

(2010) 06 KAR CK 0017
In the Karnataka High Court
Case No : Criminal Appeal No. 332 of 2007

Madusudan @ Madusudan Raje Urs

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 436

Citation : (2011) CriLJ 215 : (2010) 4 KCCR 2841 : (2011) 7 RCR(Criminal) 1919

Hon'ble Judges : K.N. Keshavanarayana, J; K.L. Manjunath, J

Bench : Division Bench

Advocate : Sandesh J. Chouta, for the Appellant; P.M. Nawaz, Addl. SPP, for the Respondent

Judgement

K.L. Manjunath J.

1. Questioning the legality and correctness of the judgment of conviction and order of sentence passed by the Presiding Officer, Fast Tract Court-III, Mysore, dt.5th September 2006 in S.C. 14/2006 convicting the Appellant for the offences punishable u/s 436, 307 and 302 IPC and sentencing him to undergo Rigorous imprisonment for five years and to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for two months for the offence punishable u/s 436, to further undergo Rigorous imprisonment for five years and to pay fine of Rs. 500/-, in default, to undergo simple Imprisonment for two months for the offence punishable u/s 307 IPC., and to undergo R.I. for life and to pay fine of Rs. 500/-, in default, to undergo S.I. for two months for the offence punishable u/s 302 of IPC., the present appeal is filed.
2. Heard the learned Counsel for the Appellant and the learned Public Prosecutor for the State.
3. The case of the prosecution is that the Appellant - accused is the son of CW2 M.N. Gayatrammanni and the brother of PW3 Subramanya Raje urs. On

26.9.2005 at about 8.30 p.m. the accused started quarrelling with his mother and brother inside the house situated in Bettada Thunga village within the jurisdiction of Bettadapura police station in connection with his share in the tobacco grown by the family. PW.3 and his mother Gayatrammanni - CW.2 refused to give him any share in the tobacco on the ground that, the accused is getting income from his shop. As a result of this the accused got angry with his mother and brother and set fire to the tobacco stacked inside the house. On seeing the fire, the neighbours namely, PW.1, Chikke urs, his cousin deceased Malla Raje urs and others rushed into house of the accused and tried to pacify the quarrel. The accused on seeing Chikke Urs and deceased Malla Raje Urs, started saying that they always support his mother and brother and saying so, he threw petrol on them. Since Malla Raje Urs was soaked with petrol which is a highly inflammable substance and since he was standing very close to the flame, he caught fire and sustained severe burn injuries on both hands, chest and back and he ran away from the house. At the first instance, he was treated in Bettadapura Hospital, then he was shifted to K.R. Hospital, Mysore, where he succumbed to the injuries at about 12.45 noon on 1.10.2005. PW1 Chikke Raje Urs who had also sustained burn injuries lodged the complaint as per Ex.P1 on 27.9.2005 at about 3.15 p.m. On the basis of the complaint lodged by PW. 1 Chikke urs, the case in Cr. No. 121/05 was registered for offences punishable under Sections 326 & 427 of IPC and the FIR was sent to the Court as per Ex.P16. The dying declaration of Malla Raje Urs was recorded on 29.9.2005 in K.R. Hospital, Mysore as per Ex.P. 18. After the receipt of death Memo, offence punishable u/s 302 IPC was added. Thereafter, I.O. held inquest over the dead body and subjected it to P.M. examination. After completion of investigation, charge sheet came to be filed for offences punishable u/s 436, 307 and 302 IPC. The accused was arrested on 27.9.2005 and has been in custody from the date of his arrest. After the committal of the case, before the Sessions Court, the accused pleaded not guilty for the charges levelled against him and claimed to be tried. Since the accused had no means to engage a counsel of his choice, Standing counsel was appointed. The prosecution in order to prove its case relied upon the evidence of P Ws.1 to 22 and Exs.P1 to P21 and M. Os. 1 to 7 and on behalf of the defence, Ex.D1 to D5 were marked.

4. The Fast Track Court after hearing the learned Counsel for the parties formulated the following points for its consideration:

- 1) Whether the prosecution proved beyond reasonable doubt that on 26.9.2005 at 8.30 p.m., in the house of CW 2, Gayathrammanni, at Bettadathunga Village, within the jurisdiction of Bettadapura Police Station, the accused set fire to the tobacco house kept in the house of accused and caused destruction of the said tobacco leaves and thereby committed offence mischief by fire, punishable u/s 436 of IPC?
- 2) Whether the prosecution further proved beyond reasonable doubt that on the alleged date, time and place, the accused alleged to cause the death of PW 1

Chikke Urs by pouring petrol on his body which resulted setting fire to his body and causing grievous burnt injuries to his right leg, and ear with knowledge or intention that if by that act has cause the death of CW 1 might be guilty of murder and thereby committed an offence punishable u/s 307 of IPC?

