alleged to be armed with sharp edged weapons like axes, choppers and blunt weapon like iron rod started assaulting the deceased, PW-4 and others. It is also alleged that accused No. 9 brought a knife from inside the house and gave it in the hands of accused No. 1, which was also alleged to have been used by the accused. In the process, not only the deceased, but also P Ws-3 and 4 alleged to have received injuries.

3. According to the prosecution, as medical help is not available at Satyagal village, while these injured along with the others were waiting for transportation, PW-27 - ASI, who received information about the incident, alleged to have come to the spot, where the injured were waiting and arranged to send them to the hospital. The injured are taken to Kollegal General Hospital and on the next day, as the condition of the injured Marimadaiah was found serious, he was advised to be taken to NIMHANS at Bangalore, but on the way, it is alleged that he breathed his last and his dead body was brought back.

4. As per the prosecution case, thereafter at about 8.30 p.m., PW-3 gave his oral statement/complaint as to the incident, which came to be reduced in writing as Ex.P3 by PW-27 and a case in Crime No. 41 of 1993 came to be registered against six named accused and other (unnamed) for the offences under Sections 143, 147, 148, 324 read with Section 149 IPC. However, after the death of Marimadaiah, second FIR as per Ex. P24 came to be drawn by including the offence u/s 302 read with Section 149 IPC. Be that as it may, the investigation is taken up by the Police in Crime No. 41 of 1993. Necessary mahazar like spot

mahazar, drawing up sketch of the scene of offence is completed, statements of the witnesses recorded. The dead body is subjected to autopsy. The accused are apprehended and on their voluntary statement, certain recoveries like the weapons M. Os. 4 to 7 and their bloodstained cloths are carried out. These bloodstained articles are sent to Forensic Science Laboratory. After completion of the entire investigation and receipt of the reports including autopsy, FSL, wound certificate, C.E., etc., charge sheet has been filed against 9 accused. After committal and framing of the charges against all the accused for the offences under Sections 143, 147, 148, 324 read with Section 149 on two counts and 302 read with 149 IPC so far as accused Nos. 1 to 7 are concerned and u/s 109 read with Sections 302 and 324 IPC so far as accused Nos. 8 and 9 are concerned, as the accused denied the charges and claimed to be tried, they are tried in Sessions Case No. 137 of 1993.

5. In order to establish the guilt of the accused, the prosecution has relied upon oral evidence of 30 witnesses as well as Exs.P1 to P42 and material objects M.O.1 to M.O.16.

6. Apart from the total denial of the prosecution case, the accused No. 1 in his 313 Code of Criminal Procedure. statement has contended that it was the prosecution witnesses and the deceased, who were aggressors and in fact, had assaulted accused No. 1 and his family members. Apart from this statement, the accused have also examined two defence witnesses and got marked Exs.D1 to D13. As already noted, after considering the entire evidence on record, the trial Court did not agree with the prosecution case so far as offences under Sections 143, 147, 148 or the other offences with the aid of Section 149 IPC are concerned and in fact, found accused Nos. 3, 5, 7 and 9 as not guilty, nevertheless found accused Nos. 1, 2, 4 and 6 as guilty for the offences under Sections 324, 302 both read with Section 34 IPC and convicted them accordingly. Hence, the present appeal.

7. We have heard Sri Hashmath Pasha, learned Counsel appearing for the Appellants as well as Sri B.C. Muddappa, learned Additional SPP for the State and perused the judgment impugned as well as the entire evidence on record.

8. At the outset, so far as death of Marimadaiah resulting from the injuries caused to him in the evening of 20.4.1993 is not much in dispute. Even otherwise, the evidence of the eye witnesses, the inquest proceedings and more specifically, the evidence of the Doctor PW-28, who had seen the deceased while still alive and also conducted autopsy on him after his death, so also the report Ex. P22 clearly establish the fact that the deceased had received four injuries out of which, one on the parietal region was found to be fatal. According to the Doctor, all these injuries were antemortem in nature and the cause of death was due to shock as a result of injury to the brain. Hence, we too agree with the finding of the trial Court that deceased Marimadaiah met with homicidal death, but the moot question before us is, who caused it and especially whether it was accused Nos 1, 2, 4 and 6 were responsible for the same as put forth by the

prosecution and upheld by the trial Court or whether the defence has succeeded in showing that the incident did not take place in the manner as put forth by the prosecution and it was something else.

