

(2010) 03 KAR CK 0197
In the Karnataka High Court
Case No : Criminal Petition No. 6516 of 2009

Sheenappa Gowda @ Venkappa and Keshava Gowda	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3 (2) (v)

Citation : (2010) 03 KAR CK 0197

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : A. Vinod Kumar, for the Appellant; Vijay Kumar Majage, HCGP, for the Respondent

Judgement

N. Ananda, J.—The petitioners are arrayed as Accused Nos. 1 and 2 in Crime No. 211/2009 registered for offences punishable under Sections 302 201 read with Section 34 IPC and also for offence punishable u/s 3(2)(v) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

2. I have heard the learned Counsel for petitioners and learned Government Advocate for Stale.

3. The learned Counsel for petitioners has made available the copies of the documents filed u/s 173(5) Cr.P.C.

4. The facts narrated in the first information, statements of witnesses recorded during the course of investigation and also the contents of Forensic Science Laboratory report are as follows:-

The deceased Babu Mugera belonged to schedule caste. He was a native of Balalu Village. Smt. Girija (CW-2) was his wife. Certain bit of Government land, which was adjacent to the land of the Accused No. 1, was in unauthorised occupation of the deceased and it had been regularised in favour of the deceased.

5. The 1 Petitioner Shecnappa Gowda was asserting that it was his kumki land. Accused Nos. 1 and 2 are the direct brothers. Therefore, there was enmity between the accused and deceased.

6. On 24.11.2008, the Accused Nos. 1 and 2 attempted to dig a channel in the land of deceased, for which deceased had taken a strong objection. There was a quarrel between the parties. At that time, Petitioner Nos. 1 and 2 had threatened the deceased stating that they would loach a proper lesson to the deceased within two days.

7. At the relevant time, the deceased was working in the garden of one Sri Rajarama Sharma. On 27.11.2008, in the morning, the deceased left the house to go to the garden of Sri Rajarama Sharma. During evening, the deceased, after completing the work, was returning to his house. On the way, he found a quarter bottle containing liquor, a soap and a biscuit pack; he brought the same to his house and the biscuits were give to his children, who ate them. The deceased took bath at about 7.30 p.m.: when the deceased opened the bottle to drink the liquor, his wile CW. 2, advised the deceased not to drink the liquor which he had found on the way to this house. The deceased did not heed to her advise and consumed the liquor. Within short time he developed burning sensation in stomach and raised hue and cry: thereafter, he was struggling for life. CW-2 brought the neighbours and tried to give first aid treatment. On the same day, at about 8.00 p.m. the deceased died.

8. The younger brother of the deceased gave the first information and Crime No. 211/2009 was registered. Thereafter, the dead body of the deceased was subject to post mortem examination. The viscera were collected. The investigation officer sent the viscera and the liquor, which was remaining in the bottle and the bottle to forensic science laboratory.

9. On 06.03.2009 the investigation officer received the FSL report which revealed that the viscera of the deceased so also the liquor contained in the bottle showed the presence of Cyanide (Potassium Cyanide) which is a poisonous substance. Thereafter, the investigating officer re-opened the investigation, recorded the statements of the first informant and other witnesses.

The statements of the wife of the deceased would reveal that Accused Nos. 1 and 2 had strong motive to commit the murder of the deceased.

The statements of CW-3 Shamaraya Achari would reveal that CW-3 was a gold smith by occupation. At the relevant time he was running "Shri Ganesh Jewelry Works". He used to store Cyanide for his gold smith work. About a month prior to the date of occurrence, Accused No 2 had approached CW-3 Shamaraya Achari and taken a small quantity of Cyanide from CW-3 by making a false representation that the same is required to kill rats in his house.

10. On 28.11.2008, CW-3 learnt about the death of Babu Mugeru. He also learnt that the deceased died due to consumption of liquor, which contained poison.

CW-3 developed suspicion on Accused No. 2 and questioned him. Accused No. 2 is said to have made an extra-judicial confession before CW-3. Thereafter, CW-3 apprehending he would also be in trouble did not inform anybody.

11. The learned Counsel for the petitioner would submit that there is inordinate delay in recording the statements of witnesses u/s 161 Cr.P.C.; the case of the prosecution that the Accused No. 2 had mixed poison with the liquor and kept the liquor bottle on the road where several people used to walk, looks highly improbable. Even if the circumstances are accepted on their face value, it cannot be said that the accused had intended to commit the murder of deceased.

12. The learned Counsel for petitioner would submit that the incriminating circumstances brought on record are hardly sufficient to make out a prima facie case against accused 1 and 2.