3) Whether the prosecution further proved beyond reasonable doubt that on the alleged date, time and place, the accused with intention to cause the death of Mallaraje Urs poured petrol on his body, due to which his body was set fire resulting in burn injuries and ultimately his death on 1.10.2005 at 12.45 p.m. at K.R. Hospital while under treatment by the said burn injuries and thereby committed an offence punishable u/s 302 of IPC?

5. On scrutiny of evidence and documents produced, by the judgment under appeal, the Fast Track Court answered points-1 to 3 in affirmative and consequently convicted the accused for the above offences and sentenced him as noted earlier..

6. Being aggrieved by the said judgment of conviction and order of sentence, the present appeal is filed.

7. We have heard the learned Counsel for the parties.

8. Though several grounds are urged by the learned Counsel for the Appellant, during the course of arguments, he contends that the Fast Track Court was not justified in convicting the accused for the above offences. According to him, the prosecution did not prove the guilt of the Appellant beyond reasonable doubt. He mainly contended that considering the mental faculty of the Appellant prior to and at the time of the alleged incident and subsequent thereto, the Trial Court ought to have acquitted the accused by holding that the accused was a person of unsound mind at the time of the incident, as per the provisions of Section 84 of IPC. He further contends that the Appellant is a mentally unsound person and considering his mental illness, the Trial Court should not have tried the Appellant for the offences punishable under sec .436, 307 and 302 IPC. and should have acquitted the accused. He alternatively contends, considering the evidence let in by the prosecution to bring home the guilt of the accused, at best the act alleged to have been committed by the accused may constitute an offence punishable u/s 285 of IPC or in the alternative it may constitute offence u/s 304A IPC. Lastly, he contended as an alternative argument that the case of the prosecution at best can be brought u/s 304 Part-II IPC. He further contended that in view of the period of sentence already served by the Appellant, he may be ordered to be released.

9. In order to substantiate the plea of insanity, the learned Counsel relied upon the complaint lodged by the complainant - Chikke Urs as per Ex.P1, and the case history furnished by the father of the deceased Malla Raje Urs while admitting the injured Malla Raje Urs to K.R. Hospital. According to learned Counsel, the father of the deceased Malla Raje Urs gave the history to the Doctor while admitting Malla Raje Urs to K.R. Hospital, as " pouring of petrol by insane person

Madhusudan on 26.9.2005 at 11 p.m. and causing burns on the body of T.A. Mallaraje Urs at the residence" (Madhusudan"s). He further contends that the Sessions Court has not considered the evidence of PW.7 - Santhosh Raje Urs, with regard to the unnatural conduct of the accused in locking himself in the room inside the burning house which would be a relevant circumstance to hold that the accused was a man of unsound mind. He further contends that the Trial Court did not consider the report secured from NIMHA Ns before commencement of the trial against the accused. Therefore, he contends that by considering the totality of evidence let in by the prosecution, the Trial Court ought to have acquitted the Appellant-accused by invoking Section 84 of IPC. To support his arguments, he relied upon the judgment of the Hon"ble Supreme Court reported in Shrikant Anandrao Bhosale Vs. State of Maharashtra, ; Tukappa Tamanna Lingardi Vs. State of Maharashtra, , Shriram Vs. The State of Maharashtra, ; Jai Lal Vs. Delhi Administration, and Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, .

10. Per contra, the learned Addl. Public Prosecutor contended that the prosecution has proved the guilt of the accused beyond all reasonable doubt. According to him, the evidence of PW. 1 is clear with regard to the accused setting fire to Malla Raje Urs by pouring petrol and lighting fire with the assistance of a lighter. He further contends that the incident has been proved by the prosecution by proving Ex.P18 - dying declaration of Malla Raje Urs and that the Trial Court has come to the right conclusion that Section 84 of the IPC cannot be pressed into service. Therefore, he requests the Court to dismiss the appeal. To support his arguments, he has relied upon the judgment of the Supreme Court in T.N. Lakshmaiah v. State of Karnataka 2002 SCC (Cri.) 103. According to him, the burden lies on the accused to prove that the case would fall u/s 84 and such a burden has not been discharged by the accused. Therefore, he requests the Court to reject the contention of the Appellant that he was mentally unsound.

11. Having heard the learned Counsel for parties, this Court is of the opinion that the following points arise for consideration in the appeal:

1) Whether in the facts and circumstances of the case, the court below is justified in holding that at the time of incident, the accused was not a person of unsound mind as such, he is not entitled for an order of acquittal by invoking Section 84 of IPC.