9. Out of 30 witnesses examined by the prosecution, P Ws-3, 4, 5, 7, 10, 11 and 13 have been projected as eye witnesses to the incident. Further, P Ws-3 and 4 are also stated to be injured witnesses in the incident. Apart from these witnesses, the circumstantial witnesses are PW-1 - Engineer, who prepared a sketch as per Ex.P1, PW-2 - Sub-Registrar to show the situation of the well as per the sale deed of accused No. 8 (Ex.P2), PW-8 - the driver of the Ambulance, who took the injured to the hospital, PW-12 - a neighbouring shop owner speaking about the motive aspect and PW-16 - B.D.O., who had visited earlier the village to resolve the dispute between the villagers on one hand including the prosecution witnesses and accused No. 8 and his family members on the other. The remaining witnesses are mahazar witnesses, who have attested various mahazars as well as members of the investigation team except PW-19 and PW-28, who are the medical officers, who have examined P Ws-3, 4 as well as the deceased.

10. The eye witnesses including the injured, no doubt, have tried to give cogent and consistent version as to the incident in question. These witnesses not only they speak about the attempt of accused No. 8 in stopping the villagers from drawing water from the well situated next to his house, but also putting a compound wall thereby obstructing the villagers from coming to the well. All these witnesses have also stated that in this regard they had approached the Tahsildar, B.D.O. and the Police and according to all these witnesses, the B.D.O. and the Sub- Inspector, who had visited the place about 2 days earlier to the incident, had tried to pacify both the sides and directed them not to take any coercive action as the matter would be considered on the basis of documentary evidence. It is to be remembered here itself that on one hand, the villagers including the prosecution witnesses claim that the well in question is used by all the villagers as it is a public well and on the other hand, case of the accused is that it is a private well exclusively belonging to the family of accused No. 8.

11. As this is the state of affairs, according to the witnesses, including the injured, on 20th April 1993, 2 days after the B.D.O. and the Inspector had visited the village, enraged by this fact, it is alleged that while PW-4 was passing in front of the house of the accused No. 8, accused No. 8 came out of the house and started questioning how could the villager file a complaint against him and also abused him. At this point of time it is alleged that other witnesses including the injured and the deceased came there and seeing these people, all the accused came out with deadly weapons assaulted PW-4 first and then the deceased and PW-3, who went to the rescue of PW-4. According to the prosecution as the accused were carrying deadly weapons, the result was not only receiving injuries on P Ws-3 and 4, but also fatal injuries on the deceased. On the face of it, though the evidence of these eye witnesses may appear to be cogent and

consistent, keeping in mind the defence theory put forth as well as the nature of injuries, it appears to us, there is a clear attempt on the part of the prosecution and the investigating agency to suppress the genesis of the incident itself. What is striking on the face of the record is the nature of injuries. As noted already, the accused were alleged to be carrying two battle axes one chopper and a knife apart from one iron rod. If such four sharp edged weapons were used by four persons on Marimadaiah, the resultant injuries would have been very severe apart from being basically incised in nature. Unfortunately for the prosecution and the investigating agency, as per the evidence of the medical officers P Ws-19 and 28, none of the injuries are incise in nature. In fact, as per the autopsy doctor, he had noticed only four injuries, which are as under:

1. Abraded contusion over the midline of skull between two parietal bones, size 2 1/2" x 1" with bleeding and fracture of the parietal bone was suspected.
2. Contusion over the lip, brown in colour.
3. Leniar abrasion " over the wound No. 2.
4. Abrasion over the chest on the left side, 2" below the neck, 1/2" x 1/2".

If one considers these injuries, they are abraded contusions on skull, lip and chest region. None of the sharp edged weapons, as described by the prosecution, would have caused such abrasions or contusions. No doubt, there is every possibility of the accused using blunt side of the weapons like chopper or axe and may possibly result in contusions or abraded contusions, but in this regard, the evidence of the prosecution witnesses including the injured P Ws-3 and 4 itself is very specific. They have stated that the accused No. 1 used sharp edge of the axe, which he was carrying to assault on the deceased over head. Similarly accused Nos. 1 and 4 had also assaulted with the sharp edge on PW-3. Even P Ws-3 and 4 have not suffered any injuries akin to arising from the use of sharp edged weapon or any stab like injury from using a knife supposed to be supplied by accused No. 9. This is a starting point for creating dent in the prosecution case.

12. Apart from the discrepancy with regard to weapon vis-a-vis injuries caused on the deceased as well as P Ws-3 and 4, the effort of the investigating agency and the prosecution to suppress the genesis is further apparent from various other circumstances. The first being, even though the investigating agency came to know of the incident and went to spot, it came to know some of the accused also being injured in the incident but surprisingly, absolutely no investigation has been carried out in this regard. This is very surprising especially in the light of the admission of the investigating officers P Ws-27, 29 and 30 to the effect that it was the Police, who took injured-accused also to hospital. The defence has succeeded in showing through DW-1 - doctor that in the very incident, accused Nos. 5, 6 and 8 received some injuries and in fact, they had lodged a complaint about the incident giving their own version with the Police, but no action or investigation is carried out. The investigating officer PW-29 has tried to explain it

by saying that even though he knew about both the complaints, as there was difference of one hour between these two incidents, he did not think necessary to make any investigation in the other complaint filed by accused. This one sided effort of the investigating agency accepting blindly the story of PW-3 and others without investing as to the possibility of defence version also being true, indicates to us that the investigation is one sided and partisan. This is to be kept in mind especially with the background that it is some villagers on prosecution side and entire family of accused on the other.

