

(2014) 11 KAR CK 0033
In the Karnataka High Court
Case No : Criminal Appeal No. 941/2012

Manjunatha

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 304, 323

Citation : (2014) 11 KAR CK 0033

Hon'ble Judges : P.D. Waingankar, J;N. Ananda, J

Bench : Division Bench

Advocate : Sriyuths Diwakara and Nagendra Dikshit S. Advs, Advocate for the Appellant; Vijayakumar Majage, HCGP, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (hereinafter referred to as accused) was tried, convicted and sentenced to undergo imprisonment for offences punishable under Sections 302 and 323 IPC. Therefore, he is before this court.

2. We have heard Sri. K. Diwakar, learned counsel for accused and Sri. Vijayakumar Majage learned Government Pleader for the State.

3. Before advertng to appreciation of evidence and submissions made by learned counsel for parties, it is necessary to state the inter se relationship of some of the prosecution witnesses and the accused.

PW.2-Radha is the daughter of deceased Nagarajappa and PW.5-Rangamma; PW.1-Poojari Kariyappa is the father of deceased Nagarajappa; PW.12-Mylarappa is the father of accused; the deceased was a native of Hebbur village, Ajjampura Hobli, Tarikere Taluk.

PW.2-Radha and the accused had fallen in love. The deceased (father of PW.2) and other elders coming to know of love affair between accused and PW.2-Radha performed their marriage about two and half years prior to 07.09.2010. After the marriage, PW.2 and accused were living in the house of deceased. About four

months prior to 07.09.2010, they had set up a separate house. PW.2 and accused were living in that house.

4. It is the case of prosecution that on 07.09.2010, at about 4.00 p.m. PW.2-Radha was weeping in the house; when PW.1 enquired PW.2, she told that accused had assaulted her; the deceased came and took PW.2 to Government Hospital at Ajjampur at about 6.30 p.m. PW.2-Radha, deceased and his wife Rangamma (PW.5) came back to their village; the deceased told PW.1 that when he was returning from Ajjampur at about 9.30 p.m., the accused had abused and assaulted him; on that day, at about 10.00 p.m., the accused was abusing the deceased by standing behind the house of deceased; PW.1-Poojari Kariyappa, PW.2-Radha and PW.5-Rangamma told the accused to go home; the accused did not heed to their advise; he pushed P.W. 1 and PW. 1 fell down; the accused fisted the deceased and trampled him; the deceased was completely tired; PW.1, PW.2 and PW.5 shifted him to the house and made him to drink water, the deceased had succumbed to injuries; the neighbors got 108 Ambulance; the medical attendants examined the deceased, and declared him dead. The medical opinion as to the cause of death is given as due to assault on vital parts. The medical evidence given by PW.15-Dr. S. Balakrishna has not been controverted.

5. It is not the case of accused that Nagarajappa died due to some other cause. In the circumstances, it is necessary for us to examine the evidence of eyewitnesses to find out if the accused had assaulted the deceased and caused his death.

6. PW.1-Poojari Kariyappa is the father of deceased. He had also suffered injuries in the incident of assault. His presence near the place of incident cannot be suspected. The evidence of PW. 1 that he had performed the marriage of PW.2-Radha and accused as they had fallen in love has not been controverted.

PW.1 has deposed; that they had constructed a shed to accommodate accused and PW.2 after 5 or 6 months from the date of marriage; the accused was frequently assaulting PW.2; PW.1 and others used to advise the accused; on the date of incident, at about 8.00 or 9.00 p.m., the deceased and accused came near the house of PW. 1 and they were quarrelling; it was raining; therefore, none came to stop the quarrel; the accused fisted the deceased and deceased fell down; the accused trampled the deceased; when PW.1 intervened, accused also assaulted PW.1.

During cross-examination, PW.1 has admitted that, before the marriage, accused and PW.2 had fallen in love; PW. 1 and deceased Nagarajappa had given consent for their marriage however, the parents of accused had not consented for the marriage; PW.1, his son (deceased) and others performed the marriage of accused and PW.2; for a period of one year after the date of marriage, accused and PW.2-Radha were staying in the house of PW.1; thereafter, PW. 1 and others constructed a shed in Gramatana to set up a separate house for PW.2 and the accused; PW. 1 has denied the suggestion that on the date of incident, deceased

had come home in a drunken state. PW. 1 has denied the suggestion that accused has not assaulted the deceased.

7. PW.1 was also hurt in the incident of assault. He is the father of deceased. PW.1 had no grudge or enmity against the accused. The evidence of PW.1 that PW.1 and deceased Nagarajappa (his-son) had performed the marriage of PW.2 and accused though the parents of accused were not willing for such marriage has not been controverted, PW.1 had no grudge or enmity against the accused to falsely implicate him. Above all, PW. 1 being the father of deceased would be least disposed to implicate the accused leaving aside the real assailant.

8. PW.2-Radha is the wife of accused. She is the daughter of deceased Nagarajappa. She has deposed about the events that had taken place on the date of incident.

