

(2013) 12 KAR CK 0051
In the Karnataka High Court
Case No : Criminal Appeal No. 1171 of 2006

Sri Narayanappa, Sri Siregowda and Sri Muniraju	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0051

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M.D. Basavanna, for the Appellant; B.T. Venkatesh, SPP-II, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda, J.—The appellants "(hereinafter referred to as accused No. 3, 5 and 6) and accused No. 1, 2 and 4 were charge sheeted for offences punishable under Sections 143, 147, 148, 302 r/w 149 IPC. Accused No. 1 and 2 are absconding since the date of commission of offence. Therefore, the case against them was separated. Accused No. 4 was a juvenile. Therefore, he was sent to Juvenile Justice Board. The learned Sessions Judge tried accused No. 3, 5, 6 (appellants herein) and 7 for the aforesaid offences. The learned Sessions Judge acquitted accused No. 3, 5, 6 and 7 for an offence punishable u/s 302 IPC and convicted accused No. 3, 5, 6 and 7 for an offence punishable u/s 304-II r/w 149 IPC. Therefore, they are before this court.

2. In brief, the case of prosecution and interse relationship of the parties is as follows:

The deceased Srinivasa is the son of P.W. 1-Dodda Kempaiah; P.W. 8-Seetharamu and P.W. 12-Nagaraja are the elder brothers of deceased; P.W. 20-Nagaraja is the father-in-law of P.W. 12; P.W. 21-Anjinappa and Late Chikka Kempanna are direct brothers; Accused No. 3 is the son of Late Chikka Kempaiah; accused No. 5, 6 and 7 are the sons Anjinappa. The deceased and accused are direct cousins.

It is the case of prosecution that there were civil disputes between the family members of accused and family members of deceased since 15-20 years prior to the date of incident. There was a criminal case pending against some of the prosecution witnesses.

It is alleged by the prosecution that on 04.07.2004 at about 8.30 p.m., deceased had returned from his work. When he came near his house, he was confronted by accused. Accused Nos. 1 to 3 assaulted deceased with a cock knife and other accused namely, accused Nos. 4 to 7 assaulted the deceased with clubs and caused grievous injuries to him. PW-1 and others intervened and saved the deceased from the hands of accused. At the first instance, the deceased was shifted to Bapist Hospital at Hebbal. After preliminary treatment, he was shifted and admitted in Rajiv Gandhi Hospital. Thereafter, he was treated in Bowring Hospital. On 14.07.2004 the deceased succumbed to injuries.

3. The State has not filed appeal against acquittal of accused for an offence punishable u/s 302 IPC, as also the acquittal of accused for offences punishable under Sections 143 and 147 IPC.

4. In this appeal, the following points would arise for determination:--

(i) Whether the prosecution has proved that on 04.07.2004 at about 8.30 p.m., in front of the house of Narayanappa within the jurisdiction of Chikkajala police station, accused Nos. 3, 5 and 6 assaulted the deceased with knife and clubs with such intention and knowledge that their assault is likely to cause death of Srinivasa and deceased succumbed to injuries caused due to assault by the accused with a knife and assault by accused Nos. 3, 5 and 6 with clubs, thereby, accused committed an offence punishable u/s 304 Part-II IPC?

(ii) Whether the learned trial Judge has properly appreciated the evidence on record?

(iii) To what order?

5. In order to prove the guilt of accused, prosecution has relied on the following:--

(i) Motive

(ii) The eyewitness account of prosecution witnesses namely PWs 1, 8 and 12.

(iii) Medical evidence.

6. The law is fairly well settled that motive is a double edged weapon. If the evidence adduced by the prosecution is found credible and consistent, the motive would be an additional incriminating circumstance against the accused. If the evidence adduced by prosecution is not credible and untrustworthy, the motive could be a reason for false implication of accused.