13. Moreover, its is seen from the evidence of prosecution itself that absolutely there is no material put-forth to show that the well in question is a public well and the public were using the same continuously. Of course, this question is a civil dispute in nature and has to be established in appropriate proceedings. But, for the present case, as the dispute is alleged to be in respect of drawing up of water by villagers as put-forth by the prosecution and exclusive ownership of the accused No. 8 and his family members on the other hand is involved, we would like to deal on this aspect for the limited purpose. As admitted by the prosecution witnesses themselves, no efforts have been made to produce any documentary evidence in this regard. In fact, if we see the evidence of PW-2 also, neither he is sure nor any effort has been made by the investigating agency to find out the nature of ownership of the well in dispute. However, what is relevant for consideration is the admission of PW-1 - Assistant Engineer that the well is inside the area of the house of accused No. 8 himself. As such, on the face of uncertainty of the ownership or alleged rights of villagers on one side or the exclusive use by the accused on the other, even if for a moment it is accepted that some of the people were using the water, that by itself cannot be a ground for the incident in question. The incident in question, as admitted by the prosecution itself, has arisen only after accused No. 8 had put up a compound wall to protect his property, which according to the prosecution witnesses, caused obstruction for them to draw water. As per the prosecution case, as the villagers could not persuade accused No. 8 from removing the wall, they approached the authorities like Tahsildar, B.D.O. and Police seeking their help in getting the wall removed, but just two days prior to the incident, B.D.O. and the Police alleged to have come to the village, seen the fact scenario and then directed both the parties not to take any coercive action till the rights and dispute between them is decided after going through the records. This, according to the prosecution, is the cause for the accused to commit the crime in question. Even the defence strategy is also the same i.e., to say according to them, when the prosecution witnesses failed to get the wall removed, it is the prosecution witnesses, who tried to remove the wall taking law into their hand and in the process, also tried to assault the accused No. 8 and his family members.

14. On going through the entire evidence, it is doubtful, prima facie, as to whether the dispute was in fact between villagers on one side and accused No. 8 and his family on the other or whether it was only pertaining to PW-4 and his family members. As we have already noted, all the prosecution eye witnesses

namely, P Ws-3, 4, 5, 7, 11 and deceased are closely related to each other. Apart from these related witnesses, no independent villager has been examined to substantiate the claim regarding the right of taking water from the well in question. As such, the defence has contended that being aggrieved by putting the wall, it was the personal vendetta on the part of the prosecution witnesses and not the cause of entire village.

15. Keeping in view the undisputed fact that the incident has taken place in the evening and the spot being surrounded by number of other houses other than these prosecution witnesses, the prosecution in fact ought to have examined those neighbours, who could have given independent version of the incident. Failure of the examination of independent witnesses also causes some dent in the prosecution case. no doubt, we are aware the settled position of law that evidence of prosecution witnesses, who are interse related, cannot be brushed aside lightly only on that ground. But at the same time, if it is seen that the related witnesses are not only interested, but partisan in nature and do not speak wholehearted truth, their evidence also requires more careful scrutiny. This scrutiny, according to us, is more essential in the present case especially when the prosecution witnesses have highly exaggerated the incident. For example, all the witnesses though speak in unison that the accused family members were armed with sharp edged deadly weapons like axes, chopper and a knife, as we have already noticed, none of the injuries caused on the deceased or even P Ws-3 and 4 are possible with such sharp edged weapon. By looking into the nature of injuries, which are abrasions and contusions, such type of injuries are possible only with a blunt weapon like club or stick. We have to specifically mention that P Ws-3 and 4 have in fact emphasized that the accused used the sharp side of the axes and chopper on the deceased and P Ws-3 and 4. This is absolutely untrue. Similarly, even though some of the accused had in fact received injuries, these witnesses feigned their ignorance also, though fortunately we have the evidence of investigating officers P Ws-29 and 30, who have admitted in cross-examination that some of the accused also had received injuries and they were also sent by the Police for treatment to hospital. Though investigating officers have to admit in their cross-examination regarding the injuries suffered by some of the accused, they tried to wriggle out by saying that the incident in which the prosecution witnesses were injured and deceased was killed was separate from the incident wherein the accused were assaulted and injured. They have tried to explain that according to the complaint, the incident of assault on deceased, P Ws-3 and 4 took place around 6'o clock and the incident of assault on the accused at about 7'o clock in the evening and this appears to be the probable explanation for the investigating agency to state that as the incidents were separate, no action was taken in respect of the second incident even though after receipt of the complaint, case was registered against some of the prosecution witnesses. This apathy on the part of the investigating agency makes us suspect that even the investigation is not free from doubt. It appears, the investigating agency has taken only one side picture and has put-

