

(2015) 01 KAR CK 0348
In the Karnataka High Court
Case No : Criminal Appeal No. 3517 of 2008

Rachappa and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Arms Act, 1959 — Section 30
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2015) 01 KAR CK 0348

Hon'ble Judges : A.S. Pachhapure, J.; L. Narayana Swamy, J.

Bench : Division Bench

Advocate : R.B. Contractor, for the Appellant; Prakash Yeli, Addl. SPP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—The appellants have challenged their conviction and sentence ordered by the trial Court for the offence punishable under Sections 143, 147, 148, 324, 307, 302 r/w. 149 IPC and under Section 30 of the Arms Act r/w. 149 IPC.

2. The facts reveal that on 22.12.2006 at 9.00 p.m., Bheemraya-P.W.9, Mallappa, s/o. Ningappa-C.W.17, Mallappa, s/o. Bheemraya-C.W.19 were going towards their land and while they were passing in front of the house of accused No. 1 [appellant No. 1 herein], there was a quarrel on the ground that P.W.9, C.W.17 and C.W.19 were peeping into his house and Siddappa-P.W.10 intervened in the quarrel and pacified them and in the aforesaid incident, accused No. 4 had assaulted P.W.10 with a stick on the head.

The prosecution alleges that on 23.12.2006 accused 1 to 6 formed an unlawful assembly with common object to cause the death of P.W.7-Bheemraya and while P.W.7 was proceeding towards his land, the accused who were armed with the axes and stick, quarreled with P.W.7 and accused No. 4 assaulted P.W.7 with the

axe. As a result, P.W.7 sustained injuries on his right hand fingers and right ear. Accused No. 5 assaulted with the axe on the left shoulder and thereby P.W.7 sustained a bleeding injury. Sidramanna [deceased] i.e., the husband of P.W.6 and Ningappa-P.W.8 intervened to rescue P.W.7. At that time, accused No. 4 assaulted Sidramanna on the head with the axe, accused No. 3 assaulted the deceased with the axe and so also accused No. 5. Accused No. 2 assaulted the deceased with the axe on the thigh and accused No. 6, who was holding the stick assaulted P.W.8. As a result, Sidramanna said to have died on the spot. At the time of the incident, accused No. 1 is said to have a gun threatened the persons gathered, by show of the gun.

P.W.19-PSI., Yadagir Police Station, received a message about this incident at 10.00 a.m. and rushed to the spot. He recorded the oral complaint [Ex.P11] of P.W.6-Mallamma, it was sent to the Police station and it came to be registered by P.W.16-SHO. Investigation was done and inquest on the body of the deceased was held. The dead body was sent for post-mortem examination. The injured were sent to the hospital for treatment. Their statements were recorded. On the arrest of the accused on 26.12.2006, the weapons were recovered at their instance. They were seized under different mahazars. Seized articles were sent to the opinion of the experts and the FSL report Ex.P26 was obtained. Spot-mahazar was held under Ex.P2 and the sketch of the scene of occurrence-Ex.P17 was drawn. After collecting post-mortem report and other documents, charge-sheet was laid against the accused for the offences punishable under sections 143, 147, 148, 324, 504, 307, 302 r/w. 149 IPC and under Section 30 of the Arms Act r/w. 149 IPC.

After framing the charges, the prosecution led the evidence of P.Ws.1 to 20 and in their evidence, Exs.P1 to 28 and M.Os.1 to 18 were marked. The statements of the accused were recorded under Section 313 Cr.P.C. No defence evidence was led. Anyhow, in the course of the trial, Exs.D1 to 4 have been marked.

The trial Court having heard learned counsel for the parties and on appreciation of the evidence on record, convicted the accused for the offence punishable under Sections 143, 147, 148, 324, 307, 302 r/w. 149 IPC and under Section 30 of the Arms Act r/w. Section 149 IPC. For the offence punishable under Section 302 IPC, they were awarded the sentence of life imprisonment and lesser sentence was awarded for other offences. Subsequent to the conviction, accused No. 6 died. Aggrieved by the conviction and sentence, accused 1 to 5 have preferred the present appeal.

