
(1999) 04 KAR CK 0016

In the Karnataka High Court

Case No : Criminal Appeal No. 724 of 1998 connected with Criminal Appeal No. 1116 of 1998

Kareppa Ramappa Avagodi and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (1999) 2 ALT(Cri) 201 : (1999) CriLJ 4438 : (1999) 3 KarLJ 543

Hon'ble Judges : Kumar Rajaratnam, J; B.K. Sangalad, J

Bench : Division Bench

Advocate : Sri Ankalgi S.M. Patil and Sri Srinivasa Reddy, High Court
Government Pleader, for the Appellant;

Judgement

1. The accused 1 to 3 have been convicted for an offence u/s 302 read with Section 34 of the IPC and were sentenced to imprisonment for life. Accused 4 has been acquitted by the Trial Court. Criminal Appeal No. 1116 of 1998 has been preferred by the State against acquittal of accused 4. Criminal Appeal No. 724 of 1998 has been preferred by the accused persons. Both the State Appeal as well as the appeal preferred by the accused were heard together and a common judgment is rendered.

2. The prosecution case in brief is as follows:

P.W. 1 is the complainant and the wife of the deceased Kareppa Poojari. P.W. 1 stated that she is the first wife and the deceased had two other wives. All of them were residing jointly. The deceased owned about 10 acres of land. About two years prior to the occurrence the deceased had given the said land for cultivation to the father of the accused Bhimappa Avagodi on the 0.25 paise share basis. The father of the accused was also entrusted with the construction of the well and certain amounts were paid to the accused and they did not construct the well. There was also certain disputes with regard to the invoice of sugarcane crop. It is stated that the accused had raised a bill in his own name

and not in the name of the deceased. It was also mentioned by P.W. 1 that the deceased had secured a loan for the accused and had stood as a guarantor. The accused did not repay the loan. P.W. 1 stated that accused 1 to 3 are brothers and accused 4 was a coolie working in her house. One year prior to the death of her husband, the deceased, accused 4 had come to work. P.W. 1 further stated that accused 1 to 3 had been entrusted with the construction work of Well in the land belonging to the deceased for a sum of Rs. 80,000/-. There was a dispute between accused and the father of accused 1 to 3 with regard to -- (1) the construction of well; (2) the invoicing of the bills in the name of the accused instead of being in the name of the deceased; and (3) the deceased had stood as guarantor to the accused for loan given to the accused.

3. From this it is clear that the motive aspect of the case has been established to large extent by the prosecution. The Trial Court was right in holding that there is a strong motive on the part of the father of the accused, he may have set up his sons to commit the murder. Unfortunately, the Trial Court has failed to make a distinction between motive and the culpability of the accused in the murder. The Trial Court failed to see wood from the trees.

4. We shall now deal with the further case of the prosecution. The case of the prosecution is that accused 1 to 3 who were cultivating the lands of the deceased left the farm of the deceased about 15 days prior to the occurrence. About six days prior to the occurrence accused 4 also left the service of the deceased. P.W. 1 went to sleep on the date of the occurrence in her house after completing meals. The case of the prosecution was that the deceased was sleeping in the hut on the Farm belonging to the deceased. At about 6 a.m., P.W. 1 went to the Farm of the deceased and she took a lantern, she opened the door and saw that her husband has sustained bleeding injuries on the right forehead and that he was assaulted with the stone. She cried for help and others came. She went to the Police Station and gave a complaint at 8 a.m.

5. At this stage it is relevant to mention that the complaint given by P.W. 1, wherein she suspected father of accused 1 to 3 and other sons viz., Balappa, Parasappa and Songappa as having committed the murder of the deceased. In Ex.P. 1., complaint, she has stated as follows:

"My deceased husband Kareppa Doddappa Pujari aged 52 years of Alagawadi has been murdered, I suspect Ramappa Bhimappa Avogodi of Mynatti and his 6 sons along with our barded labour Kareppa Tungal (A-4) since there was dispute regarding crops share and loan amount. I hereby lodge complaint on them and I pray inquiry".

6. On the basis of the complaint the Police registered a case in Crime No. 94 of 1995 for offences under Sections 143, 147, 148 and 302 read with Section 149 of the IPC against the accused. In this case undoubtedly there is strong motive. The question which we will have to address ourselves is to determine what are the incriminating pieces of evidence against the accused with regard to the

alleged offence of murder. The entire case depends on circumstantial evidence and it also revolves around evidence of P.Ws. 4 and 5. P.Ws. 4 and 5 speak about seeing the accused coming together immediately after or before the occurrence. If the evidence of P.Ws. 4 and 5 could be accepted as reliable and trustworthy, then the case against the accused would have been made out. If P.Ws. 4 and 5 cannot be relied upon, then the accused would be entitled to be given a benefit of doubt. We shall now deal with the evidence of P.W. 4.

