

(2005) 12 KAR CK 0046

In the Karnataka High Court

Case No : Criminal Revision Petition No. 228 of 2003

Ratnappa Shivalingappa Jeevani and Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397

Electricity Act, 2003 — Section 25, 39

Penal Code, 1860 (IPC) — Section 304 A, 379

Citation : (2006) CriLJ 1579

Hon'ble Judges : A.C. Kabbin, J

Bench : Single Bench

Advocate : Ashok R. Kalyan Shetty, for the Appellant; Satish R. Girji, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.C. Kabbin, J.—This revision petition u/s 397 of the code of Criminal Procedure has been preferred by the accused in C.C. No. 819/1999 on the file of the Additional JMFC, Gokak challenging their conviction and the judgment in Criminal Appeal No. 51/2000 on the file of the I Additional Sessions Judge, Belgaum. This revision petition is directed against the confirmation of their conviction by the appellate Court for the offence punishable u/s 304-A of the IPC and consequent sentence of rigorous imprisonment for three months and a fine of Rs. 1,000/- each in default to undergo simple imprisonment for two months.

2. The case of the prosecution may be briefly stated as follows :

Mahadev Bandroli (the deceased), aged about nine years and his sister Laxmi Bandroli, aged about twelve years resided with their father Yallappa Kareppa Bandroli (the complainant/PW-1) in Gujanatti village of Mudhol Taluk. Mahadev was studying in the third standard. Yallappa's younger brother Parashurm collects milk from different houses and does the business of vending the milk, Yallappa's children Laxmi and Mahadev used to assist him in collecting the milk

from some of the houses. Normally they used to go the house of Siddappa Shivalingappa Jeevani (the accused No. 2) and bring milk. On 22-7-1999 at 8.00 a.m., Laxmi (PW-5) Mahadev (the deceased), a neighbour Dundappa Siddalingappa Kankanwadi (PW-6) went to the house of the accused No. 2 Siddappa to bring milk. On the way, Yallappa's younger brother Krishnappa (PW-4) met them. All of them went to the house of Siddappa Jeevani (the accused No. 2) situated within the land, which the accused cultivated. At that time, Mahadev went in the grown crop in the land to urinate. At that time others heard his cries. When Laxmi, Dundappa and Krishnappa ran to the spot, they saw Mahadev having fallen on the ground. Apparently he had been electrocuted by the live wire which had been left in the crop per-haps to drive away the animals. Ratnappa Shivalingappa Jeevani (the accused No. 1) and Siddappa Shivalingappa Jeevani (the accused No. 2) ran to the KEB pole and disconnected the connection and when Mahadev was moved by a wooden pole, they found him already dead and his both knees having been electrocuted. His body was carried by Krishnappa (PW-4) to the house of Mahadev's father Yallappa. Yallappa Bandroli then went to Mudalagi police station and lodged a complaint against the accused, which was received by Sri B. P. Chandra-shekar, PSI (PW-10) at about 4.00 p.m. on 22-7-1999. He registered a case at Crime No. 84/1999 for offences punishable under Sections 304-A and 379 of the IPC and Section 25 of the Karnataka Electricity Act. He went to the place of offence and conducted spot mahazar and inquest mahazar. The dead body of Mahadev was sent for postmortem examination. Autopsy was conducted by PW-9, Dr. S. M. Ganiger, who opined that the death was due to electric shock. The accused were arrested on 24-7-2005 and they were produced before the jurisdictional Magistrate and were remanded to the judicial custody. After further investigation a charge sheet was placed against the accused.

3. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution examined in all ten witnesses. PW-1 is the complainant and PWs-2 and 3 are panch witnesses. PWs-4 to 6 are eye-witnesses. PW-1 learnt about the incident from PW-4. PW-8 was the Junior Engineer, KEB, Mudalagi, who speaks about the electric supply during the relevant period to Waderhatti village. PWs-7 and 10 are police officers.

4. After the case of the prosecution was closed, the accused were examined u/s 313 of the Code of Criminal Procedure to explain the circumstances arising out of the evidence. While denying the allegations of the prosecution witnesses, the accused No. 1 produced extract of the record of rights in respect of Sy. No. 47/5A + 5D + 5E2 of Waderhatti village in which this incident of electrocution of Mahadev is stated to have taken place. The owner of the land and the person in possession of the land is shown to be Jeevani Kempanna Shivalingappa. It appears to be the defence theory of the accused that they were neither the owner nor the persons in possession of the said land, where the alleged death of Mahadev is stated to have taken place. No witness has been examined on behalf of the accused.

5. After hearing the learned Public Prosecutor and the learned Counsel for the accused, the learned Additional JMFC, Gokak, accepted the version of the prosecution relying on the depositions of PWs-4 to 6 and convicted both the accused for offences punishable under Sections 304-A and 379 of the IPC read with Section 39 of the Indian Electricity Act and sentenced them to undergo rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- each in default to undergo simple imprisonment for two months for the offence punishable u/s 304-A of the IPC and to undergo rigorous imprisonment for two months and to pay a fine of Rs. 1,000/- each in default to undergo simple imprisonment for two months for the other offence, i.e., the offence punishable u/s 379 of the IPC read with Section 39 of the Indian Electricity Act.