13. The learned Government Advocate taking me through the various steps of investigation and the documents which came to existence from time to time, would submit that none of the prosecution witnesses was interested in implicating the accused. The statements of the wife of deceased namely CW-2 Girija, would reveal that there was strong motive for the accused to commit the murder of deceased; in fact, on 24.11.2008. Accused Nos. 1 and 2 had threatened the deceased with dire consequences to his life. The statements of Shamaraya Achari CW-3 would prima facie establish that the Accused No. 2 had secured Cyanide (sic) deadly poisonous substance) by making a false representation to CW-3 that that same is required to kill rats in his house.

The learned Government Advocate would submit that after the death of deceased?Babu Mugera. Accused No.2 had made an extra-judicial confession before CW-3. Therefore, there are strong circumstances against the accused and they cannot be released on bail.

14. On consideration of investigation records. I find that the entire case of the prosecution rests upon the circumstantial evidence. The circumstances brought on record against the Petitioners Nos. 1 and 2 (Accused Nos. 1 and 2) are as follows:

(i) There was strong motive for Accused Nos. 1 and 2 to kill the deceased as there was a land dispute between deceased and Accused Nos. 1 and 2;

iii) The statement of wife of deceased would reveal that on 24.11.2008, petitioners wanted to dig a channel in the land of the deceased: the deceased had raised protest; At that lime. Accused Nos. 1 and 2 had threatened the deceased that they would see to the end of his life within a day:

(iii) About a month prior to the date of occurrence. Accused No. 2 had secured certain quantity of Cyanide by falsely representing to CW-3 that it is required to kill rats in his house.

(iv) After the occurrence, Accused No. 2 is alleged to have made an extra-judicial

confession before CW-3.

15. Regarding the submissions of the learned Counsel for petitioners that there was inordinate delay in recording the statements of witnesses under Sections 161 Cr.P.C. it is necessary to state that at the first instance, neither the wife of deceased nor any of the villagers had suspected the involvement of petitioners. In fact, the cause of death was not known till the investigation officer received the report from the Forensic Science Laboratory on 06.03.2009. The investigation gained momentum after 06.03.2009.

The statements of CW-3 Shamaraya Achari would reveal that a month prior to the date of occurrence. Accused No. 2 Keshava Gowda had procured Cyanide from CW-3 Shamaraya Achari by falsely representing that same was required to kill the rats in his house, which was apparently a false statement. After the occurrence, when questioned by CW 3. Accused No. 2 is said to have made an extrajudicial confession.

16. Thus from the material collected during the course of investigation. I find that apart from the motive, there is no incriminating circumstances forthcoming against Accused No. 1.

17. As regards the Accused No. 2, the investigation records would reveal that

(i) Accused No.2 had motive to kill the deceased:

(ii) Accused No.2 had procured Cyanide (a deadly poison) from CW-3 Shamaraya Achari by making false representation that Cyanide is required to kill rats in his house:

(iii) After the occurrence, when questioned by CW-3. Accused No.2 had made an extrajudicial confession before CW-3, about his involvement in the crime:

Thus, on overall consideration, I find that there is no prima facie case against the Petitioner No 1.

18. As regards Petitioner No. 2, the prosecution had brought on record the following incriminating circumstances namely:

(i) Motive:

(ii) Procurement of poison (Potassium Cyanide) by Accused No.2:

(iii) False representation made by the Accused No.2 to CW-3 to procure Cyanide;

(iv) After the occurrence, Accused No. 2 had made an extra-judicial confession before CW-3.

19. At this juncture, it is necessary to state that CW-3 did not bear any ill-will or grudge against Accused No. 2.

20. As regards the delay in recording the statements of witnesses, the sequences of events narrated above would reveal that there was tardy progress in the

investigation. In fact, the investigation officer came to know the cause of death after the receipt of FSL Report on 06.03.2009. Therefore, investigating officer was slow in the matter of investigation. Ultimately, on 26.10.2009. the statement of Shamaraya Achari was recorded.

21. At this stage of the case, it is not possible to hold that delay in recording statements of witnesses is fatal to the case of the prosecution, more particularly, when it is not demonstrated that CW-3 Shamaraya Achari had any ill-will or grudge against Accused No.2 to falsely implicate him.

22. In view of the above. I pass the following:

ORDER

The petition is accepted in part;

The petition as it relates to I Petitioner namely Sheenappa Gowda @ Venkappa is accepted. The petition as it relates to II Petitioner namely Keshava Gowda is dismissed:

The I Petitioner (Sheenappa Gowda) is released on bail subject to following conditions:

- (i) The I Petitioner shall execute a bond for a sum of Rs.50,000/- and shall offer two sureties for the like sum to the satisfaction of committal/Sessions Court.
- (ii) The I Petitioner shall not intimidate or tamper with prosecution witnesses.
- (iii) The I Petitioner shall regularly attend the Court.