

(2011) 09 KAR CK 0026
In the Karnataka High Court
Case No : Criminal Appeal No-669 of 2007

Lokesh Modallar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 300 I, 302, 304 I, 304 II

Citation : (2011) 09 KAR CK 0026

Hon'ble Judges : N. Ananda, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : P.K. Ponnappa, for D. Ramesh, for the Appellant; N.S. Sampangiramaiah, HCGP, for the Respondent

Judgement

N. Ananda, J.—The Appellant (hereinafter referred to as "accused") was tried and convicted for an offence punishable u/s 302 Indian Penal Code. Therefore, he has filed this appeal.

2. We have heard Sri P.K. Ponnappa, learned Counsel for accused and Sri N.S. Sampangiramaiah, learned HCGP for State. We have been taken through the evidence and the impugned judgment.

3. In brief, the case of prosecution and inter se relationship of some of the prosecution witnesses is as follows:

PW1-Lalitha is the mother of accused-Lokesh and the deceased Santhosh. PW2-Sheela is the daughter of PW1 and younger sister of the accused and deceased. PW3-Nataraj is the father of PW1.

During Ganesha Festival, PW2-Sheela had come to the house of PW1. The inmates of the house were PW1, PW2, the accused and the deceased. The house is situate at No. 6, II Cross, Pipeline, Cholurpalya, Magadi Road, Bangalore-23. PW1, the deceased, accused and PW3 (father of PW1) were staying in I-floor of the house. The ground floor was in occupation of a tenant. The deceased was

working as an Electrician in Electronics City, Bangalore. The accused, was working in a Printing Press. The deceased was in the habit of wearing clothes and shoes of accused. The accused had taken objection for this.

On 27.09.2004 at 10.15 a.m., after seeing the deceased wearing of shirt and shoes of accused, accused picked up quarrel with the deceased. PW1 intervened to pacify the accused and deceased. At that time, the deceased picked up an iron box to throw at PW1. The accused got enraged and assaulted the deceased with iron pestle (a small iron rod used in the kitchen) and assaulted on the head of deceased, as a result the deceased suffered injuries to his head, The incident was witnessed by PW1 & PW2. After the incident, the accused and PW2 shifted the deceased to Gayathri Nursing Home, on the way, he succumbed to injuries. PW1 lodged first information and set criminal law Into motion. After the inquest, dead body was subjected to post-mortem examination, which revealed that death was due to shock and haemorrhage as a result of head injury. The Investigating Officer inspected the house of PW1, recorded statements of witnesses and arrested the accused. On the information volunteered by accused, the Investigating Officer recovered an iron pestle and a blood-stained shirt; of accused. The Investigating Officer sent incriminating articles to FSL. On completion of investigation, charge sheet was filed against the accused for aforesaid offence.

4. During trial, on behalf of prosecution, PW1 to PW6 were examined and documents as per Ex.P. 1 to Ex.P. 14 were marked and material objects as per M.O.1 to M.O.6 were marked.

5. PW1-Lalitha, who had lost her younger son (deceased) due to assault by her elder son (accused) did not support the case of prosecution and resiled from the first information lodged by her. She was declared as a hostile witness.

6. PW2-Sheela, who is the younger sister of accused and the deceased did not support the case of prosecution On the other hand, PW2 came forward with a theory that deceased while getting down from stairs fell down and sustained multiple injuries to his head. PW2 was declared as a hostile witness

7. PW4-Dr. P.K. Devadas conducted post-mortem examination on dead body of deceased. On examination of dead body of deceased, PW4 found following injuries:

I. Laceration over skull behind left ear with fracture of underlying skull bone

II. Laceration over left parietal region about 9 cms above left ear, which was bone deep

III. Another laceration over left parieto occipital region, below and behind injury No. 2.

IV. Contusion over upper part of left cheek

V. Another contusion over right frontal region

On dissection, PW4 noticed depressed fracture of left temporal and lower part of left parietal bones and also fissured fracture across frontal bone. PW4 also noticed subarachnoid haemorrhage. All other internal organs in thorax and abdominal region and also genitor urinary organs were in tact.

