

(2015) 04 KAR CK 0083
In the Karnataka High Court
Case No : Criminal Appeal No. 297 of 2012

PV Acharya

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-A), 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 320, 320(8), 326, 504

Citation : (2015) 3 KarLJ 398 : (2015) 4 KCCR 3739

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Budrunnisa, Advocate as Amicus Curaie, for the Appellant; K. Nageshwarappa, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.

1. The appellant has challenged his conviction and sentence for the offence punishable under Sections 307, 504 IPC and under Section 27 of the Indian Arms Act on a trial held by the Sessions Judge, Bangalore Rural.

2. It is the prosecution version that on 08.01.2009 at about 9.45 a.m., the appellant abused Mallesh (PW2), the owner of premises in filthy language near his house No. 6, Thunganagar road, Herohalli, Bangalore and caused a gunshot injury by using his revolver and thereby said to have committed the offences punishable under Sections 307, 504 IPC and Section 27 of the Indian Arms Act. Immediately, after the incident, PW2 was taken to the hospital. He was treated by the doctor (PW1). A complaint was filed by PW4 his wife under Ex. P5 and it came to be registered by PSI PW9. The investigation was taken up. The spot mahazar was held as per Ex. P6 in the presence of PW5 and another. During the surgery doctor (PW1) removed the bullet (MO1) from the abdomen of injured PW2. The blood stained clothes (MOs. 2 to 5) were seized under the mahazar.

The statement of witnesses were recorded, MOs.6 and 9 to 11 were seized under the mahazar Ex. P7 on their production by appellant-accused after his arrest, in the presence of PW8. The seized articles were sent for the opinion of expert and the report (Exs. P9 and P10) were secured. After completion of investigation, chargesheet was laid against the appellant for the offence under Sections 326, 504, 307 IPC and Section 25(1-A) of the Arms Act.

In the Trial Court, the prosecution examined PWs. 1 to 11, got marked documents Exs. P1 to P14 and MOs. 1 to 12. The statement was recorded under Section 313 Cr.P.C. No defence evidence was led. The Trial Court heard the Counsel and on appreciation of the evidence on record, convicted the appellant for the offences under Sections 307, 504 IPC and under Section 27 of the Indian Arms Act. The appellant was ordered to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 40,000/- for the offence under Section 307 IPC and lesser sentence was awarded for the other offences. Aggrieved by the conviction and sentence, the present appeal is filed.

3. Heard the learned Amicus Curiae for the appellant and learned High Court Government Pleader.

4. The point that arises for my consideration is:

"Whether the appellant has made out any grounds to warrant interference in his conviction and sentence for the offence under Sections 307, 504 IPC and under Section 27 of the Indian Arms Act?"

5. Learned Counsel for the appellant submits that there is weak motive which is not sufficient to infer an intention to commit the murder. She submits that the injuries are not grievous. It is also her submission that the incident was in a sudden and grave provocation. It is further contented that there was no intention on the part of appellant to cause the death of injured and therefore, the conviction of the appellant for the aforesaid charges is improper. She submits that there are no independent witnesses examined by the prosecution and acceptance of the evidence of injured, the family members and the neighbors, to base the conviction is improper. On these grounds, she has sought for setting aside the conviction and sentence ordered.

6. On the other hand, learned High Court Government Pleader supports the judgment and order and submits that the material placed on record is sufficient to sustain the conviction for the offence under Section 307 IPC and other minor offences.

7. Learned Amicus Curiae has taken me through all the evidence recorded by the Trial Court and an anxious consideration of the said evidence reveals that PW2 is the injured. He is the owner of premises in which the appellant (accused) was in possession as a mortgagee. The mortgage period was for three years. The appellant was to vacate the premises and therefore, on the date of incident, PW2 the owner asked the appellant who was returning to his house in the night, to

vacate and hand over the possession, after receiving the mortgage money. In this context, there was a quarrel and ultimately, the appellant is said to have taken out the revolver from his pocket and caused gunshot injury to PW2. The bullet went into the abdomen. The injured was immediately taken to the hospital. PW1 examined the injured and at the time of surgery, the bullet (MO1) was removed from the abdomen. The doctor PW1 has said in his evidence about the surgery and removal of bullet from the abdomen of PW2. In his opinion, the injury is grievous.

8. Though PW1 has not stated about the period for which the injured was in the hospital, under the provisions of Section 320 IPC, the injury sustained by PW2 falls within the purview of a hurt which endangers the life and therefore, though the injured was not in the hospital for 20 days, as the bullet injury would have taken the life of injured, it is grievous injury as defined under Section 320(8) of the said provision.

