

(1995) 03 KAR CK 0016

In the Karnataka High Court

Case No : Criminal Appeals No's. 103 of 1992 and Cri. A. No. 582 of 1991

State of Karnataka and another

APPELLANT

Vs

Hanumanthappa Kariyappa Talawar and another

RESPONDENT

Date of Decision : 09-03-1995

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 100

Citation : (1995) 2 ALT(Cri) 298 : (1995) CriLJ 2711 : (1995) ILR (Kar) 1280 : (1995) 2 KarLJ 158

Hon'ble Judges : M.M. Mirdhe, J;M.B. Vishwanath, J

Bench : Division Bench

Advocate : A.B. Patil, Addl. S.P.P. and R.B. Deshpande, for the Appellant; R.B. Deshpande and A.B. Patil, Addl. S.P.P., for the Respondent

Judgement

Mirdhe, J.—Criminal Appeal No. 103/1992 is preferred by the State against the judgment dated 12-11-1991 passed by the Principal Sessions Judge, Dharawad, in S.C. No. 70/1987 acquitting the respondent-accused of the offence punishable u/s 302, I.P.C. and Sections 3 and 25 of the Arms Act. Criminal Appeal No. 582/1991 is preferred by the appellant-accused against the judgment dated 12-11-1991 passed by the Principal Sessions Judge, Dharawad, in S.C. No. 70/1987, convicting the appellant-accused for the offences punishable under Sections 304 Part-I, 326 and 324, I.P.C. and sentencing him to undergo rigorous imprisonment for 5 years, 2 years and 1 year respectively and ordering the sentence to run concurrently.

2. Since both these appeals are preferred against the same judgment, we have heard them together and we are passing a common judgment in both these appeals.

3. We have heard Sri A. B. Patil, learned Additional State Public Prosecutor, for the State, and Sri R. B. Deshpande, learned counsel for the accused, fully and

perused the records of the case.

4. The case of the prosecution is as follows :

P.W. 7 Kallappa is the nephew of deceased Shekappa and P.W. 8 - Mahanthesh is the son of deceased Shekappa. P.W. 2 - Kenchappa is the younger brother of P.W. 7. Hanumanthappa, deceased Shekappa, P.Ws. 2, 7 and 8 are from Shigigatti Village in Kalaghatagi Taluk in Dharawad District.

On 16-4-1987 at about 6.30 p.m., Parasappa, Channappagouda and Shankargouda came to the house of Kenchappa and told him that while they were passing on the road by the side of the house of accused Hanumanthappa, the accused was sitting in the backyard of his house holding a gun and pointed out the said gun towards them and stated thus :

"Vernacular matter is omitted"

Thereupon P.W. 2 - Kenchappa took them to deceased Shakappa who was then present in Ishwara Devara Temple of that village. There they met deceased Shekappa and informed about the fact of Hanumanthappa pointing out the gun at these two persons. Deceased Shekappa called Basanagouda, another Basanagouda, Siddanagouda, Basappa and Ramappa to that temple. In the meanwhile, two other persons, Ningappa and Yallappa came there. Then they sent Ningappa to go to his house and bring the accused from his house to the temple for enquiring into the matter. But, Ningappa who went to the house of the accused did not return. They then sent Yallappa to bring the accused. But, within a shortwhile, the said Yallappa returned back and told them that he was abused and beaten by the accused. There after, deceased Shekappa, P.W. 2 - Kenchappa, P.W. 7 - Kallappa, P.W. 8 - Mahantesh, Basanagouda, another Basanagouda, Siddanagouda, Basappa and Ramappa proceeded to the house of the accused for enquiring into the matter. On enquiry they came to know that the accused was in the backyard of his house at that time. So, they went in the direction of the backyard and stood on the road abutting that backyard and they called the accused who was in the backyard holding a gun and asked him to come to the temple. The accused told them to proceed ahead and that he would follow them. So saying he went inside the house from the backyard. Deceased Shekappa and the persons accompanying him came to the road adjoining front side of the house of the accused and stood on the road in the front of the main door of the house of the accused. Then deceased Shekappa called the accused who was inside the house to come to the temple. The accused, without responding to his call, shut the front door of his house. Then the accused came near the window of his house and whispered some abuse and then sitting on a cot near the window of his house, he fired a shot from his gun through the window of his house which hit deceased Shekappa on the left side of his chest and he staggered back a few steps and fell down on the ground. When P.Ws. 2, 7 and 8 went to the help of deceased Shekappa, accused Hanumanthappa fired another shot from his gun which after hitting the left hand of P.W. 7 - Kallappa, lodged on the left foot of

