
(1997) 01 KAR CK 0059
In the Karnataka High Court
Case No : Criminal Appeal No. 758 of 1995

Prabhu Jattappa Pujari and another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304 III, 324, 34

Citation : (1998) CriLJ 146 : (1997) 3 KarLJ 400

Hon'ble Judges : M.F. Saldanha, J; M.B. Vishwanath, J

Bench : Division Bench

Advocate : Smt. G.S. Anasuya, for the Appellant; A.B. Patil, Addl. S.P.P., for the Respondent

Judgement

Saldanha, J.—This appeal is directed against the conviction recorded by the learned Sessions Judge, Bijapur, in S.C. No. 121/1990 against the two accused. It was alleged that on the evening of 21-8-1990 at about 6.00 p.m., the incident took place which resulted in the accused inflicting injuries on their brother Sharanappa Pujari, his wife Kashibai and son Siddalinga. The prosecution alleges that deceased Sharanappa had gone to his field that evening and that some quarrel started on the ground that the bullocks of the accused who are the adjoining owners of the next field had encroached into the field of the deceased. The accused are alleged to have assaulted the deceased initially with a barked and thereafter with wooden implements which are described as clubs. In the course of the assault, wife Kashibai tried to intervene and she sustained injuries and so did the son Siddalinga. As far as the latter two persons are concerned, the injuries are relatively minor and charges under S. 324, I.P.C. were framed in respect thereof. Sharanappa however had sustained a head injury as a result of which he died. The matter was thereafter reported to the police who took down the complaint and commenced investigation. The accused were traced only on 3-9-1990 and 7-9-1990 whereupon they were placed under arrest and it is alleged that A-1 made a certain statement pursuant to which the barked in question was recovered at his instance. On completion of the investigation, the

police charge-sheeted the accused and they were finally put on trial before the learned Sessions Judge, Bijapur. The trial Court accepted the prosecution evidence and convicted both the accused for the offence punishable under Ss. 302 and 324 read with S. 34, I.P.C. and awarded them sentence of imprisonment for life and A-1 was awarded a separate sentence of six months R.I. for the offence under S. 324, I.P.C. We note from the operative part of the order that the learned trial Judge has committed a technical error as far as the latter sentence is concerned because it is not indicated as to whether it should be R.I. or S.I. This error will have to be corrected by us while disposing of the appeal.

2. Smt. Anasuya, learned Advocate who represents the appellants, has submitted that the basis for the conviction is essentially the evidence of the wife P.W. 6 Kashibai and the evidence of P.W. 7 Siddalinga, who is the minor son. She submits that it is not disputed that these two persons were present when the incident took place because both of them have sustained injuries apart from which, the defence was only to the effect that their evidence is not worthy of credibility. For this purpose, the learned Advocate has in the first instance demonstrated to us that both these witnesses do not give a proper and detailed description of the manner in which the deceased came to be assaulted and that therefore, the oral evidence does not really tally with the medical evidence. As far as this aspect of the matter is concerned, we have carefully scrutinized the medical evidence and we find that the general description of the assault given by the two witnesses does in fact explain how the deceased sustained injuries in question. The second submission is that the two witnesses have grossly exaggerated the incident in so far as they have sought to say that even after the first phase of the assault that the accused came and assaulted the deceased for the second time which is a material improvement in so far as originally this was never the version put forward. The submission is that it is very clear that these two witnesses desired to put forward a version before the Court in support of their plea that the intention was not to merely assault but to kill and if the evidence is clearly motivated and further more, if the improvements are so material and far reaching, that this is a case in which the evidence itself requires to be rejected. We are unable to uphold this argument for the reason that if the evidence is otherwise credible and acceptable, merely because there is some degree of attempt to improve or exaggerate, it would not justify the total rejection of that evidence, but the Court would be required to discriminate and to water down the evidence by chopping off that part of it which appears to be a clear improvement. There are incidents in which such a process may not be possible or in which the level and degree of improvement may be so very gross that it would destroy the entire superstructure of the evidence, but this is not one such case in so far as the improvements are hereby consequential. The last submission advanced was that A-1 had suffered an injury of some seriousness in so far as he had sustained a bleeding injury on the face and damage to his tooth and it was therefore clear that there was some substance in his defence that it was the deceased who had assaulted him. The learned Advocate submitted that