2) Whether the act of the accused can be brought either u/s 285 or u/s 304A or under 304 part II of IPC. Or whether the order of conviction needs to be confirmed?

12. After hearing the parties and on perusal of the evidence on record, the following facts are not in serious dispute in this case:

The accused Madusudan is the brother of PW.3 -Subramanya Raje Urs and the son of CW2 Gayatrammanni and they are the residents of Bettadathunga Village, Periyapatna Taluk. Deceased Malla Raje Urs, PW.1 Chikke Urs, PW.2- Narayana

Raje Urs, PW.4 - Lakshmikantheraje Urs, PW.5 Jagadathri, PW.6 - Savithammanni, PW.7 - Santhosh Raje Urs are all neighbours of the accused and PW.3. Their family during 2005, had grown tobacco and the accused was demanding share in the tobacco grown by the family. Since PW.3 and CW.2 refused to give share in the tobacco to the accused, the accused was quarreling with his mother and brother. On 26.9.05 after a quarrel, the accused lit fire to the Tobacco stocked in the house by pouring petrol. On hearing the galata and the fire inside the house of PW3 and accused, P. Ws.1, 2, 4 & 5 along with deceased Malla Raje Urs came to pacify the quarrel. At that time the accused threw petrol on Malla Raje Urs and others on the ground that they would always support his mother and brother. As Mallaraje Urs was standing very close to the flame, and since the petrol in a highly inflammable substance, he caught fire. The dispute was whether accused set fire to Malla Raje Urs with a lighter as contended by the prosecution and that accused had no intention to commit murder or to set fire to Malla Raje Urs or PW. 1 Chikke Urs. Yet another dispute was that whether accused was not mentally sound and that he was suffering from mental ill ness. The Trial Court relying upon the report of the NIMHA Ns has come to the conclusion that the accused is not suffering from mental illness and he is mentally a fit condition to face the charges levelled against him. The Trial Court has also come to the conclusion that the accused after pouring petrol on Malle Raje Urs, lit fire with a cigarette lighter.

13. In this background, we have to examine whether the accused lit fire to Malla Raje Urs with an intention to commit murder, or whether Malla Raje Urs on account of the petrol poured by the accused caught fire since he was standing very close to the tobacco which was set on fire by the accused.

14. Ex. P18 is the dying declaration of Malla Raje Urs, recorded by PW. 17. The Doctor of K.R. Hospital has also been examined to prove that Malla Raje Urs was in a fit condition to give his statement on 29.9.2005. He succumbed to the injuries on 1.10.2005 at about 12.15 noon. It has come in the evidence that both fingers were burnt as a result of which PW. 17 could not take LTM of Malla Raje Urs and therefore he took impression of big toe of the left foot.

15. In the dying declaration as per Ex.P18 Malla Raje Urs has stated that in order to pacify the quarrel he went inside the house and accused threw the petrol on him and his cousin Chikke Urs, and since he and his cousin brothers were standing very close to the door, he caught fire, as a result he sustained burn injuries to his face, hands, chest and right leg and that he was shifted to Bettadapura Hospital and thereafter to K.R. Hospital, Mysore. From the dying declaration, it is clear that the accused did not set fire on the deceased Malla Raje Urs and that he had only poured petrol. Ex.P1 the complaint lodged by Chikke Urs would also support the dying declaration made by Malla Raje Urs. In the complaint Ex.P1. It is categorically stated by the complainant that when an attempt was made by him and others to put off the fire, the accused threw petrol on him and others and since they were very close to the fire, Malla Raje Urs

caught fire. But PW. 1 in his Examination-in-Chief has stated that the accused after pouring petrol on him and Malla Raje Urs, set fire with a cigarette lighter which is contrary to the contents of dying declaration Ex.P18 and also the complaint lodged by him as per Ex.P1. By looking into the dying declaration Ex.P18 and complaint - Ex.P1, we are of the opinion that the evidence of Pw.1 in this regard is an improvement on the material aspect regarding the complicity of accused setting fire to the deceased with a lighter, and this amounts to contradiction which has discredited his evidence. Therefore, we are of the opinion the Trial Court did not consider the evidence of PW1 properly in the context of Ex.P1 and P18. When deceased Malla Raje Urs himself had not stated that accused set fire on him with a cigarette lighter and when he admitted that he caught fire since he was standing very close to the fire, we are of the opinion that the findings of the Trial Court with regard to setting fire by the accused on the deceased Malla Raje Urs has to be reversed. However as there is consistent evidence we hold that the accused threw petrol on the deceased and PW1.