P.W. 8 - Mahanthesh. Then, it was found that Shekappa had died. P.W. 2 was asked to go to Kalaghatagi along with the two injured persons, P.Ws. 7 and 8 to report the matter to the police and they came to the Kalaghatagi Police Station where P.W. 2 lodged his complaint as per exhibit P-5. The police started investigation and after investigation, they filed charge-sheet against the accused.

5. After assessing the evidence and the merits, the trial Court has come to the conclusion that the prosecution has proved beyond reasonable doubt that the accused had committed the offence punishable u/s 304 Part-I, 326 and 324, I.P.C. and sentenced him to undergo rigorous imprisonment for 5 years, 2 years and 1 year respectively for each of the said offence, ordering the sentence to run concurrently.

6. The grievance of the State in its appeals is that the trial Court has erred in acquitting the accused of the offence punishable u/s 302, I.P.C. and convicting him for the lesser offence u/s 304, Part-I, I.P.C. and also acquitting him of the offences under Sections 3 and 25 of the Indian Arms Act.

The grievance of the accused in his appeal is that the trial Court has erred in convicting him for the said offences. According to him, he ought to have been acquitted totally of all the offence alleged against him. It is also his grievance that the sentences awarded to him are harsh and disproportionate to the offences as disclosed from the facts and circumstances of the case.

7. P.W. 3 - Dr. Mahadevappa conducted the post-mortem examination on the dead body of deceased Shekappa and he found five external injuries and seven internal injuries and he has given his report as per Exhibit P-8 wherein he has opined that the death of deceased Shekappa was due to shock and haemorrhage as a result of injury to vital organs like heart, liver and lungs. P.W. 3 has also given his opinion about the injuries found on the body of deceased Shekappa. According to him, there was an exit wound on the body of the deceased. Hence, he has stated that there was no possibility of any bullet being embedded and subsequently recovering from the body of the deceased. P.W. 3 has further stated that the C.P.I., Shiggaon, sent a bullet in a sealed bottle for his opinion and he gave his opinion with reference to the injuries found on P.Ws. 7 and 8, that the injuries found on P.Ws. 7 and 8 could be caused by a bullet like the one that was sent for his examination by the C.P.I.

8. P.W. 4 - Dr. Raghavendra's evidence is that he examined P.W. 7 and took his X-ray and no evidence of fracture was disclosed. He has also deposed that he examined P.W. 8 and took his X-ray and it disclosed comminuted fracture of third, fourth and fifth meta-tarsal left foot, and a big rounded metallic capacity seen overlying the soft tissue at the level of first meta-tarsal bone. The evidence of P.Ws. 3 and 4 proves beyond reasonable doubt that the deceased Shekappa died a homicidal death and P.W. 7 had sustained injuries and P.W. 8 had sustained injury which was grievous as it was a comminuted fracture. This evidence also goes to show that the injuries on the person of the deceased were

caused by a single bullet and the injuries on the persons of P.Ws. 7 and 8 could be caused by a bullet like the one sent by the C.P.I., Shiggaon, to P.W. 3 for his opinion.

9. P.W. 10 - Dr. Anandanappa's evidence is also regarding the operation done by him on P.W. 8. P.W. 9 is the fire-arm expert and his opinion, which has been properly assessed by the trial Court, is to the effect that M.O. 14 is the same cartridge, among four cartridges, which was test fired by P.W. 9 from the gun M.O. 7. It is not in dispute that M.O. 7 is of the ownership of the accused and he is its licence holder. According to the evidence of P.W. 9, there must be two shots fired from the gun. His certificate is at Exhibit P-18.

