
(2003) 11 KAR CK 0041
In the Karnataka High Court
Case No : Criminal Appeal No. 657 of 2001

Pradeep	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 304, 307, 326

Citation : (2004) ILR (Kar) 260 : (2004) 1 KarLJ 314 : (2004) 2 KCCR 156 SN

Hon'ble Judges : S.R. Bannurmath, J; Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : G.M. Srinivasa Reddy, Amicus Curiae, for the Appellant; H.V. Ramesh, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is filed being aggrieved by the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Tumkur, in Sessions Case No. 57 of 1999, dated 28-2-2001 holding the appellant guilty of the offence u/s 302 of the IPC and sentencing him to undergo life imprisonment.

2. The factual matrix as per the prosecution is as follows.--

The deceased Jayamma was married to one Ramachandrappa and about 8 to 10 years prior to the incident, she had deserted him and started living at Sira town as a mistress of P.W. 6-Syed Siraj. She was working as a sweeper in "Geetha Lodge" at Sira. The accused Pradeep was also working as a servant in a nearby hotel called "Ashoka Hotel". As per the prosecution case, illicit intimacy developed between the accused and the deceased. P.W. 6, on coming to know of this, had in fact advised the deceased not to have connections with the accused, but it appears, it fell on deaf ears and the illicit relation continued. It appears, thereafter, the accused started pestering the deceased to leave P.W. 6 and marry him, which the deceased alleged to have refused and this according to the prosecution developed ire in the mind of the accused.

3. As per prosecution, on 18-3-1999 while the deceased was working in Geetha Lodge, at about 7.00 p.m., the accused alleged to have come there and again pestered the deceased to marry him and on her repeated refusal to accede to his request, alleged to have assaulted on the deceased indiscriminately with a chopper he was carrying. Attracted by the cries of Jayamma, few of the inmates and nearby people including P.W. 5-Mohamed Fazlu Rehaman and P.W. 7-Ramachandraiah, Police Constables on beat and present duty nearby, P.W. 9-G. Manjunatha and P.W. 11 came to the spot, P.W. 9 disarmed the accused and detained him. P.W. 5, the Police Constable, with the help of others immediately shifted the injured Jayamma to the Government Hospital and there while she was under treatment, the PSI, P.W. 16-Eradasappa, on receipt of information went to the hospital and recorded the statement of the injured Jayamma as per Exhibit P. 13. On the basis of this first information, a case in Crime No. 73 of 1999 for the offence u/s 307 of the IPC is registered against the accused and investigation is taken up. However, later on, as Jayamma succumbed due to the injuries, the offence was altered from Section 307 of the IPC to Section 302 of the IPC and investigation is taken. The accused, as already stated, was apprehended at the spot itself. Necessary mahazars like spot mahazar, inquest proceedings are held in the presence of independent mahazar witnesses, statement of various witnesses recorded, clothes of the accused and the deceased, as well as the weapon chopper M.O. 6 are seized and sent to FSL. After completion of the investigation and receipt of all the necessary reports including the chemical analysis and autopsy, the accused is charged for the offence u/s 302 of the IPC.

4. On committal and after framing the charge for the offence u/s 302 of the IPC, as accused denied charges and claimed to be tried, he is tried in Session Case No. 57 of 1999. In order to establish the guilt of the accused, the prosecution has examined as many as 17 witnesses and got marked Exhibits P. 1 to P. 25. Total denial appears to be the defence as evident from the statement of accused u/s 313 of the Cr. P.C. No defence witnesses have been examined, however the accused produced and got marked Exhibits D. 1 to D. 11 as defence documents. On appreciation of the entire evidence as noted earlier, the Trial Court found that the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt for the offence u/s 302 of the IPC and accordingly, finding him guilty of the same, sentenced him to undergo life imprisonment. Hence, the present appeal.

5. As the accused has filed this appeal as an indigent person from jail, this Court requested Sri G.M. Srinivasa Reddy, learned Counsel to assist the Court on behalf of the appellant as Amicus Curiae. We have heard the learned Amicus Curiae and the learned High Court Government Pleader Sri H.V. Ramesh for the State, in detail and perused the material on record.