7. P.W. 4 has stated that he is an agriculturist and he knew accused 1 to 4. About 2 1/2 years prior to giving of the evidence he stated that he was preparing jaggery in the land of one Kareppa Ramappa Harugeri. Throughout night he was in the land. At about 2 a.m. he found there was a shortage of powder to be used for preparing jaggery. He therefore took a motorcycle to go to his house to bring the powder. While he was going he saw and met accused 1 to 4 coming from Alaknur. He asked the accused as to where they were going. The accused replied that they were going to the land of the deceased. He later learnt that the deceased was murdered. P.W. 4 in his cross-examination has admitted that the land where he was preparing jaggery was about half kilometre away from the land of the deceased.

8. We shall now deal with the evidence of P.W. 5. He stated at 3.30 a.m. the dogs were barking, he woke up and took his torch light and he could see accused 1 along with three to four others. He could make out accused 3 and there were totally 3 persons. He started talking to the accused, they replied that they have gone to the land of the deceased and that they were proceeding to their village. He later learnt that the deceased was murdered. He stated in his cross-examination that his statement was recorded after six months after the death of Kareppa.

9. The evidence of P.W. 5 cannot be the basis of any conviction. He stated that he could see accused 1 along with three to four others. This does not in any way corroborate the evidence of P.W. 4. Although nothing much has been elicited in the cross-examination of P.Ws. 4 and 5, there is material to show that accused 1 to 3 left the land of the deceased about 15 days prior to the occurrence (according to P.W. 1) and went to their native place called Mynatti Village, which is about 30 kms. away from the scene of occurrence. From this it can be gathered that if the accused had trekked all the way to the scene of occurrence there ought to have been more reliable evidence to connect the accused with the crime either immediately after the occurrence or before the occurrence.

10. Learned Counsel for the accused Sri Ankalgi S.M. Patil, submitted that both P.Ws. 4 and 5 are totally unreliable witnesses and even according to the prosecution they are chance witnesses, they have not implicated the accused immediately after time of the occurrence. It was further submitted on behalf of the accused that P.W. 5 made a vague statement before the Court that he saw accused 1 along with three to four others. He further submitted that evidence of P.W. 5 is at variance with the evidence of P.W. 4.

11. Before we evaluate evidence of P.Ws. 4 and 5 for the sake of completion it would be necessary to deal with the evidence of the doctor who conducted post-mortem examination. P.W. 7 is the doctor who conducted the post-mortem who states that there was a contusion on the right side of the face, and there is a depressed commuted fracture situated on the right frontal, parietal, temporal bones, 6" x 3". There is laceration of the temporal and frontal lobes of brain on right side with tearing of the meninges 3" x 2 1/2" and blood clots present. There was also a fracture on the base of the skull. The doctor gave opinion that cause of death was due to head injury. Ex.P. 2 is post-mortem report. The doctor also opined M.O. 5, the stone, could have caused these injuries.

12. There can be no dispute that the death of the deceased was because a stone was thrown on the deceased which crushed the head of the deceased. The question really is in a case of this type how many accused were involved in this crime and who were they. It cannot be forgotten that the accused have been convicted for an offence punishable u/s 302 read with Section 34 of the IPC. If it was a simple case of a single accused being seen immediately after the occurrence the matter might have been different. Here there are four accused who go to the shed of the accused and one of them is alleged to have thrown a huge stone on the head of the deceased. Therefore, the Court has to be absolutely clear with respect to the identity of the accused since the accused have been convicted u/s 302 read with Section 34 of the IPC. Both the P.Ws. 4 and 5 are chance witnesses. They see the accused 1 with the help of a torch light, the other with the help of the motorcycle light. P.W. 5 speaks about accused 1 along with 3-4 others. P.W. 4 speaks about accused 1 to 4. P.W. 4 states that he saw the accused around 2 a.m. He states that he saw the accused with the help of the light on his motorcycle. He however admits that his land was about 1/2 km. from the land of the deceased. This by itself cannot clinch the prosecution case against the accused. There are no recoveries of bloodstained clothes from accused 1 to 3. Of course in a case of this type it is not possible to have any recoveries since the death might have been an instantaneous and no blood may have split on the clothes. If P.W. 5 had corroborated with the evidence of P.W. 4 a case could have been made against the accused. Both P.Ws. 4 and 5 contradicted with each other with regard to the number of accused they saw after the occurrence.

13. When we invoke Section 302 read with Section 34 of the IPC, it would be difficult to fasten vicarious liability on the accused with clinching proof. This is particularly so when the complaint refers to the father of the accused 1 to 3 and accused 1 to 3, and 3 others. It is extremely difficult to identify which of the accused went to the scene of occurrence and which of the accused did not go to the scene of occurrence.

