

(2015) 12 KAR CK 0152
In the Karnataka High Court
Case No : Criminal Appeal No. 32/2012

Kondlahalli Thippeswamy and Others

APPELLANT

Vs

Station House Officer

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2015) 12 KAR CK 0152

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : V.N. Jagadeesh, Advocate, for the Appellant; P.M. Nawaz, Addl. SPP, for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order of conviction dated 11/14th of September, 2009 passed by the learned Additional District and Sessions Judge, Fast Track Court, Chitradurga in Sessions Case No. 53/2008 is called in question in this appeal by the convicted accused. By the impugned judgment, the trial Court has convicted two accused for the offences punishable under Section 302 r/w 34 of IPC.

2. Both the convicted accused have filed the present Criminal Appeal i.e., Criminal Appeal No. 32/2012. However, during the pendency of the appeal, accused No. 2 - Smt. Pennamma expired and thus the appeal filed by her has stood abated. Consequently, the appeal filed by accused No. 1 viz., Kondlahalli Thippeswamy is heard.

3. The case of the prosecution in brief is that:

The deceased Ganganna had married Janamma and out of the said wedlock, five children i.e., one son and four daughters were born. Out of 4 daughters of Janamma and Ganganna, two were married and were living separately and two were yet to be married during the relevant point of time. Janamma expired

subsequently. Thereafter, Ganganna - the deceased married Bhagyamma, who is daughter of both the accused. The said Bhagyamma had no issues. However, the two unmarried daughters and son born to the deceased Ganganna through his first wife Janamma were living along with Bhagyamma (the second wife of the deceased). In other words, Bhagyamma is the step mother of five children born to Janamma.

4. The case of the prosecution is that Bhagyamma was not looking after the unmarried daughters and the son of the deceased Janamma properly; Bhagyamma used to mentally torture the said children and hence, the said children had complained about the ill treatment by Bhagyamma before Ganganna; in view of the same, Ganganna - the deceased used to scold his second wife Bhagyamma telling her to behave properly and to look after the children properly. The accused, who are parents of Bhagyamma, were also residing near the house of Ganganna; the accused brought alliance for the marriage of the daughter of Ganganna namely Basamma (P.W.15) born through Janamma from Sadam village of Andra Pradesh State; marriage talks were not yet concluded; Ganganna - the deceased was not willing to perform the marriage of his daughter born through Basamma with the said boy from Sadam village, who was proposed by the accused; in that regard, there was ill will between the accused and the deceased; there used to be frequent quarrels on the said issue. At about 7 p.m. on 1.1.2008 the deceased Ganganna had consumed liquor and he was telling in the house that he was not willing to perform the marriage of his daughter Basamma (P.W.5) with the boy from Sadam village, who was proposed by the accused. Having heard such negative comments from the deceased, the accused came to the house of the deceased and started quarreling with him. The quarrelling went on for some time and ultimately at 9.00 p.m., accused No. 2 held the deceased tightly with his hairs and accused No. 1 stabbed with his knife - M.O.1 on the left thigh of the deceased, consequent upon which, the deceased sustained severe bleeding injuries and died on the spot because of heavy bleeding.

5. The complaint came to be lodged by P.W.1 i.e., the mother of Ganganna viz., Gangamma at about 00.30 hours on 2.4.2009 before the Molakalmur Police Station which came to be registered by the Sub-Inspector of Police (P.W.15) in Crime No. 42/2008 for the offence punishable under Section 302 read with Section 34 of IPC against both the accused. The police station is situated about 22 kilometers from the scene of offence. P.W.19 - the Inspector of Police completed the investigation and laid the charge sheet.

6. In order to prove its case, the prosecution in all examined 19 witnesses and got marked 13 exhibits and 6 material objections. On behalf of the defence, no witness is examined.

7. As aforementioned, the trial Court on evaluation of the material on record convicted both the accused for the offence punishable under Section 302 r/w 34 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of

Rs. 10,000/- each with default clause.

8. Sri V.N. Jagadeesh, learned Advocate on behalf of the appellants taking us through the material on record submits that the Court below is not justified in evaluating the material on record in proper prospective; even if the entire evidence of the prosecution is believed in full, the accused cannot be convicted for the offence punishable under Section 302 of IPC and at the most the accused could have been convicted for the offence punishable under Section 304 Part-II IPC. P.W.1 though has lodged the complaint as if she is the eye witness to the incident, she is actually not an eye witness to the incident in as much as she has not deposed before the Court about the actual incident in question. She has come to the spot after the incident. All other witnesses are partisan and interested witnesses. Lastly he submitted that, the reasons assigned and conclusion arrived at by the trial Court are not proper and incorrect.