3. We have heard learned counsel for the appellants and learned Additional State Public Prosecutor.

4. The point that arises for our consideration is;

Whether the conviction of the appellants for the charge under Sections 302 r/w. 149 IPC and other offences and the sentence ordered thereon warrants any interference in this appeal? 5. Learned counsel for the appellants submits that

the incident set-up by the prosecution and the motive is not proved. Therefore, they submit that in the absence of the motive, the conviction for the offence punishable under Section 302 IPC is improper. So also, they submit that the independent witnesses have not been examined by the investigating agency and the non-examination leads to a serious doubt in the case of the prosecution. They submit that the seizure of the weapons is not proved as the witnesses examined by the prosecution are either interested or have not supported the case of the prosecution and in the absence of acceptable evidence, the conviction needs interference. Further they submits that there was no intention on the part of the accused to cause the death Sidramanna [deceased] and the material placed on record reveals only a motive to cause assault on P.W.7 and Section 302 IPC cannot be invoked for the assault and consequent death of Sidramanna [deceased]. It is also their contention that accused 1 to 3 have not caused any injuries on the deceased on vital organs and that they have no intention to take the life of the deceased and their conviction needs to be set aside. So also they submit that the prosecution has failed to establish the scene of occurrence and there is inconsistency in the evidence and therefore, they contend that the incident alleged by the prosecution is not proved. On these grounds, they sought to set aside the conviction and sentence ordered by the trial Court.

On the other hand, learned Additional State Public Prosecutor supports the Judgment and Order of the Court below and contends that there are injured witnesses, who have supported the case of the prosecution and the evidence placed on record is sufficient to prove the guilt of the appellants beyond reasonable doubt. The trial Court has considered all that evidence and has rightly awarded the conviction and sentence. He submits that there are no grounds made out to warrant interference in the impugned Judgment and Order.

6. We have gone through the records of the Court below, the evidence of the prosecution witnesses and also the documents admitted in their evidence. Amongst the witnesses examined, P.W.10 speaks to the first incident that occurred on 22.12.2006 at 9.00 p.m. The motive put-forth by the prosecution is due to the conduct of P.Ws.9, C.W.19 and C.W.17. While they were proceeding towards their land, they peeped into the house of the 1st accused. It is for this reason that there was an assault by accused No. 4 with the stick and P.W.10 suffered injuries at that point of time, he had gone to pacify the quarrel. To support this version, the prosecution relies upon the evidence of P.Ws.9, 10 and 12 and also the injury certificate produced at Ex.P14. P.W.10 had suffered a cut lacerated wound on the scalp. There were blood clots. The injury was measuring 2.5 cm. X 1 cm. X 1/2 cm. The time of the assault is said to be 8.00 p.m. on 22.12.2006. He was examined by the doctor on the next day at 6.10 p.m. In fact, there was no complaint of this incident either by P.W.9 or P.W.10. It may be for the reason that there was no such serious grievance either of the injured or P.W.9 to file a complaint. The conduct of P.Ws.9, C.Ws.17 and 19 peeping into the house was unwarranted and they may not have thought of filing a complaint of such a minor incident. Merely because the complaint was not filed that itself in

our opinion is insufficient to reject the version put-forth by the prosecution to prove the motive aspect.

P.W.10 is an injured witness and his evidence has been supported by P.W.9. Such evidence can be accepted to prove the motive even in the absence of any other evidence.

7. The sketch of the scene of occurrence is produced at Ex.P17. The place where the assault took place is in between the premises of Mariyappa and Saidappa. It is an open site. The dead body of Sidramanna was found at a distance of 53 mtrs. from the place of the assault. Near the place where the dead body was found there is a flour mill of one Eranagouda and a house of one Balappa, approximately at a distance of 13 mtrs. Though a contention has been raised that the place of the incident has not been proved, it is necessary to look into the evidence of the injured eye-witnesses and it is P.Ws.7 and 8, who suffered injuries in the incident at that time.