PW.2 has deposed; that her father and others had constructed a hut to set up a separate house for accused and PW.2. She has deposed that about 8 days prior to the date of incident, accused had assaulted her, therefore, she was staying in her parental house; on the date of incident, accused came and assaulted and also demanded her to leave the house of her parents.

PW.2 has deposed; that deceased returned home and told PW2 that when he was returning from Ajjampur at about 9.00-9.30 p.m., accused assaulted him; the accused was standing behind their house and abusing them; PW. 1, PW.2 and the deceased tried to pacify the accused; the accused fistec and trampled the deceased; the deceased fell down; he was tired he was brought into their house; they secured the ambulance; on examination of deceased, the attendants of ambulance declared that he is dead.

During cross-examination, PW.2 has reiterated the version of occurrence. She has denied the suggestion that she refused to join the accused. She has admitted that her father was taking liquor once in a while. She has deposed that the accused was taking liquor from morning till evening. On the date of incident, accused was in a state of intoxication.

9. On careful consideration of evidence of PW.2, we do not find any reasons to discredit her evidence, PW.2 is none other than the wife of accused. She would be least disposed to implicate her husband whom she had loved and married.

10. PW.5-Rangamma is the wife of deceased. She is the mother of PW.2-Radha and mother-in-law of accused. She has deposed about the events which had taken place before the marriage of PW.2 and accused.

PW.5 has deposed; that on the date of incident, her husband came home at about 9.30 p.m., and told her that accused had assaulted him; he was tired; at that time, the accused came from behind of their house and threatened that he would kill the deceased and scolded the deceased for keeping his daughter (PW.2) in his house; the accused assaulted the deceased and trampled him; the accused abused PW.5 and others; they secured ambulance; the medical

attendants of ambulance examined Nagarajappa and declared that he is dead.

During cross-examination, she has reiterated that her father-in-law (PW.1) and her husband (deceased) performed the marriage of PW.2 and accused. She has admitted that accused was demanding PW.2 that she should set up a separate house. She has reiterated that the accused used to come home in a drunken state. Her husband was drinking alcohol once in a while; on the date of incident, accused assaulted and kicked her husband.

PW.5-Rangamma is the wife of deceased-Nagarajappa. She would be least disposed to implicate accused, leaving aside real assailant. The evidence of PW.5 that PW.5 and her husband (deceased) had performed marriage of accused Manjunatha and PW.2-Radha, who had fallen in love, against wishes of parents of accused has not been controverted. PW.5 did not have enmity or grudge against accused. Therefore, there are no reasons to discredit the evidence of PW.5. Thus, from above evidence, it is established that on 07.09.2010, at about 9.00 a.m. or 10.00 a.m., accused assaulted deceased-Nagarajappa and caused his death in front of house of PW.1-Poojari Kariyappa in Hebbur village.

11. The crucial point for consideration is:-

"Whether the acts committed by accused would attract an offence punishable under Section 302 IPC?"

12. After the post-mortem examination of deceased, opinion as to cause of death was kept pending for want of chemical examiner's report. After receipt of report of chemical examiner, PW.15-Dr. S. Balakrishna has opined that death was due to respiratory failure. During cross-examination, PW.15 has deposed that if a person is fisted and trampled, he would die of respiratory failure which is called as Vaso vagal shock. Therefore, from medical evidence, it is not possible to hold that accused had assaulted deceased with intention of causing his death. The accused had not come to the house of deceased with any weapons to cause his death. It appears that in afternoon on 07.09.2010, there were skirmishes between parties. The accused had visited house of deceased to take his wife PW.2 to his house. In that connection, a quarrel had taken place between the parties. The accused had fisted and also trampled deceased. Therefore, it can safely be inferred that accused had assaulted deceased with the knowledge that such assault was likely to cause death of deceased Nagarajappa. The accused did not have intention to cause his death or cause bodily injury as is likely to cause death. The learned Sessions Judge without taking into consideration the background of occurrence, manner of assault, cause of death, has erroneously held the accused guilty of an offence punishable under Section 302 IPC. The teamed Sessions Judge accepting the evidence of PW.1 had held accused guilty of an offence punishable under Section 323 IPC, which in our considered opinion, does not call for interference.

13. In the result, we pass the following:-

ORDER

The appeal is accepted in part. The impugned judgment is modified. The judgment of conviction of accused-Manjunatha, S/o Mylarappa in S.C. No. 156/2010 on the file of Additional District and Sessions Judge, Chikmagalur, for an offence punishable under Section 302 IPC is set aside. The accused-Manjunatha, S/o Mylarappa is convicted for offences punishable under Sections 304 -II and 323 IPC. The accused is sentenced to undergo simple imprisonment for a period of four years and pay fine of Rs. 10,000/-, in default, to undergo simple imprisonment for a period of three months for an offence punishable under Section 304 -II IPC. The accused is sentenced to undergo simple imprisonment for a period of three months and pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month for an offence punishable under Section 323 IPC.

Out of fine amount, a sum of Rs. 10,000/- shall be paid as compensation to PW.5-Rangamma. The substantive sentence of imprisonment shall run concurrently. The period of detention undergone by accused during trial and post conviction stage is given set off as provided under Section 428 Cr.P.C.