9. Per contra, Sri P.M. Nawaz, learned Additional State Public Prosecutor argued in support of the judgment of the Court below.

10. P.Ws.1, 5, 6, 8, 9 and 11 are the eye witnesses to the incident in question. Among them P.W.8 has turned hostile to the case of the prosecution. However, all other witnesses have supported the case of the prosecution; but the evidence of P.W. 1 before the Court discloses that she came to the spot immediately after the incident and she has not seen the actual incident. P.Ws. 1, 5, 6, 9 and 11 have deposed about the actual incident and about the complicity of each of the accused. P.W.2 is the witness to the scene of inquest panchanama - Ex.P.2. He has identified M.Os. 2 to 4 i.e., clothes worn by the deceased which was seized by the police during the course of inquest panchanama-Ex.P.2.

11. P.W.3 is the witness for recovery of knife M.O.1 at the instance of the accused. He has deposed that the accused went inside the house and brought the knife for commission of offence (which came to be seized under the panchanama Ex.P.3). He is the witness to the recovery of knife as well as the scene of panachanama Ex.P.3. He has also deposed that the accused went inside the house and brought the knife which was used for commission of offence. During the course of scene of offence panchanama, police have seized small portion of sample mud and blood stained mud apart from seizure of knife.

12. P.W.4 is the witness for seizure of clothes on the dead body of the deceased i.e., M.Os.2 to 4 under panchanama Ex.P.4. P.W.7 is the photographer, who took the photographs of the dead body as well as the scene of offence as per Ex.P.5, 5(a) to 5(e). P.W.10 has deposed that there used to be frequent quarrels between the deceased and Bhagyamma since she was not looking after the children properly; the deceased was not willing to perform the marriage of his daughter Basamma with the boy from Sadam village, who was proposed by the accused and in that regard, the quarrels used to take place between the accused and the deceased. Though P.W. 10 was supposed to depose as an eye witness, she did not depose about the actual incident in question. However, he has

confined herself to the aspect of motive for commission of murder. P.W.12 is the Police Constable, who carried the first information report to the jurisdictional magistrate. P.W.13 is another Police Constable, who handed over the dead body to the relatives of the deceased after completion of the postmortem examination. P.W.14 is the Police Constable, who carried the articles to the forensic science laboratory (FSL) for examination. P.W.15 is the Sub-Inspector of Police, who registered the crime No. 42/2008 based on the complaint lodged for the offence punishable under Section 302 r/w 34 of IPC. P.W.16 is the Assistant Engineer, who drew the sketch of scene of offence as per Ex.P.9. Ex.P. 17 is the doctor, who conducted the postmortem examination over the dead body as per the postmortem report -Ex.P. 10. P.W.18 is the Officer of FSL. On the examination of the articles sent to the laboratory, he gave the report as per Ex.P. 11. The evidence of P.W.18 and the report submitted by him disclose that the blood stained mud, the knife used for commission of offence and the clothes sent for FSL examination were containing the "B" Group blood of human origin. P.W. 19 is the Inspector of Police, who completed the investigation and the laid the charge sheet.

13. The case of the prosecution mainly rests on the evidence of ocular testimony of the eye witnesses - P.Ws. 5, 6, 9 and 11. Their evidence is supported by the evidence of P.W.1 and other circumstantial witnesses as aforementioned. The complaint is lodged by P.W. 1 - the mother of the deceased stating that she has seen the incident. Though the complaint discloses the names of the eye witnesses, she has clarified that during her deposition before the Court that she came to be scene of offence, immediately after the incident in question. She has deposed that when she was sleeping in her house, she heard hue and cry raised by certain people and after hearing such hue and cry, she and other inmates of her house, came out of her house and at that time, she saw the injured Ganganna lying on the pool of blood with bleeding injuries. By the time, the injured was shifted to the hospital, he was declared as dead. However, she came to know about the incident that accused No. 2 had held the victim tightly with the hairs and whereas accused No. 1 stabbed on the left thigh of the deceased with knife. She has made it clear that when the incident has taken place, the light was emanating from the street electric bulb. She has also deposed about the motive for commission of offence.