10. Besides the evidence of these doctors and the fire-arm expert, the prosecution relied on the oral evidence of P.Ws. 2, 5, 6, 7, and 8. Their evidence is to the effect that when they had gone to the house of the accused to enquire about the earlier incident wherein the accused had pointed his gun at two persons, the accused was in the backyard of his house and that they asked him to come to the temple, that the accused told them to proceed and he would follow them, that there after he went inside the house and these persons came to the road adjoining the front side of his house, that deceased Shekappa called the accused who was inside the house to come to the temple, that the accused then shut the doors of his house, and that sitting on a cot, he fired at Shekappa and others. This evidence has been believed by the trial Court and we think that assessment of the trial Court is in accordance with law. The trial Court is justified in believing the evidence of these witnesses and also the evidence of the fire-arm expert. The defence that is taken by the accused is also required to be perused at this stage.

11. The accused filed his written statement as follows :

According to the accused, he was required to fire the gun in self-defense of himself and his family members. The case of the prosecution itself is that Shekappa along with others had gone to the house of the accused to bring him to the temple. From the evidence, it is also disclosed that though the accused told them to proceed ahead and that he would follow them, Shekappa and others were not satisfied with that answer and they came to the road adjoining the front side of the house of the accused and stood there. From the written statement of the accused, it is disclosed that the wife and mother of the accused, entreated Shekappa and others to go away from there, who were standing in front of their house on the road.

12. While assessing the plea of right of self-defense the Court is not required to find whether the defence has proved its plea of right of self-defense beyond all the reasonable doubts. Even on the preponderance of probability the Court will be justified in accepting that plea and giving the benefit of that plea to the accused. In this case, the facts that are proved beyond reasonable doubt are that some incident had occurred in the earlier part of that day where the accused had

pointed his gun towards two persons for teasing his daughters. The evidence further discloses that Shekappa along with P.Ws. 2, 7, 8 and some 4 or 5 other persons came to the house of the accused to take him to the temple, that the accused avoided to go with Shekappa, that in spite of the accused asking Shekappa and others to proceed ahead and that he would follow, they did not go and stood in the road adjoining the front side of his house. The evidence also discloses that they were bent upon taking the accused with them. It is not necessary that for the exercise of the right of self-defense, the accused must sustain some injuries. Exercise of the right of self-defense depends not on the sustaining of injuries by the accused, but on the apprehension of the accused that his life and the lives of his family members are at stake. That apprehension may be caused either by the injury that may be sustained by the accused or his family members or by the situation that may be prevailing at the time of the incident. Persistence on the part of Shekappa and his group standing on the road and insisting that the accused should accompany them to Eshwara Temple indicates that the deceased and his companions were bent upon not to return to the temple without the accused. Under such circumstances, it is natural for the accused to apprehend that his life and lives of his family members were in danger and, therefore, he was justified in exercising the right of self-defense. The trial Court is perfectly right in holding that the accused cannot be held guilty of the offence of murder u/s 302, I.P.C.

13. The trial Court has convicted the accused for the offence punishable u/s 304, Part I, I.P.C. and also under Sections 326 and 324, I.P.C. So far as the conviction of the accused for the offence punishable under Sections 324 and 326, I.P.C., is concerned, we do not find any ground to interfere with the findings of the trial Court as the medical evidence discloses that the injuries sustained by the deceased and two others were sufficient to bring the offence under Sections 324 and 326, I.P.C. The trial Court has held that the accused has exceeded the right of self-defense in view of the facts and circumstances of the case, the weapon used and the injuries sustained by these witnesses are sufficient to bring the offence under Sections 326 and 324, I.P.C. and therefore convicted the accused u/s 304, Part-I, I.P.C. The law gives the right to a person to cause even the death of another person in exercise of the right of self-defense. But, there is no such apprehension to the accused that his life and the lives of his family members are in danger, he will not be justified in causing the death of another person. u/s 100 of the Indian Penal Code, right to cause death of a person in exercise of private defence is given when one apprehends danger to one's life or danger of sustaining grievous hurt or there is apprehension of rape or apprehension of the commission of unnatural lust or the apprehension of confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release and that he apprehends danger to his life. In his statement u/s 313, Cr.P.C., the accused has not stated that anyone in the group of Shekappa was armed with any weapon. There is no material to show that Shekappa or any