7. PW-1 Dodda Kempaiah is the father of deceased. PW-1 has deposed that on the date of incident at 8.30 p.m., when he was near his old house, the deceased

returned from the work. At that time, accused No. 1 confronted the deceased and demanded money from him. The deceased refused to give money. Accused No. 1 picked up quarrel with him. Accused No. 5 assaulted the deceased with a club. Accused No. 2 assaulted the deceased with a cock knife. Accused No. 3 assaulted the deceased with the same cock knife. The deceased suffered multiple stab injuries. He was shifted in an auto-rickshaw to Baptist Hospital at Hebbal. After preliminary treatment, he was shifted and admitted in Rajiv Gandhi Hospital. When the deceased was being treated in Rajiv Gandhi Hospital, the police recorded the statement of PW-1 at about 1.30 p.m. on 08.07.2004 and a case was registered in Crime No. 128/2004 against accused Nos. 1 to 7 for offences punishable under Sections 143, 147, 148, 324 r/w 149 IPC. The injured was shifted and admitted in Bowring Hospital. On 14.07.2004, the deceased died. The post-mortem examination was conducted by PW-13 Dr. Bheemappa Havanur.

8. PW-1 has not assigned reasons for belatedly lodging the first information though the place of incident is at a distance of 10 Kms from the jurisdictional police station. According to evidence of PW-1, incident of assault had taken place at 8.30 p.m. on 04.07.2004. Neither PW-1 nor any one of his sons had gone to the police station to lodge first information. On the other hand, first information was recorded by the police when PW-1 was in Rajiv Gandhi Hospital at 1.30 p.m., on 08.07.2004. As already stated there was hostility between the members of family of PW-1 and accused. If the deceased had suffered injuries at the hands of accused, PW-1 and his sons would not have kept quiet without informing the police. The prosecution has not produced the medical records such as wound certificate, MLC register extract of Baptist hospital, wherein the deceased was examined soon after the alleged incident of assault. Therefore, the prosecution has failed to prove that deceased was admitted in Baptist hospital immediately after the incident of assault on 04.07.2004.

9. PW-14 Dr. Prasanna Kumar has deposed that the deceased was admitted in Bowring Hospital on 14.07.2004. The extract of Accident Register of Bowring Hospital marked as Ex.D1 would reveal that the deceased had given history of injuries as due to assault on 08.07.2004.

10. The evidence of PW-1 that accused Nos. 5 and 6 assaulted the deceased with clubs does not find support from medical evidence. As already stated, medical records of Baptist Hospital were neither secured during investigation nor they were produced before the trial court. The contents of post-mortem examination report marked as Ex.P12 and evidence of PW-13 does not reveal that deceased had suffered contusions or abrasions, which would be caused if a person is assaulted with clubs. The evidence of PW-1, that at the first instance, accused No. 2 assaulted the deceased with a cock knife. Accused No. 3 snatched the same knife and again assaulted the deceased does not inspire confidence.

11. During cross-examination, PW 1 has admitted that there was civil litigation pending between PW-1 and accused. since 15 years prior to the date of incident

and family members of PW-1 and accused were not on talking terms. In the circumstances, evidence of PW-1 that accused No. 1 wrongfully restrained the deceased and demanded money from him looks improbable. The evidence of PW-1; at the first instance, Seerappa s/o Chikka Kempanna (A2) assaulted the deceased with a cock knife. Narayanappa s/o Chikka Kempanna (A3) assaulted the deceased with the same cock knife looks improbable. It looks as if that accused No. 2 after assaulting the deceased with a cock knife, gave the cock knife to accused No. 3 to assault the deceased.

12. PW-1 was inimical to the accused. There was delay of four days in lodging the first information. The medical records relating to injuries suffered by PW-1 such as wound certificate and MLC register extract of Baptist Hospital was neither secured nor produced before the court below. Therefore, the evidence of PW 1 is not free from reasonable doubt.

13. The independent witnesses namely PW-2 Ramanna, PW-3 Krishnegowda, PW-4 Suresha, PW-5 Channarayappa have not supported the case of prosecution.

14. PW-8 Seetharamu is the elder brother of deceased. PW-8 has deposed; that on the date of incident at about 8.30 p.m., accused No. 1 confronted the deceased and demanded money from him. The deceased told accused No. 1 that he does not owe money to accused No. 1. At that time, accused Nos. 2, 3 and 5 to 7 joined accused No. 1. Accused No. 5 assaulted on the head of deceased with a club. Accused No. 7 assaulted the deceased with a club, so also accused No. 6. The deceased fell down. By the time, PW-8 reached the place of incident, accused Nos. 2 and 3 were running away after stabbing the deceased with a cock knife.