16. In this background, we have to examine what was the intention of the accused in throwing petrol on PW1 and deceased Malla Raje Urs. In the evidence PW.7 has categorically stated that the accused threw the petrol and set fire to tobacco inside his house and later went inside a room and bolted from inside and though he made attempt to open the door, still the accused did not open the door and while making an attempt to open the door, he also got injured. From this evidence, it is clear, the accused had no intention to set fire on Malla Raje Urs as the accused could not have anticipated Malla Raje Urs, would enter the house. There was no enmity between Malla Raje Urs and the accused and the actual dispute was with regard to the sharing of tobacco grown by the family of the accused and PW2 and he had set fire to his own house. In para-2 of the examination-in-chief, PW7 states that four months prior to the said incident, the accused had hit a lady with his slipper which had resulted in registering a case against him by the Bettadapura Police and a similar incident had taken place when the accused had beaten another lady with club. It is also in the examination-in-chief of PW7 that accused was not speaking to others and he was always quarreling at home. Now in this background, we have to see" the history furnished to the Doctor while admitting Malla Raje Urs by his father Anantha Raje urs at K.R. Hospital, as recorded in Ex.P14 wherein the cause is shown as "pouring petrol by an insane person Madhusudan on 26.9.2005". Signature of father of Malla Raje Urs is also found on Ex.P14. For the reasons best known to the prosecution, the father of the deceased has not been examined. From the contents of Ex.P14, it is clear to the Court that at an undisputed point of time, the mental capacity of the accused has been stated as an insane person by none other than the father of the deceased. Therefore, it cannot be said that the accused did the act of throwing petrol on the deceased with an intention to set fire on Malla Raje Urs. As discussed by us earlier when he set fire to tobacco in his house, he did not anticipate that Malla Raje Urs and Chikke Urs would come to the rescue of his mother and brother. He had no enmity either against Chikke

Urs or against Malla Raje Urs. As could be seen from dying declaration and as per complaint Ex.P1, Malla Raje Urs caught fire since he was standing very close to the fire. In addition to this we have to take into consideration the conduct of accused entering into another room and bolting the door from inside. If the accused were to be a normal man, after setting fire to house, he would not have gone inside the room and bolt it from inside. If the intention of the accused was to commit murder of Malla Raje Urs by setting fire, he would have run away from the place of incident and he would not have entered into another room and bolt the door from inside. Looking into these circumstances, we can only infer that all was not well with the mental stability of the accused on the date of the incident. However the medical evidence produced before the Court is not sufficient to come to the conclusion that Appellant was mentally unsound. We cannot hold that the accused was a man of unsound mind in order to acquit him by invoking Section 84 IPC.

17. In view of our finding that Section 84 cannot be pressed into service, there is no necessity for us to consider the various Judgments relied upon by Mr. Chouta.

18. The next point to be considered by us, is whether the case of the Appellant can be brought u/s 285 or 304A or 304 Part-II. So far as Section 285 is concerned, we are of the opinion that the said section has no application to the facts and circumstances of this case. We cannot hold that the acts of accused in setting fire to the Tobacco Stock inside the house after pouring petrol and further act of throwing petrol on the deceased when he tried to pacify, cannot be held either as rash or negligent act so as to attract the offence u/s 285 of IPC. Therefore we are of the opinion that Section 285 has no application to the facts of the case.

19. We are also of the opinion Section 304A cannot be pressed into service considering the evidence let in by the prosecution. To constitute an offence death of any person must have been caused by doing any rash or negligent act not amounting to culpable homicide. Negligence and rashness are essential elements of offence u/s 304A. Culpable negligence lies in the failure to exercise reasonable and proper care, and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed in law. Having regard to the facts and circumstances of the case, the acts committed by the accused cannot be termed as rash or negligent to attract the offence u/s 304A of IPC. Hence, the arguments in this regard fails. Therefore, as rightly pointed out by Mr. Chouta, we can hold that the case on hand would fall under Part-II of 304. Considering that he had no intention to commit the murder of Malla Raje Urs or causing burn injuries to Chikke Urs and considering that the evidence of PW7 and statement recorded by the Doctor as per Ex.P14 and the complaint lodge by PW. 1 and also the evidence of Jagadathri, the wife of the deceased Malla Raje Urs, we are of the opinion that he had no intention to commit murder. Therefore, the case falls

under part-II of 304 IPC.

20. In the result, we allow this appeal in-part. In substitution of the judgment of conviction passed under Sections. 436, 307 and 302 IPC, we hold that the Appellant is guilty of offence u/s 304 part-II. Considering that the accused has been in custody from 27.9.2005, and that he has been suffering from epilepsy and that he was treated at NIMHANS, we are of the opinion that he has to be sentenced to the period already undergone in the custody. Ordered accordingly. Therefore, the Appellant is set at liberty forthwith, if he is not required in any other case.