forth as the absolute truth of the incident. So far as the difference of time factor is concerned, even though it is now indirectly established through the investigating officers that both the incidents are one and the same merely because there is some lapse or difference between the two versions, the same cannot be taken as absolute, correct time factor especially when the difference is hardly less than one hour. The trial Court has also blindly accepted this explanation of the investigating officer to give a finding that even though some of the accused were injured, non-explanation of the injury, would not affect the prosecution case. It should be remembered that too sophisticated approach of the Courts on unreal assumptions about human conduct cannot be applied to the lethargic and actual ways of illiterate, ignorant villagers. The sluggish put forth put forth put forth chronometric sense of the country side community in India is notorious. Since time is hardly of any essence of their slow life and when even urban folks make mistake about the strict time factor, we cannot make much about the difference of time between the first incident as per the prosecution and the incident as per the defence.

16. On going through the entire evidence, we are satisfied that both the incidents have taken place almost simultaneously. If that is so, we have to find out what exactly was the probable reason for the assault or more specifically, who were the real aggressors.

17. As we have already noted, from the prosecution evidence of the closely related witnesses, it appears to us that in the absence of any material that the entire village people were using the well, the prosecution story is not full, true version and in all probability, it shows that it was PW-4 and his family members, who were residing nearby, may be using the water and possibility of PW-4 getting irked by the putting up of compound wall by accused No. 8 and thus taking support of only his relatives started agitation against the accused family, cannot be overruled. As such, it is possible when the efforts of the prosecution witnesses failed, even getting the wall removed through B.D.O. or Police, there is every possibility that they wanted to take law in their own hand or teach accused No. 8 a lesson. This possibility cannot be treated as either too remote or improbable. This is exactly what the defence has tried to put forth by preponderance of probabilities. So far as the starting point of the incident is concerned, as accused No. 8 or his family never knew that PW-4 is going to pass through that area, our conclusion aforesaid gets more strength. Hence, as there were two possibilities of looking at the same incident and possibility of either prosecution witnesses themselves being aggressors or the accused family being the aggressors could have been properly investigated by the investigating agency. As we have already noted, the investigating agency has made only one-sided effort to fix the liability on the accused alone. This effort of the investigating agency being partisan and only to help the prosecution witnesses is apparent from glaring delay of the first information report Ex.P18 reaching the jurisdiction Magistrate. Even though the incident has taken place in the early evening and by 8.30 P.M., the first information was recorded and FIR was

prepared, the same has reached the jurisdiction Magistrate on the next day around 11.40 P.M. It is not in dispute that the Court is within the same premises near Police Station and even the residence of the Magistrate is at a very short distance, within few furlongs from the Police Station. Normally we would not have attached much importance for this delay, but taking into consideration that by then i.e., by 9'o clock in the morning of the next day, the complaint of the accused had also been registered in Crime No. 43 of 1993, the FIR of same also ought to have been despatched simultaneously to the Magistrate. In not doing so, we suspect the investigating agency intended to withhold such a material so as to project only the prosecution version as the only version of the incident.

18. Taking into consideration all these aspects and after giving our anxious consideration to the entire fact scenario, as there appears possibility of two views being taken of the incident and there is every possibility of either prosecution witnesses or accused No. 8 and his family members being the aggressors and when the prosecution has come up with self-serving one-sided exaggerated version and the investigating agency has assisted only the prosecution witnesses by their partisan conduct, in our view, it would not be safe to hold that the prosecution has proved its case beyond reasonable doubt. The trial Court has failed to consider all these fine aspects, which would have weighed the case one way or the other and failure of the trial Court, in our view, has necessitated our interference. In view of the possibility of the version of the same incident as the accused are entitled for more weightage, we give them benefit of doubt and acquit them of all the charges.

In the result and for the reasons stated above, the appeal is allowed. The accused Nos. 1, 2, 4 and 6 stand acquitted of all the charges. It is to be noted that accused No. 1 is in custody and as such, he shall be set at liberty forthwith, if not required in any other case. So far as accused Nos. 2, 4 and 6 are stated to be on bail, their bail bonds stand cancelled.