14. P.Ws. 5, 6, 9 and 11 have consistently deposed about the actual complicity of the accused. They have not only deposed about the motive for commission of the offence but also have deposed as to the overt acts of each of the accused. It is specified by these accused that, accused No. 2 held the deceased tightly with the hairs whereas accused No. 1 suddenly took out the knife and stabbed on the thigh of the deceased, consequent upon which, the deceased sustained severe bleeding injuries. Though P.W.6 - an eye witness is subjected to lengthy cross-examination, nothing worth is elicited. As we have stated supra that these witnesses have also deposed about the motive for commission of offence. looking into the trend of cross-examination, the defence was not so serious in disputing

their presence on the spot and the complicity of the accused in the crime.

15. No explanation is forthcoming from the accused as to why accused No. 1 had carried the knife to the scene of offence. Accused No. 1 is none other than the father-in-law of the deceased. There was misunderstanding between the deceased and the accused on the issue relating to the wedding alliance of Basamma (P.W.5) - daughter of the deceased with the boy, who was proposed by the accused, but the deceased was not willing for the said marriage; even on the date of the incident, the quarrel took place between the accused and the deceased on the very ground in as much as the deceased was negating the request of the accused for performing the marriage with the boy from Sadam village. On the basis of this trivial issue, the unfortunate incident has occurred.

16. All the eye witnesses have categorically admitted before the trial Court that though there was misunderstanding between the accused and the deceased, they were not quarrelling on the said issue. It seems the real motive appears to be that the deceased was worried about the conduct of Bhagyamma (second wife) (the daughter of the accused) in not looking after the children of the deceased born through his first wife. Be that as it may. There was misunderstanding between the accused and the deceased. In our considered opinion, this trivial issue should not have resulted in the ghastly crime of murder. It seems the accused must have gone to the house of the deceased to convince him about the marriage proposal, but at that time, the accused had consumed alcohol and was not in a position to hear the request of the accused. In that regard, verbal altercations have taken place and ultimately when they reached the pinnacle, accused No. 1 stabbed on the thigh of the deceased.

17. The very fact that accused No. 1 had brought the knife with him to the house of the accused discloses that accused No. 1 wanted to commit gruesome act against the deceased, but it would be very difficult to conclude that accused No. 1 had got the intention to commit murder of the deceased. If really, accused No. 1 had got any intention to commit the murder of the deceased, he would have wielded the knife on the vital parts of the body.

18. The postmortem report Ex.P.10 and the evidence of the doctor, who conducted the postmortem examination, clearly disclose that the deceased had only one major injury that too on the left thigh. The doctor has opined that the cause of death was due to shock and hemorrhage as a result of cut injury of femoral vessels. The wound sustained by the victim was measuring 2.5 to 3 cms., long x 3 cms., wide and 10 cms., deep. The wound sustained by him is serious in nature, but the same is not on the vital portion of the body. However, because of profuse bleeding, the deceased died within short time. In our considered opinion, accused No. 1 has taken the law into his hands under the sudden and grave provocation by the deceased.

19. Having regard to the totality of the facts and circumstances of the case, in our considered opinion, the offence committed by accused No. 1 may fall under

Section 304 Part-II of IPC in as much as he had the knowledge that the injuries inflicted by him is likely to cause death, but the same, in our considered opinion, was without any intention to cause death. Having regard to the totality of the facts and circumstances of the case, the accused is liable to be convicted for the offence punishable under Section 304 Part-II of IPC.

20. Accused is aged about 61 years as of now. He was aged about 55 years as on the date of the incident. He is already in custody since 2.4.2008 which means that he has been in jail for more than 7 years. In our considered opinion, the sentence of imprisonment for a period of 8 years would be sufficient under the facts and circumstances of the case. Accordingly, we make the following:

a) The judgment and order of conviction dated 11/14th of September, 2009 passed by the Additional District and Sessions Judge, Fast Track Court, Chitradurga in S.C. No. 53/2008 stands modified. Accused No. 1 (Kondlahalli Thippeswamy) is convicted for the offence punishable under Section 304 Part II of IPC.

b) Accused No. 1 (Kondlahalli Thippeswamy) is sentenced to undergo imprisonment for 8 years and to pay a fine of Rs. 10,000/-. In default of payment of fine, the accused No. 1/appellant No. 1 herein shall suffer imprisonment for a further period of 2 years; The period of imprisonment already undergone by the convicted accused shall be given set off as provided under Section 428 of Cr.P.C.; and

c) The amount of fine, if deposited by accused No. 1, shall be paid to P.W.5 - the daughter of the deceased as compensation.