The above said injuries and fractures were ante-mortem in nature.

PW4 has opined that death was due to shock and haemorrhage as a result of head injuries sustained by the deceased.

PW4 has denied suggestion that injuries found on the deceased would be caused if a person were to fall from first floor while climbing-down stairs.

8. PW4-Nataraj is the grand father of deceased and the accused. PW4 was not present in the house at the time of incident.

9. PW5-G.V. Kouri, the Investigating Officer has deposed about first information lodged by PW1. PW5 has deposed about spot inspection and presence of bloodstains in the dining hall of the house of PW1. PW5 has deposed that he had recovered bloodstained shirt of accused and an iron pestle on the information volunteered by the accused.

During cross-examination, nothing is elicited to discard his evidence.

10. PW6-M. Rajanna, the then PSI of Magadi Road Police Station, who was the Station House Officer on the date of incident has deposed that on 27.09 2004 at about 11.10 a.m., PW1 appeared before him and gave an oral statement, which was reduced to writing as per Ex.P.1. PW6 registered Crime No. 336/2004 for an offence punishable u/s 302 Indian Penal Code against the accused and dispatched first information; on the same day, PW6 brought the accused to Police Station and produced before PW5.

In cross-examination, PW6 has denied suggestion that PW1 had not appeared before him and she had not given first information as per Ex.P. 1. PW6 has denied suggestion that he had not apprehended the accused.

11. The incident of assault had taken place in dining hall in the house of PW1. The incriminating articles such as bloodstained shirt and an iron pestle were recovered from beneath cot of the room of accused on the information volunteered by accused.

12. From the evidence of PW6 and first information, it is obvious that PW1 having set criminal Jaw into motion has resiled from the contents of first information to save the accused, who is her elder son as she had already lost her younger son (deceased). PW2 being the sister of accused and the deceased did not have reasons to differ from the stand taken by her mother (PW1), yet the fact remains that neither PW1 nor PW2 has explained about the presence of bloodstains in the dining hall and fatal injuries suffered by the deceased, they have also not explained about recovery of a bloodstained shirt of accused and a bloodstained iron pestle from beneath a cot from the room of accused in

pursuance of voluntary statement made by the accused. The eye-witnesses being the mother and younger sister of accused and the deceased had reasons to resiled from their statements recorded during the course of investigation. The homicidal death of deceased had taken place in the dining hall of the house of PW1. The presence of bloodstains in the dining hall and removal of deceased from the house of PW1 to the hospital and recovery of a bloodstained shirt of accused and a bloodstained iron pestle from beneath cot of room of the accused would lead to an inference that accused had assaulted the deceased and caused his death it is but natural for PW1 and PW2, who are none other than the mother and sister of accused and the deceased to resile from the case of prosecution. The FSL report marked as Ex.P. 14 reveals that stains on the shirt of accused, stains on clothes of deceased and iron pestle were of human origin. The bloodstains found on the shirt of accused and clothes of deceased were of "E" group. There is no explanation by the accused as to how his clothes were stained with blood. The shirt of accused and clothes of the deceased were stained with "B" group blood. These circumstances would conclusively prove that accused had assaulted the deceased and caused his death.

13. The learned Counsel for accused would submit that accused was annoyed by seeing the deceased wearing his shirt and shoes. When the accused questioned the same, PW1 intervened and pacified the quarrel between the deceased and accused. At that time, deceased picked up an iron box to throw at PW1 (their mother). The accused having seen the deceased who picked up iron box (a missile) to throw at his mother, in a grave and sudden provocation, picked up a iron pestle from the kitchen of the house of PW1 and assaulted on the head of deceased. After the incident, accused and his mother shifted the deceased to hospital. Therefore, it is a case of culpable homicide not amounting to murder falling exception I to Section 300 Indian Penal Code.

14. The learned HCGP would submit that accused had repeatedly assaulted the deceased with a heavy weapon. Therefore, the case on hand does not fall within exception I to Section 300 Indian Penal Code.