8. P.W.7-Bheemraya, who had suffered the injury in the accident was examined by the doctor-P.W.12. The injury certificate produced at Ex.P12 reveals (1) deep cut lacerated wound over the left shoulder area measuring 15 cm. X 5 cm. X 4 cm. There was active bleeding, x-ray reveal the fracture of clavicle, (2) abrasion on the right ear lobe 1/4 cm. X 1/4 cm., (3) abrasion over tip of the nose 1/4 cm. X 1/4 cm., (4) abrasion over the right thumb measuring 1/2 cm. X 1/2 cm. and (5) cut lacerated wound over the left fore-arm measuring 3 cm. x 1 cm. x 0.5 cm. He has suffered one grievous injury and the rest were simple.

9. P.W.8-Ningappa is also a person said to be the present at the time of the incident and suffered injuries. Exs.P13 is the certificate issued by the doctor-P.W.12. He had (1) tenderness over the right scapula area and (2) tenderness over the right shoulder area and these injuries are simple. The other eye-witnesses examined are P.W.6-Mallamma, the wife of deceased Sidramanna and her son-P.W.11. Though her presence has been disputed, it is important to note that the scene of occurrence where the assault took place was adjoining the house of the deceased and she has stated in her evidence that she heard the noise of quarreling and rushed to the place of the incident. She saw the assault by the accused on her husband Sidramanna [deceased]. She also speaks of the incident that occurred a day earlier. It is no-doubt true that she has not suffered any injury and did not intervene in the incident. She speaks to the individual acts of each of the accused in the assault on both P.Ws.7 and 8 and her deceased husband Sidramanna. She states that the dead body was fallen at the place of the incident. But, in fact, as could be seen from Ex.P17, the sketch, the dead body was at a distance of 53 mtrs. Though it was at such a distance that itself is insufficient in our opinion to dislodge the case of the prosecution. The manner of incident as stated in the evidence of eye-witnesses is supported by the evidence of the injured witnesses. Her presence in the place of the incident is natural as it is very close to her residence. Though she does not speak to the deceased proceeding towards the place where the dead body was fallen, it is probable that

at the time of the assault, there is movement of the persons to avoid the blows and thereby the place where the assault commenced may be at some distance from the place where the body of the deceased was found after completion of the assault. In our opinion, this circumstance itself is insufficient to reject the evidence of P.W.6-Mallamma, the wife of the deceased.

10. Though P.W.6 speaks of the incident on the earlier day, even not accepting her evidence and her presence in the first incident, as there is abundant evidence of other witnesses including P.Ws.9 and 10 proves the motive. She has not stated in the evidence that she saw the first incident and for this reason her evidence for the second incident cannot be rejected.

11. It is well-established principle of law that an injured generally does not implicate an innocent and does not leave a person, who has really committed the crime. The evidence of an injured stands on a higher footing, particularly, P.W.9-Bheemraya having sustained a grievous injury, i.e., the fracture of clavicle. He has spoken to the assault made on him by accused No. 4 with the stick and it is accused No. 5 who bet him at that time. P.W.7 was assaulted by accused No. 4 with the axe on the right finger. Accused No. 5 assaulted him with the axe on the shoulder and rest assaulted him with the sticks. The fact that he had suffered the fracture of clavicle, a grievous injury, there is corroboration of medical evidence. Therefore, the evidence of P.W.7 stands at a higher footing.

12. P.W.7 also speaks to the assault by each of the accused on Sidramanna [deceased]. As stated by him, accused 2 to 5 assaulted the deceased with the axes and it is accused No. 1, who was holding gun at that time and was threatening the persons not to intervene. There is consistency in the evidence of P.Ws.7 and 8 in this matter. P.W.8 as well speaks to the individual acts of the accused in causing the assault on the deceased. The scrutiny of the evidence of P.Ws.6, 7 and 8 reveals that it is consistent, cogent and trustworthy. P.W.8 is also an eye-witness as stated above and his evidence stands on higher foot. The evidence of P.W.6 even could be taken as corroboration to the evidence of P.Ws.7 and 8.