14. In AIR 1946 38 (Privy Council) , it was held that suspicion is not proof.

15. In re Periyaswami Thewan-Prisoner-Accused, the Madras High Court held at paragraphs 1 and 3 as follows:

"1. The adequacy or otherwise of the circumstantial evidence against the accused will have to determine his guilt or innocence and for that purpose it is necessary to outline briefly the evidence against him. Shortly put, and if we accept the prosecution evidence in its entirety, the evidence comes to this: Firstly, that the deceased and the appellant were on inimical terms sometime prior to the date on which the murder took place. Secondly, that the accused had threatened the deceased that he would cut him even as the deceased had cut and killed his goat. Thirdly, on the date of murder, a few hours prior to its taking place, there is evidence that the deceased was seen driving his goats in a particular direction. The accused also was doing the same thing so far as his own goats were concerned, i.e., both the deceased and the accused were seen either in each other's company or in close proximity to each other some hours before the murder took place. The further piece of circumstantial evidence is that sometime after the alleged murder, the accused was seen with a blood-stained chopper going in a direction opposite to the place of murder but coming from the place of murder; and lastly, on information given by the accused, a blood-stained chopper M.O. 1 was recovered from a bush about 2 1/2 furlongs to the east of the scene of murder. The question we have to decide is whether these pieces of circumstantial evidence are sufficient to bring home the guilt of the accused beyond reasonable doubt.

3. Taking the prosecution case at its face value, it seems to us that the offence cannot be held to have been brought home beyond reasonable doubt to the accused. If the prosecution had shown that the blood-stains on M.O. 1 belong to the same group as the blood of the deceased, the answer would have been clinching. But there is no such evidence in this case. Nor is there any evidence that any article belonging to the deceased was found either in the possession of the accused or recovered as a result of information given by the accused. Ordinarily, in a case of circumstantial evidence where there has been a discovery as a result of a confession made u/s 27, Evidence Act, we expect to find the discovery of something which can be associated with the deceased and not with the accused. The question of the weapon with which the offence was committed being discovered as a result of information given by the accused is also probable. But in such a case the mere fact that a weapon, which could have been used for the commission of a crime like this, was discovered with blood-stains on it on information given by the accused, would not, by itself, be sufficient to show that he was the murderer. But whatever that might be, the only important circumstance in the case, viz., that the bloodstained weapon with which the murder could have been committed was unearthed as a result of information given by the accused, would not by itself be sufficient to bring home the guilt to the appellant. In such circumstances we feel that though the case is one of very grave suspicion against the accused and though we might have something like a moral conviction that the accused must have committed the crime, still there is not sufficient legal evidence on which a Court can found a conclusion that the appellant must have been the murderer. In such circumstances the benefit of the

doubt has necessarily to be given to the appellant".

16. Dealing with Section 34 of the IPC, the Supreme Court in Krishna Govind Patil Vs. State of Maharashtra, , held:

"It is well-settled law that common intention within the meaning of Section 34 implied a pre-arranged plan and the criminal act was done pursuant to the pre-arranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a Court can convict a person u/s 302 read with Section 34, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence".

17. In Phoolchand Vs. State of Rajasthan, , the Court held that where the case hinged on only one witness (in this case P.W. 4) it would not be safe to rely on the testimony of the single witness with respect to circumstantial evidence without any other materials.

18. However, in this case we have only the testimony of P.W. 4. P.W. 4 does not corroborate the testimony of P.W. 5 since P.W. 5 refers to accused 1 along with 3 or 4 others. It is also unnatural that the accused told P.W. 4 that they were going to the land of the deceased. It is not likely that anybody who is about to commit a ghastly crime would inform P.W. 4 that he is going to the farm of the deceased. We feel it would not be safe to rely on the sole testimony of P.W. 4 in the absence of any other material to sustain the conviction of accused 1 to 3. This is particularly so since the complaint given by P.W. 1 implicates the father of accused 1 to 3, accused 1 to 3 and three other sons as suspects.

19. We therefore give the benefit of doubt to the accused and set aside the conviction of the accused for an offence u/s 302 read with Section 34 of the IPC. We do not find any compelling reason for allowing the State appeal since accused 4 would also be entitled to benefit of doubt.

20. Accordingly, the appeal preferred by the accused in Criminal Appeal No. 724 of 1998 is allowed. Once when we reject the testimony of P.W. 4 it would be difficult to hold that accused 4 is guilty. For the reasons stated above what applies to accused 1 to 3 equally applies to accused 4 and the appeal preferred by the State in Criminal Appeal No. 1116 of 1998 stands dismissed. Accordingly accused 1 to 3 shall be set at liberty forthwith.