6. Out of 17 witnesses examined, P.Ws. 5, 7, 9 and 11 are the eye-witnesses to the incident. P.W. 6 is the paramour or the present husband of the deceased Jayamma. P.W. 3-Kumara is the son of the deceased born from the first husband

Ramachandrappa. P.W. 2-Puttathayamma is the neighbour of the deceased who speaks about the possible motive. P.W. 4 is a co-worker of the accused to whom the accused alleged to have communicated his intention to marry the deceased and also anger for her refusal. However, this witness has not supported the prosecution and hence, has been stated as hostile witness. P.W. 13-Dr. K. Manjuladevi is the Medical Officer who has examined the injured Jayamma immediately after she was brought to the hospital by P.W. 5 and others. P.W. 15-Dr. Ramesh has conducted autopsy on the dead body of the deceased and has given the report as per Exhibit P. 11. The remaining witnesses are either mahazar witnesses and/or members of the police investigation team.

7. In this case, apart from evidence of independent eye-witnesses, there is evidence of the deceased herself by way of first information recorded by the Investigating Officer while she was under treatment. This first information though recorded as a statement of the injured, assumes character of a "dying declaration" admissible u/s 32 of the Indian Evidence Act as the same reveals the cause of death of the then injured Jayamma. Evidence of the P.S.I., P.W. 16 is to the effect that immediately after receipt of the information about the assault on Jayamma and her being treated at the Government Hospital, he rushed to the hospital and after seeking permission from the duty Doctor and ascertaining as to the mental health condition and capability of the injured giving a statement, recorded the statement as per Exhibit P. 3. This evidence of the PSI has been fully corroborated by the Medical Officer. On perusal and reappraisal of evidence of these two witnesses, we do not find any lacunae in the statement made by them as to the fit condition, of both mind and body of the then injured to make such statement and as such, Exhibit P. 3 which has assumed the character of a dying declaration, in our view, is acceptable one. In Exhibit P. 3, the injured has mentioned her earlier relations with the accused, her refusing to marry the accused and enraged by the same, the accused assaulting her with the chopper in the Geetha Lodge on the date and time of incident. In our view, the statements of the injured (assumes character of dying declaration) is sufficient to hold that it was the accused who had caused fatal injuries on Jayamma, ultimately resulting in her death.

8. Apart from this dying declaration, we have no record, evidence of totally independent witnesses in the form of P.Ws. 9, 10, 5 and 7. P.W. 9-G. Manjunatha is a driver by profession and according to him, as the owner of the lodge P.W. 10 was his friend, he often used to visit the lodge. Accordingly, on the date of incident while he was sitting in the lodge along with P.W. 10 and another common friend R. Bheemesha-P.W. 11, at about 6.30 p.m., he noticed Jayamma sweeping and carrying on the cleaning work in the lodge. He also states that he saw the accused entering the lodge but thinking that he may be one of the customers, not much attention was given to him. However, after about 10 minutes, all of them heard screaming of a woman and when they went towards the source of screaming, they saw that Jayamma was suffering bleeding injuries on both of her arms and the accused was present holding a chopper nearby. He

states that blood was scattered on the walls and floor and Jayamma was screaming out of pain. According to this witness, immediately he caught hold of the accused, disarmed him and made him to sit in the lodge itself and intimation was sent to the police. He has also stated that when he questioned the accused as to why he did the crime, accused said to have stated that he was enraged by the refusal of the deceased to marry him and hence has finished her off. P.W. 5-Mohamed Fazlu Rehaman and P.W. 7-Ramachandraiah are Police Constable attached to Sira Police Station. According to them, on 18-3-1999, they were deputed for traffic control duty at the area extending from Sira Bus-stand to T.K.P. lodge and while they were near the lodge at about 7.00 p.m. or so, they heard a screaming sound coming from Geetha lodge and immediately on rushing there, noticed one woman fallen on the ground with bleeding injuries and another person holding the chopper, standing nearby. Immediately, P.Ws. 5 and 6 took the injured to the hospital, sent words to the Police Officials and as well as to P.W. 6-Syed Siraj, the second husband/paramour of the injured and gave his report as per Exhibit P. 3. Evidence of these two independent Police Officials is very cogent and consistent one. They being Police Constables on duty, their presence near the scene of offence also cannot be much disputed and in fact not disputed by the accused. We see absolutely no reasons to discard the evidence of these two witnesses who have arrived at the spot immediately after the incident and have in fact noticed the presence of the accused himself with the murderous weapon viz., chopper. Accused said to have been detained by other people present in the lodge including P. Ws. 9 and 11, Presence of all these witnesses has been spoken to by every one of them and thus their presence and seeing the incident is confirmed by the cogent and consistent evidence. We see no reasons to disbelieve the independent versions given by all these witnesses who have arrived immediately to the spot being attracted by the screaming of Jayamma. The evidence of Medical Officer P.W. 13-K. Manjuladevi also indicates that when the injured Jayamma was brought to the hospital though bleeding, was in conscious state and in fact made a statement as to the history, naming the accused as the assaultant. It is to be mentioned here itself that P.W. 15-Dr. K.V. Ramesh who has conducted the autopsy had noticed the following 12 external injuries on the dead body of the deceased Jayamma, which are as follows.--