15. The evidence of PWs 1 and 8 is not consistent. PW-1 has deposed that accused Nos. 5 to 7 assaulted the deceased with clubs after he was assaulted with a cock knife. The evidence of PW-8 is contrary to evidence of PW-1.

16. During cross-examination, PW-8 has deposed that investigating officer seized the weapons of offence (MO-1 cock knife, MOs 2 to 5 - clubs) from the place of incident. At this juncture, it is necessary to recall that first information was lodged on 08.07.2004 after a lapse of four days. In the circumstances, the evidence of PW-8 that weapons of offence were laying near the place of incident even after 4 days, looks improbable.

17. PW-12 Nagaraja is the elder brother of the deceased. P.W. 12 has deposed that accused No. 5 assaulted on the left side of the face of deceased with a club. Accused Nos. 6 and 7 assaulted the deceased with clubs and deceased fell down. At that time, accused No. 1 stabbed the deceased with a cock knife. Accused No. 3 snatched cock knife from the hands of accused No. 1 and stabbed the deceased. Thereafter, accused No. 2 stabbed the deceased with the same cock knife. The accused threw weapons of assault and ran away from the place. The evidence of PW-12 that accused Nos. 1 to 3 stabbed the deceased with a knife in succession, gives an impression that accused No. 1 after assaulting deceased

with a cock knife handed over the same to accused No. 3 to stab the deceased and thereafter, accused No. 3 stabbed the deceased and handed over the knife to accused No. 2 to stab the deceased.

18. The evidence of PW-12 that accused Nos. 5 to 7 assaulted the deceased with clubs does not find support from medical evidence. The post-mortem examination does not reveal that deceased had suffered contusions and abrasions which would be caused due to assault with clubs.

19. PW-20 Nagaraja is the father-in-law of PW-12. He has not supported the case of prosecution. He has made an omnibus statement that the deceased was assaulted by sons of Chikka Kempanna and sons of Anjinappa. Accused Nos. 5 to 7 are the sons of Anjinappa. After the incident of assault, he had not gone near the injured (deceased). He did not observe the weapons held by accused. PW-20 was declared as hostile witness and he was cross-examined by the learned Public Prosecutor. Even during cross-examination by public prosecutor, he has not given evidence to prove the charges against accused. Therefore, his evidence is of no avail to the prosecution.

20. The evidence of PW-13 Dr. Bhemappa Havanur and contents of post-mortem report would reveal that PW-13 conducted the postmortem examination between 3-4 p.m., on 14.07.2004. He had noticed the sutured wound on the inter costal space of 5th rib, two surgical sutured wounds on the lower part of abdomen. The wounds were infected. As could be noticed from the post-mortem examination, that other organs were intact. PW-13 has opined that the death of Srinivasa was due to infection of injuries found on the stomach (back). These injuries were stab injuries, which could be caused with a knife.

21. The evidence of eyewitnesses namely PWs 1, 8 and 12 referred to above is not sufficient to prove that accused No. 3 had caused stab injuries. The prosecution has not proved that accused Nos. 4 to 7 had assaulted the deceased with clubs by production of medical records such as wound certificate, MLC extracts and examination of doctors who treated the deceased immediately after the incident of assault. The learned trial Judge without noticing these material discrepancies has convicted the accused. The learned trial Judge has failed to properly appreciate the evidence on record. Therefore, the impugned judgment cannot be sustained. In the result, I pass the following:--

ORDER

(i) The appeal is accepted.

(ii) The impugned judgment as it relates to conviction of accused Nos. 3, 5 and 6 for an offence punishable u/s 304 Part-II r/w 149 IPC is set aside.

(iii) Accused Nos. 3, 5 and 6 are acquitted of an offence punishable u/s 304 Part-II r/w 149 IPC.

(iv) The bail bonds executed by them shall stand cancelled.

(v) If the accused have deposited fine amount, the same shall be refunded to them.