

(2016) 01 KAR CK 0215
In the Karnataka High Court
Case No : Criminal Appeal No. 1026 of 2011

State of Karnataka by S.B.C. Railway Police Bangalore	APPELLANT
Vs	
Yajendra Alias Bombay s/o Siddappa And Others	RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 397

Citation : (2016) 163 AIC 683 : (2016) 3 CriCC 603 : (2016) 2 Crimes 697 :
(2016) 3 KantLJ 176

Hon'ble Judges : Mohan M. Shantanagoudar; K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : C. Parameshwarappa, Advocate, Amar Correa, Amicus Curiae, for
the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J. - The judgment and order of acquittal dated 22-7-2010 passed by the Fast Track Court-XIV, Bangalore City in Sessions Case No. 1088 of 2008 is called in question in this appeal by the State.

By the impugned judgment and order, the Trial Court has acquitted accused 1, 2 and 4 for the offences punishable under Sections 397 and 302 read with Section 34 of Indian Penal Code, 1860.

2. Case of the prosecution in brief is that the deceased Akmal Hussain and his wife Smt. Ameera Bibi (P.W. 9), his daughter Sarina Kathoon (P.W. 8) and his relative Sri Mohamad Nohu (P.W. 4) boarded the Gauhati Express train bearing No. 2509 at 11 p.m. on 27-12-2007 from Bangalore Central Railway Station to go to their native place at West Bengal; they boarded the general compartment, which is the last compartment attached to the train; the train left the Railway Station at 11.30 p.m.; at that point of time, the deceased was carrying the cash of Rs. 70,000/-; all the accused boarded the very train in the City Railway Station, Bangalore with the common intention to commit robbery of passengers;

the accused boarded the very compartment in which the deceased was travelling along with P. Ws. 8 and 9; after the train moved to certain extent, in furtherance of common intention to commit robbery, accused 2 who was armed with knife demanded the deceased to part with money; when the deceased refused to make payment, accused 2 stabbed on the chest of the deceased by means of knife and took away Rs. 70,000/- from him; accused 1 who was armed with knife, assaulted P.W. 9 (Ameera Bibi) with knife and took away Rs. 2,000/- from her; accused 4 who was armed with knife caused injuries on the hand and ankle of P.W. 1 and robbed Rs. 3,000/- possessed by him; thereby the accused committed dacoity and committed murder of the deceased and thereafter they got down from the train; P.Ws. 4 and 8 have alerted the Police at Cantonment Railway Station about the incident in question; the Police rushed to the spot and shifted the injured to the Bowring Hospital and from there, they were taken to Rajiv Gandhi Chest Disease Hospital; the deceased succumbed to the injuries in the hospital.

Based on the complaint lodged by P.W. 4 as per Ex. P. 8, Crime No. 170 of 2007 came to be registered in City Railway Police Station, Bangalore City. During the course of investigation, the presence of accused 3 could not be secured inasmuch as he remained absconding. However the presence of accused 1, 2 and 4 were secured. P.W. 12-the Inspector of Police took up further investigation and laid the charge-sheet.

3. In order to prove its case, the prosecution in all examined 12 witnesses and got marked 14 Exhibits and 6 Material Objects. On behalf of the defence, no witness is examined and no document is marked.

4. The Trial Court on evaluation of the material on record, concluded that the prosecution has not proved the identity of the accused and that the material is not sufficient to convict the accused. Accordingly, the Trial Court has acquitted the accused. Hence this appeal by the State.

5. Before proceeding further, it would be beneficial to refer to the evidence of each of the witnesses in brief.

P.W. 1 is the doctor who conducted autopsy over the dead body on 28-12-2007 in Bowring Hospital. The post-mortem report is at Ex. P. 1. He has opined that the cause of death is due to shock and haemorrhage as a result of stab injury to heart and lungs. P.W. 1 has also opined that M.O. 5-knife cannot cause the injuries found on the dead body.