9. It is well established principle of law that the injured generally does not implicate an innocent and does not leave the person who has really caused the injury. The appellant is the only person who is arrayed as an accused and he is said to be responsible for the cause of injury. When PW2 has sustained grievous injury, he would not implicate an innocent.

10. That apart, perusal of the evidence of PW2 would reveal that the incident took place at 9.30 p.m. The incident has occurred in the house of injured while the appellant was entering his premises. It is not in dispute that the appellant was occupant of the premises under an agreement and that agreement has been produced under Ex. P2 and the demand register in respect of the premises (Exs. P3 and P4). Under this agreement, the appellant was in possession and as the period had expired, he was bound to hand over the possession of the property to the owner PW2. It is in this context that there was a quarrel and immediately the appellant is said to have taken out the revolver from his pocket and caused bullet injury to PW2 in the abdomen.

11. So far as the motive aspect is concerned, though it is contended that there is a weak motive, the fact that the appellant took the gun, aimed at the injured and caused gun shot injury itself clearly reveals the intention on his part. The abdomen is a vital organ and therefore, any injury caused to the abdomen would endanger the life of injured. So the grievous injury is caused due to the gunshot and the revolver was produced by the appellant on the date of its seizure. The said revolver is produced at MO6. This revolver has been produced by the appellant himself and was seized under the mahazar Ex. P7 alongwith 5 bullets (MO7), empty cartridge (MO8), 12 live bullets (MO9) and licence book (MO10). Though there is a weak motive, the intention was very much clear and therefore, I am of the opinion that Section 307 IPC is attracted.

12. The evidence of injured PW2 is supported by the evidence of daughter (PW3), the wife (PW4) and the neighbors (PWs.5 to 7). They consistently state

about the appellant taking out the gun from his pocket and causing gunshot injury to PW2. When the incident took place in the night at about 9.30 p.m. in the premises, it is only the inmates of the house, the neighbors at the place of incident can witness the incident. So, merely because the independent witnesses have not been examined itself does not mean that the evidence of aforesaid witnesses has to be rejected. The scrutiny of evidence of PWs. 2 to 4, 6 and 7 would clearly reveal that it is consistent, cogent and trustworthy.

13. PW8 is examined as an attesting witness for the mahazar Ex. P7 in which MOs.6, 9 to 11 were seized and this object were produced by the appellant himself on the date of mahazar Ex. P7. PW9 is the police officer who registered the crime and held investigation. He immediately after the information about this incident, went to the hospital and as PW2 was not in a position to give the statement, he recorded the complaint of PW4 as per Ex. P5, registered the crime thereafter held the investigation.

14. That apart, the prosecution has also examined PW10, the scientific officer who examined the bullet which was removed from the abdomen and other bullets in addition to the revolver MO6 and it is in her evidence that the injury suffered is due to gunshot injury from the revolver (MO6). There is nothing to disbelieve the evidence of PW10. Perusal of the cross examination of PW10 does not reveal any material to discard her evidence. PW11 is the ballistic expert who has also spoken about the revolver (MO6), bullet (MO1) which was removed from the abdomen and other circumstances. His evidence is also not seriously challenged in the cross examination.

15. Perusal of the material placed on record reveals that on the date of incident, the appellant caused the gunshot injury and injured PW2 suffered grievous injury in the abdomen. There was an intention to cause the death of injured as the injured PW2 requested the appellant to vacate the premises, as the period was over. There was no such circumstances by which there could have been an grave and sudden provocation. Therefore, the submission of learned Counsel that the incident was due to grave and sudden provocation cannot be accepted.

16. The scrutiny of material placed on record in the context of submissions made, I do not find any error or illegality in the conviction of appellant for the charge under Sections 307, 504 IPC and under Section 27 of the Indian Arms Act.

17. So far as the sentence is concerned, the injury suffered is grievous in nature. If the injured was not taken to the hospital in time, he could have lost his life. Taking into consideration the grievous nature of injury and the circumstances in which it was caused, I do not find any grounds even to show any leniency to reduce the sentence that has been awarded by the Trial Court.

18. Consequently, the appeal fails and it is dismissed. Conviction of the appellant for the charge under Sections 307, 504 IPC and under Section 27 of the Indian Arms Act is confirmed.

The fee of Amicus Curiae is fixed at Rs. 7,500/- and the State shall pay the same.