member of his group indulged in violence and no damage is caused to any part of his house. Therefore, the trial Court is justified in coming to the conclusion that there was no apprehension to the life of the accused or the lives of the family members of the accused and, therefore, he was not justified in going to the extent of causing the death of Shekappa and injuries to the two persons. We are aware that the Supreme Court has said that extension of the right of private defence to the accused, where he has exceeded that right, cannot be considered in the golden scales from the point of view of cool objectivity prevailing in Court room. But, this proposition will hold good where there is some danger involved in a situation wherein the accused will be in a position to mobilise use of weapon in that exigency. In this case, the accused was sitting in his house behind the closed doors. Deceased Shekappa and his members were standing outside the house on the road, and they were not armed with any weapon. They did not indulge in any violence and there is no indication that any damage was caused to his property. In view of these circumstances, we think that the trial Court was justified in coming to the conclusion that the accused had exceeded the right of private defence and it is justified in convicting the accused for the offence punishable u/s 304, Part-I, I.P.C. as from the facts and circumstances of the case, it is obvious that the accused had the intention to cause the death of the deceased. So far as the other offences alleged against the accused are concerned, we find that the acquittal order recorded by the trial Court is justified. We find no grounds to interfere with the judgment of the trial Court convicting the accused for the offences punishable under Sections 304 Part-I, 326 and 324, I.P.C.

14. Now, coming to the sentence awarded to the accused, he has been sentenced to R.I. for five years for the offence punishable u/s 304, Part-I, I.P.C., two years for the offence punishable u/s 326, I.P.C. and one year for the offence punishable u/s 324, I.P.C. The accused was aged 50 years when he was convicted in the year 1991. We are in the year 1995 and four years have elapsed and the accused will be nearing 54 years of age. The records also disclose that he has got eight children and mother and wife. P.W. 2's evidence discloses that his family consists of 11 members and he is the only earning member of his family. P.W. 6 says that the accused is a sober man and he had no criminal antecedents. The situation which led or compelled the accused to cause the death of one person and injuries to two others was not the situation created by him. The incident wherein he pointed his gun towards the two persons on the earlier part of the day was on account of teasing of his daughters by those two persons. The situations cannot be said to be a creation of the accused. Taking into consideration the facts and circumstances of the case, we feel that the sentencing of the accused to five years R.I. for the offence punishable u/s 304 Part-I, I.P.C., is not justified. We think that the ends of justice will meet if the accused is sentenced to R.I. for 2 1/2 years for the offence punishable u/s 304, Part-I, I.P.C., and also a fine of Rs. 500/- and in default to undergo simple imprisonment for one month and for the offence u/s 326, I.P.C. the term of R.I.

awarded by the trial Court is required to be confirmed subject to the modification that it shall also carry a fine of Rs. 500/- in default for one month simple imprisonment. In other respects the judgment of the trial Court is not liable to be justified.

15. Hence, we pass the following order :

Criminal Appeal No. 103/1992 preferred by the State is dismissed.

Criminal Appeal No. 582/1991 preferred by the accused is allowed in part. The conviction of the accused for the offence punishable under Sections 304 Part-I, 326 and 324, I.P.C., is confirmed. The sentence awarded by the trial Court for the offence punishable u/s 304, Part-I, I.P.C., is modified and he is sentenced to R.I. for 2 1/2 years and a fine of Rs. 500/- in default to undergo simple imprisonment for one month and for the offence u/s 326, I.P.C. he is sentenced to the same term of R.I. as ordered by the trial Court and further he is sentenced to a fine of Rs. 500/- in default to undergo simple imprisonment for one month. So far as the sentence awarded to the accused for the offence punishable u/s 324, is concerned, it does not require any modification. With this modification in respect of the sentence awarded by the trial Court, the judgment of the trial Court is confirmed and the sentences shall run concurrently.

The bail bonds executed by the accused are cancelled and he is ordered to be taken into custody for undergoing the sentence awarded to him. He shall be entitled to the benefit u/s 428, Cr.P.C.

16. Order accordingly.