15. In order to appreciate the submissions made by learned Counsel for parties, it will be useful to refer to the judgment of the Supreme Court, reported in K.M. Nanavati Vs. State of Maharashtra, wherein the Supreme Court has held:

(85) The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the

influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In the case on hand, accused is the elder son and deceased is the younger son of PW1. The accused had questioned the deceased for wearing his shirt and shoes. The deceased picked up quarrel with accused. When PW1 (their mother) intervened to pacify the deceased, deceased instead of repenting for the mistake committed by him, picked up an iron box to throw at his mother. The conduct of deceased was violent. In our society, sons are expected to give utmost respect and worship their mothers. It will be provocative to see a son raising hand against his mother.

In the case on hand, the mother of deceased and the accused had intervened to pacify the quarrel between accused and the deceased. The deceased was responsible for the quarrel. Therefore, the conduct of the deceased in picking up an iron box to throw at his mother regardless of his relationship and the duties he owed to his mother, had provoked the accused, who is none other than the elder son of PW1 and elder brother of deceased. It is but natural for a son to get provoked if some one ventures to commit violent acts on his mother. A son owes a duty to protect his mother. Therefore, we hold that accused was under grave and sudden provocation when he assaulted the deceased and the case falls under exception I to Section 300 Indian Penal Code.

16. In a decision reported in Sucha Singh Vs. State, Division Bench of Delhi High Court has held that number of wounds caused during occurrence would not be a decisive factor to determine the offence.

17. In the case on hand, the accused had assaulted the deceased under grave and sudden provocation. Though the deceased had suffered two fatal injuries to his head, yet exception I to Section 300 Indian Penal Code is squarely attracted.

18. The next point for determination is:

Whether the acts committed by the accused would attract an offence punishable u/s 304 Part, I or Part II Indian Penal Code?

19. As could be seen from the contents of post-mortem examination report, the deceased had suffered 5 injuries. Injuries 1 to 3 were on the head of deceased. The accused had picked up an iron pestle lying in the kitchen, which is of considerable weight. The accused with the intention of causing death had assaulting on the head of deceased with an iron pestle. Therefore, we hold that the accused has committed an offence punishable u/s 304 Part I Indian Penal Code.

20. The learned Counsel for accused would submit that accused was aged about 21 years; he is not married; accused does not bear any criminal antecedent; the entire incident had taken place in a grave and sudden provocation. Therefore, learned Counsel for accused submits that a lenient view may be taken in the

matter of sentence.

21. The learned HCGP would submit that this Court has altered the offence from Section 302 Indian Penal Code to an offence u/s 304 "Part-I Indian Penal Code. Therefore, there is no need to take a lenient view in the matter of sentence.

22. In the discussion made supra, we have narrated the circumstances under which the offence was altered from Section 302 Indian Penal Code to Section 304 Part. I Indian Penal Code. The accused was aged about 21 years at the time of incident. The accused has been in judicial custody for over a period of six years. The accused is not married. The accused does not bear criminal antecedents. Considering the age, aggravating and extenuating factors, we deem it proper to sentence the accused to undergo simple imprisonment for a period of 7 years and pay fine of Rs. 5,000/-, in default to undergo simple imprisonment for a period of three months for an offence punishable u/s 304 Part I Indian Penal Code.

23. In the result, we pass the following:

ORDER

The appeal is accepted in part. The impugned judgment is modified. The conviction of accused for an offence punishable u/s 302 Indian Penal Code is set aside. The accused is convicted for an offence punishable u/s 304 part-I Indian Penal Code. The accused is sentenced to undergo simple imprisonment for a period of seven years and pay fine of Rs. 5,000/-, in default to undergo simple imprisonment for a period of three months for an offence punishable u/s 304 Part I Indian Penal Code. The period of detention undergone by accused during trial and during pendency of this appeal is given set off as provided u/s 428 Code of Criminal Procedure Office is directed to send back records along with a copy of this judgment to the trial court forthwith.