6. Challenging the said conviction and sentence, the accused preferred Criminal Appeal No. 51/2000 before the I Additional Sessions Judge Belgaum. By judgment dated 8-2-2003 passed in the said appeal, the learned Additional Sessions Judge allowed the Criminal Appeal in part and set aside the conviction and sentence imposed for the offence punishable u/s 379 of the IPC read with Section 39 of the Indian Electricity Act and acquitted both the accused of the said offence. As regards the other offence, i.e., the offence punishable u/s 304-A of the IPC, he dismissed the appeal and confirmed the conviction and sentence imposed for the said offence. Challenging the said conviction for the offence punishable u/s 304-A of the IPC and the consequent sentence, the present revision petition has been filed.

7. It is submitted by Sri Ashok R. Kalyan Shetty, learned Counsel for the revision petitioners that despite the contention taken by the petitioners that they are not the owners of the land where the alleged rash and negligent act leading to the death of Mahadev took place, the learned Sessions Judge has not taken into consideration that factor. Referring to the suggestions made during cross-examination of eye-witnesses, it is submitted by him that the suggestions indicate that the land belongs to Kempanna and that suggestion had been fully corroborated by the extract of ROR which shows the name of Kempanna as the owner and cultivator of the land in which the alleged incident had happened. It is therefore submitted by him that taking into consideration the suspicion about the culpability of the accused, the conviction could have been rendered. It is further submitted by him that even if the depositions of PWs-4 to 6 are accepted in toto, they only show the act of one of the accused claiming the electric pole and disconnecting electricity and the other moving the live wire by a wooden pole and taking out the unconscious Mahadev who was found dead by that time. He submits that if that is taken into consideration, innocent accused have been wrongly convicted.

8. Replying to this Sri Satish R. Girji, learned High Court Government Pleader submits that the evidence of PWs-4 to 6 clearly shows that the land was in possession of Kempanna and also these accused who are the brothers and that the said electric connection had been illegally taken by all the three persons. The

fact that Kempanna has not been added as one of the accused itself does not give any scope/benefit to the accused who are apparently found as the culprits by witnesses.

9. I have carefully considered the points urged by the learned Counsel for the revision petitioners. The evidence of PWs-4 to 6 clearly shows that on that day PW-5 Laxmi, PW-6 Dandappa had gone along with Mahadev to the house of the accused to bring milk, that both the accused were present there and at that time Mahadev went behind the hut to urinate. The evidence shows that there was sugarcane crop and the person in that hut heard the cries of Mahadev and when they ran to the place, they found him fallen and the black colour wire below him. Suspecting that it must be a live wire, it was moved by the wooden pole by PW-4 Kempanna and the boy was rescued, but by that time Mahadev had already died. The evidence of the witnesses shows that in the meantime the accused No. 2 Siddappa Shivalingappa Jeevani climbed the pole and disconnected the wire and the accused No. 1 Rathnappa moved the wire further. The spot mahazar shows that the land had sugarcane and maize crop and to protect the crop, illegal electricity connection had been taken by the persons in possession of the land. In fact the spot mahazar Ex.P-2 shows that the land was in possession of the accused No. 2. On consideration of the evidence adduced by the prosecution, the learned trial Judge and the learned Appellate Judge have accepted the said evidence and I see no reason to come to a conclusion different than the one they have arrived at or to observe that they have erred in holding that the accused are responsible for taking illegal electricity connection and not taking proper precaution to warn the persons who might go to that place. This clearly falls within the ambit of Section 304-A of the IPC, as it was a rash and negligent act. For the above said reasons, the conviction recorded by the learned Additional JMFC, Gokak is affirmed by the I Additional Sessions Judge has to be confirmed.

10. It is next submitted by Sri Ashok R. Kalyan Shetty, learned Counsel for the revision petitioners that even if the whole allegations are taken, it might be a foolish act on the part of the persons to protect their crop and it would be too harsh on the accused to undergo imprisonment after the lapse of 5 years. Taking into consideration the facts and circumstances of the case, I am of the opinion that there was no intention on the part of the accused to cause any harm to the deceased and there was also negligence on the part of the boy Mahadev when he went to that place without the knowledge of the accused. Taking into consideration all these materials. I am of the opinion that this case does not call for imprisonment and if a heavy fine providing some compensation to the LRs. to the deceased Mahadev is provided, that would meet the ends of justice.

11. For the above said reasons, the petition is partly allowed. While confirming the conviction of the revision petitioners for the offence punishable u/s 304-A of the IPC, the sentence imposed by the learned trial Judge as affirmed by the appellate Judge is set aside and in its place each of the revision petitioners is sentenced to pay a fine of Rs. 5,500/- in default to undergo simple imprisonment

for three months. If fine amount is realized an amount of Rs. 10,000/- shall be paid to the mother of the deceased Mahadev and in case the mother is not alive, to the father or LRs. of the deceased Mahadev. The revision petitioners are granted two months" time to deposit the amount, failing which the trial Court shall take steps to recover the compensation amount and also to send the petitioners to undergo the default imprisonment now imposed.