13. The autopsy on the body of the deceased was held by the doctor-P.W.13 and Ex.P15 is the post-mortem report. The deceased had sustained as many as 8 injuries. Injury No. 1 is an incised wound on the scalp measuring 13 cm. x 3 1/2 cm. x 2 cm. Injury No. 2 is lacerated wound on the left ear measuring 3 cm. x 1 cm. x 0.5 cm. Injury No. 3 is also lacerated wound on the scapula region. There was a fracture of scapula. Injury was measuring 10 cm. x 5 cm. x 6 cm. There was a slit wound on the back and many other injuries on the scalp. They include lacerated wound also. In all, as many as 8 injuries were on the body of the deceased. The doctor-P.W.13 held the autopsy on the body of the deceased and he is of the opinion that multiple injuries to the vital organs with sharp edged weapons was the cause of the death. These injuries correspond with the blows given by each of the accused. The perusal of the evidence of P.W.13 and Ex.P15-post mortem report would lead to the only conclusion that the death was

homicidal.

14. Lacerated wounds and incised wound can be caused by the axes and stick. Each of the accused was armed with the aforesaid weapons. The individual acts of each of the accused having been spoken to by the witnesses P.Ws.6 to 8. Nothing is elicited in the cross-examination of these witnesses to disbelieve the version.

15. That apart, there was no enmity between the deceased and the accused prior to 22.12.2006. There was no such enmity even between P.Ws.7, 8 and the accused. It is due to the incident on the earlier day that the second incident in question resulting in the death of Sidramanna occurred. In such circumstances, the evidence of such witnesses cannot be rejected as they do not have any mala-fides or malice earlier against the accused, prior to the first incident.

16. P.W.7 was proceeding towards his land at the time of the second incident and at that time, the prosecution alleges that the accused formed an unlawful assembly, armed with the weapons like stick and axes and questioned P.W.7 about the incident that occurred on the earlier day and caused assault with weapons. At that time, the deceased came to rescue P.W.7-injured, who was assaulted by the accused. So also, P.W.8 came at that point of time to rescue the injured and when Sidramanna [deceased] intervened, he was assaulted by the accused with the axes and stick. Accused No. 1 was also present with the gun and was threatening the other persons not to intervene in the assault. No-doubt, the accused had intended to assault on P.W.7, who had sustained severe injuries in the incident and though the accused had no intention at that point of time to cause assault on deceased Sidramanna, it is his intervention in the assault that made the accused to cause the assault on the deceased. So, the malice that was there against P.W.7 was transferred to Sidramanna [deceased] because of his intervention and therefore, he was assaulted by the accused. So, when such malice is transferred, the accused would be responsible on the principle of transferred malice and their assault on the deceased, if it is with an intention to cause his death, they are liable for the offence punishable under Section 302 IPC.

17. Though it is contended by learned counsel for the appellants that there was no intention to cause the death of Sidramanna, the assault was made on vital organs like the head and other portions of the body, by continuous assault with deadly weapons, and it would lead to only conclusion that there was an intention to cause his death and therefore, Section 302 IPC is attracted.

18. A reference is made to the provisions of Section 302 Part II IPC and it is contended that the accused at the most had the knowledge that their act is likely to cause the death. But, the number of injuries suffered by the deceased and the continuous assault by the accused with the deadly weapons like the axes and stick will clearly indicate their intention to do away with the life of the deceased. Therefore, Section 304 IPC is not applicable. As the accused caused the death of Sidramanna with such intention and Section 302 IPC is attracted.

19. Reliance is placed on the decision of the High Court of Patna, reported in Vijay Kumar and Others Vs. State of Bihar, ; wherein the independent witnesses were not examined. The witnesses examined were not natural and they were chance witnesses. There was vivid description of the assault on the deceased. The High Court held that the incident is not proved beyond reasonable doubt. The aforesaid principle does not apply to the facts on hand for the sole reason that there are injured eye-witnesses to this incident particularly, P.W.7 who sustained a grievous injury. His evidence is supported by the evidence of other injured P.W.8. P.W.6 has also spoken to the fact of the assault. When such evidence is available, in our opinion, the non-examination of the other persons surrounding the place of the incident is not relevant. Even in the absence of such evidence, the prosecution theory and the evidence of P.Ws.7 and 8 cannot be disbelieved. Their evidence is consistent, cogent and trustworthy and we find no reasons to discard their evidence.