it was that the deceased is the aggressor and he started the quarrel and it is the duty of the prosecution to explain the injury sustained by the accused which if not done would be fatal to the prosecution. With regard to this aspect of the matter, the learned Addl. S.P.P. has very clearly pointed out to us that A-1 was arrested on 3-9-1990 until which day he was absconding and that the injury of that stage was very old and that there was no guarantee that this injury has anything to do with the incident in question. On the other hand, the learned Addl. S.P.P. submitted that it has come in the clear evidence of the I.O. that A-1 was absconding until 3-9-1990 and A-2 was absconding until 7-9-1990 and that in this background, the circumstance of absconding would lead to an adverse inference against the accused.

3. The learned trial Judge has, after a very clear evaluation of the evidence, held that the complicity of the accused in the assault on the deceased on his wife and on his son is established beyond doubt from the evidence on record. On a review of the material before us and after hearing the two learned Counsel we are of the view that the findings in question are correct and that there is no ground on which any interference is called for as far as they are concerned.

4. The last submission canvassed by the appellants' learned Advocate is that the record even taken at its highest would indicate that sudden quarrel erupted between the accused and the deceased all of whom were brothers. There was no history of enmity or hostility and that consequently, if in the course of a sudden quarrel which was started by the deceased, the accused were to assault him with the usual implements which the agriculturists normally use, that it would be wrong to record a conviction under S. 302, I.P.C. The submission proceeds on the footing that no deadly weapons were used and that even though there is an injury on the head, that from the manner in which the entire incident took place it is very clear that the accused had only indulged in a counter assault which unfortunately had far reaching consequences. The learned Addl. S.P.P. has seriously refuted this submission because he points out that the incident has taken place in the land of the deceased which means that the accused were the aggressors and secondly, that the injury is one of considerable seriousness and that there are several other injuries and that therefore it would be impossible to contend that it was not with the intention of causing death.

5. We have carefully considered all relevant aspects of the case, the first of which is that this was an unfortunate incident within the family. Secondly, the accused are agriculturists, they are not persons of any criminal background and, they have no adverse history. Also, what impresses us is the fact, as rightly pointed out by the learned defence Advocate, that it does appear that the incident was started by the deceased and it is of some relevance that the record itself indicates that the deceased had been involved in a murder case, had spent a long term in prison and had been released not very long ago. That he was given to violence is therefore established, and in this background, even though the accused would not be justified in exceeding the right of self-defence, one has to

take note of the fact that there is some degree of provocation. It is on the basis of the totality of all these circumstances, the fact that no conventional deadly weapons were used, that it would be necessary to record that it would be difficult to hold that there was any intention to cause death. The injuries themselves are not of much gravity and it is rather surprising, in the circumstances that the deceased died and the doctor has indicated that this was due to shock. In this background, in our considered view the appropriate conviction would be one under S. 304-III, I.P.C. We maintain the convictions under S. 324, I.P.C. We need to record that the learned trial Judge has overlooked the fact that charge No. 3 related to the assault on Siddalinga, who has also sustained injuries in the same incident and, consequently A-1 would be liable to be punished for the offence punishable under S. 324, I.P.C. also.

6. The conviction and sentence recorded by the trial Court is accordingly altered. The conviction under S. 302, I.P.C. is set aside and in its place A-1 and A-2 are convicted under S. 304-II read with S. 34, I.P.C. and sentenced to suffer R.I. for 6 months for the offence punishable under S. 324, I.P.C. in respect of the assault on Kashibai. Even though A-1 would normally have been liable to a separate conviction under S. 323, I.P.C. in respect of the assault on Siddalinga, we refrain from imposing any sentence because the learned trial Judge has not done so and the State has not appealed against that part of the order.

7. The sentences, awarded to run concurrently.

8. The appellants-accused shall be entitled to set off in respect of the period undergone by them.

9. The appeal partially succeeds and stands disposed of.

10. Appeal partly allowed.