- "1. An incised wound of the size of 8 c.ms. x 1 c.m. muscle deep on the lower 1/3rd of the right forearm on the dorsal aspect covered by blood clots.
2. An abrasion 5 c.ms. x 11/2 c.ms. on the dorsal aspect of the middle 1/3rd of the right forearm covered by reddish blood clot.
3. An incised wound over the right wrist on the dorsal aspect 5 c.ms. x 1 c.m. skin deep covered with blood clot.
4. An incised wound found 4 c.ms. above the right wrist joint 5 c.ms. x 6 c.ms. exposing the muscles tendon and bone covered by blood clot.
5. An incised wound 2 c.ms. x 1 c.ms. x 1/2 c.m. over the right wrist on the

lateral aspect reddish in colour.

6. An incised wound on the dorsum of the right index finger 2 c.ms. x 1 c.ms. exposing the tendon phalangeal joint of proximal and middle phalanx.

7. A chop wound of the size 11 c.ms. x 5 c.ms. on the lateral aspect of the left lower arm exposing the bone cutting the skin deep, fascia, muscles, nerves and tissues present. Wound covered by red clot.

8. A chop wound 9 c.ms. x 12 c.ms. bone deep found 2 c.ms. below the above wound cutting the skin deep, fascia, muscles, vessels and nerves exposing the bone present externally covered by blood clot.

9. A chop wound 7 c.ms. x 4 c.ms. bone deep, exposing the skin, muscles bone present 2 c.ms. below the elbow joint on the anterior aspect. Vessels and nerves are severed and covered by red blood clot.

10. A chop wound between the left thumb and index finger 6 c.ms. x 12 c.ms. exposing the muscle, metacarpal bone of the thumb with red blood clot.

11. A lacerated wound over the dorsum of the left hand 1 c.ms. x 1 c.m. (back).

12. An abrasion over the right knee above the upper part of the patella, size 1 1/2 c.ms. x 1/2 c.m. reddish in colour".

9. On dissection, he has noticed fracture of the right upper limb, radius and ulna at lower end, left upper limb with continued fracture of upper end of radius at elbow joint, deep infiltration of tissues with blood present and severance of major arteries and veins in both the arms. He has opined that the death was due to shock as a result of extensive haemorrhage due to multiple injuries. The Doctor has also given his opinion as per Exhibit P. 12 with M.O. 6, the chopper recovered at the spot and found in the hands of the accused detained, which was possible to cause such injuries.

10. Evidence of all these witnesses discussed above even on reappraisal and in the light of arguments addressed by the learned Amicus Curiae, leaves no doubt in our mind as to the accused and the accused alone being the assailant of Jayamma on 18-3-1999 at about 7.00 p.m. at Geetha Lodge, Sira Town. Hence, we have to hold that the learned Trial Judge was justified and was correct in finding that it was the accused who committed the assault on deceased Jayamma due to which, later she succumbed while under treatment.

11. This takes us to the next question as to what is the offence committed by the accused. In this regard, the learned Amicus Curiae contended that as the accused had assaulted on the deceased on non-vital parts viz., both the arms and not chosen any vital organ, clearly indicates that the accused had no intention to commit the murder of the deceased Jayamma. Hence, he submitted that even if the entire prosecution case is accepted, keeping in mind the fact that the accused was in love and affection with Jayamma and on her refusal to marry him, probably got enraged and in the state of enrage, in order to teach her

a Session, might have given few blows on the person of Jayamma. However, he contended that as the injuries caused were on arms which are non-vital organs, the intention was not to commit murder but to severely injure Jayamma and thereby teach her a lesson and hence, it is submitted that the evidence is one u/s 304 of the IPC at the most and not u/s 302 of the IPC.