20. So far as the recovery is concerned, it is relevant to note that the accused were arrested on 26.12.2006. Respective weapons were recovered by the Police under different mahazars and P.Ws.2 to 4 are the attesting witnesses present at the time of recovery. The recovery mahazars have been admitted in the evidence. They are at Ex.P5 to 10. The voluntary statements of each of the accused were recorded as per Exs.P20 to 25. The investigating Officer-P.W.20 has spoken to the recovery of the aforesaid weapons at the instances of the accused. It is true that P.Ws.2 to 4 have not supported the case of the prosecution. The hostile attitude of these witnesses itself is insufficient to discard the evidence of the Police Officer. The seized articles were sent to the opinion of the experts. The FSL report has been produced at Ex.P26. The cloths of the deceased were also sent for the opinion of the experts and it is stated that items 1 and 3 to 12 inclusive of the cloths of the deceased and the weapons were stained with AB-Group blood, to mean the blood group of deceased Sidramanna was AB and this is also a strong circumstance in our opinion to support the version of the prosecution. Merely because the mahazar witnesses have turned hostile appears to be not a good ground to reject the version of the prosecution.

21. Furthermore, the incident took place on 23.12.2006 at 9.30 a.m. The complaint came to be lodged by P.W.6 immediately after the incident before 11.30 a.m. and the FIR was sent to the Magistrate after its registration by the SHO., who is examined before the Court. The FIR was received by the Magistrate at 5.30 p.m. on the same day. The distance between the place of the incident and the Police Station is at 16 kms. The PSI-P.W.19 came to the place of the incident immediately after he received the phone message and recorded the complaint of P.W.6. He sent the said complaint-Ex. P11 to the Police Station for registration and P.W.16 registered the same in crime No. 221/06. It is thereafter that the FIR was sent to the Magistrate. There appears to be no delay in lodging the FIR. This circumstance, which is placed on record further strengthen the case of the prosecution.

22. P.W.11 is the son of deceased Sidramanna is an interested witness. Anyhow, he also supports the case of the prosecution and his evidence can be looked into for the purpose of corroborating the other materials placed on record. P.W.15 is the Assistant Executive Engineer, who drawn the sketch-Ex. P17. P.W.17 is the Police Constable, who shifted the dead body for post-mortem examination and produced the cloths of the deceased, which were seized under the mahazar. P.W.18 is the Police Head Constable, who carried the seized articles to the experts. P.W.14 is the Tahsildar, who speaks to the license for the gun held by accused No. 1. The said license has been produced under letter-Ex.P16. Accused No. 1 was the custodian of the gun and he used the said weapon illegally for commission of the crime. Therefore, there is evidence against the accused for the offence punishable under Section 30 of the Indian Arms Act.

23. It is relevant to note that there were more than 5 accused at the time of the incident. They came from their residence to the place of the incident armed with the aforesaid weapons, the common object of this assembly of these 6 persons was to cause assault and death of P.W.7. Each of them have used the weapons in furtherance of their common object. Therefore, the provisions of Section 149 IPC is applicable for each of the offences committed by the accused. It is for this reason that the trial Court considering the abundant evidence made available on record convicted them for the main offence under Section 302 IPC and other offence as well, wherein lesser sentence has been awarded. So far as the offence punishable under Section 302 IPC is concerned, the minimum sentence is imprisonment for life. Though the accused have been in custody for more than 8 years, we do not find any justification even to warrant interference in the sentence ordered by the Court below as each of the accused have been awarded sentence for imprisonment of life and the other sentences are for lesser period and are to run concurrently with the sentence for main offence, we deem it proper not to interfere even in the sentence for the other offences. The scrutiny of the Judgment of the trial Court would indicate that the evidence of each of the witnesses has been scrutinized, appreciated and ultimately conclusion has been arrived at in awarding the conviction and sentence. We do not find any grounds to warrant interference in the impugned Judgment and Order.

Consequently, the appeal fails and it is accordingly dismissed. The conviction and sentence ordered by the Court below under the impugned Judgment and Order is confirmed.