12. Whether the offence falls u/s 302 or 304 of the IPC depends upon various factors and surrounding circumstances. The Hon''ble Supreme Court in the case of Jai Prakash Vs. State (Delhi Administration), , has given enough guidelines to find as to whether the case falls under Sections 302 or 304 of the IPC. The Apex Court has laid down that in order to find out the nature of assault and whether it is offence of murder or of lesser degree falling u/s 304, 307 or 326 of the IPC, etc., one has to find out whether the injuries were sufficient in the ordinary course of nature to cause death and for this purpose, one has to keep in mind the intention and knowledge of the accused, the weapon used, the degree of force released in wielding it, the antecedent relations of the parties and the nature of injuries, etc,

13. In the present case, it is to be noted that the weapon chosen by the accused is a chopper, a heavy cutting instrument. It is seen from the evidence of the I.O. and mahazar witnesses, it is a steel chopper of about one and a half feet in length having one and a half inch blade. Even the photographs taken by the police during the investigation as per Exhibits P. 7 and P. 18 clearly indicate that it has a large sharp edged heavy cutting instrument. The very fact that the accused had no business to carry this chopper as he is merely a servant in the hotel, added to that fact, nature of injuries found with the deceased resulting in cutting of not only the muscles but also other tissues, bones and importantly the nerves and arteries of both the arms indicate the severity of the blows given by the accused. The scene of offence and the photographs disclose that the floor where the injured fell down after the assault, was practically flooded with blood. The blood was also scattered on the wall at the place where the injured was standing when assaulted. No doubt, as per the decision relied upon by the learned Amicus Curiae in the case of Jagir Singh and Ors. v. State of Haryana, sic wherein the accused had attacked the deceased with deadly weapons but on non-vital parts, the Hon''ble Supreme Court found that none of the injuries sufficient to cause death in the ordinary course and as such found the accused guilty of the offence u/s 304 and not u/s 302 of the IPC. Similar is the pronouncement in the case of Radha Kishan Vs. State of Haryana, There is no dispute as to the pronouncement of the Apex Court in those two cases. However, as it is well-settled that in criminal cases, law of precedent does not play much role as each case has to be considered on its own facts and circumstances, keeping in view these two decisions as well as the decision of the Apex Court in Jai Prakash's case, supra, as guidelines, we find that as per the medical evidence itself, the injuries especially on both the arms of the deceased were so severe as to cut the muscles, bones and the arteries and nerves of the arms. Cutting of arteries in the arm as per medical reports results in severe bleeding which if not treated or

attended to immediately will result in profuse haemorrhage and consequently, in a death. It has to be noted that the injured immediately after the assault has literally bled to death and even though she was immediately shifted to the hospital by P.Ws. 5 and 6, the Doctors could not save her life. Looking to the nature of weapon, the force used and the resultant injuries and its consequences and the fact that the accused carried such a big weapon with him even while going to meet the injured, leaves no doubt in our mind that the intention of the accused was to finish off Jayamma who had refused to marry him. The mindset of the accused is also apparent from his previous conduct as spoken to by P.W. 6. Thus, we find that the accused was a desperate man who would stop at nothing short of taking vengeance against Jayamma and in such a state of mind has in fact caused severe injuries though on non-vital organs, but ultimate imminent result ,was the death due to severe haemorrhage. Hence, we find that the offence of the accused was nothing short of homicidal death amounting to murder and as such, we find no merits in the contentions raised by the learned Amicus Curiae.

14. On entire reappraisal of the evidence as we do not find any illegality or perversity in the appreciation of evidence and conclusion arrived at by the learned Trial Judge, we find the appeal as devoid of merits.

15. For the reasons stated above, the appeal is dismissed as devoid of merits.

16. Before closing, we place on record our appreciation for the efforts made by the learned Amicus Curiae and as such, direct a honorary of Rs. 2,000/- to be paid to him.