P.W. 2 is the Medical Officer attached to SDS and Rajiv Gandhi Institute of Chest deceases. He has deposed that he examined the victim on 28-12-2007 at 1.45 a.m. and at that time, the victim was not in a position to speak; he gave first aid and issued the memo as per Ex. P. 2 to the Police; at 4.30 a.m., the victim died.

P.W. 3 is the doctor who treated P.W. 4 (complainant) on 28-12-2007 at 12.45 a.m. and issued the wound certificate as per Ex. P. 6 in Bowring Hospital. P.W. 3

has deposed that P.W. 4 has sustained simple injuries; further at 12.50 a.m., he examined P.W. 9 and issued the wound certificate as per Ex. P. 7. Ex. P. 7 discloses that P.W. 9 has sustained certain simple injuries.

P.W. 4 is the injured and the complainant. He has deposed that one Mr. Abdul Byari expired in the accident and the claim petition was filed by his son (the deceased) claiming compensation; compensation of Rs. 4,70,000/- is awarded to the legal representatives of Abdul Byari; out of the said amount, the deceased was carrying a sum of Rs. 70,000/- along with him in the train; P.Ws. 4, 8 and 9 were also traveling in the very train along with the deceased; at that time, four persons boarded the compartment and they asked money from the deceased; since the deceased refused to part with the money, he was stabbed on his chest and also caused injuries to P. Ws. 4 and 9; they took away cash from the deceased as also the cash of Rs. 2,000/- from P.W. 9; thereafter accused got down from the train and fled away from the scene; the Police came to the spot and took the injured to the hospital and ultimately, the victim died at 2.30 a.m. It is further deposed by P.W. 4 that he was once again called by the Police to the Police Station after 3 months of the incident; he identified accused 1,2 and 4 in the Police Station; he has further deposed that he has lodged the complaint as per Ex. P. 8.

P.W. 5 is the Assistant Sub-Inspector attached to the City Railway Police Station, Bangalore. He apprehended accused 1 and 4 on 9-6-2008 and seized M.Os. 5 and 6.

P.W. 6 is the Police Constable. He collected post-mortem report and clothes of the deceased. He participated during the course of investigation to certain extent.

P.W. 7 is the Sub-Inspector of Police attached to the City Railway Police Station, Bangalore. Based on the complaint-Ex. P. 8 lodged by P.W. 4, P.W. 7 registered Crime No. 170 of 2007 on 28-12-2007. After registering the crime, he issued the First Information Report to the Court as per Ex. P. 10.

P.W. 8 is the daughter of the deceased and P.W. 9. She was also travelling along with the deceased and her mother in the train. She has deposed that she was travelling along with the deceased, P.W. 4 and P.W. 9 on that fateful night and that she is partially blind; she heard the cries of her mother and got up and saw the injuries on her father and P.Ws. 4 and 9; she saw 3 to 4 persons getting down and going away; she identified M.Os. 5 and 6 which are seized during the course of investigation and she has deposed that M.Os. 5 and 6 could be the weapons used for commission of the offence. She has further deposed that the accused robbed Rs. 65,000/- from her father, Rs. 2,000/- from her mother and Rs. 3,000/- from her uncle.

P.W. 9 is the injured. She is none other than wife of the deceased. She has deposed that on the previous day of the incident, they had received Rs. 70,000/- towards compensation out of the total compensation awarded to them by the MACT; on the date of the incident, the train left at 11 p.m. and at that point of

time, 3 to 4 persons attacked the deceased; the deceased was stabbed on the chest; P.W. 4 questioned four persons as to why they caused injuries; thereafter they caused injuries to P.W. 4 and herself also; they took away the money and when the train stopped in the next station, the accused ran away; thereafter the victim was shifted to hospital by the Police. According to P.W. 9, M.O.5 is the weapon used for commission of the offence by the accused. She has further deposed that after seeing the accused in the train, she has seen the accused in the Court for the first time.

P.W. 10 is the Head Constable attached to Cantonment Railway Station. He has deposed that on 26-12-2007 at 11.55 p.m. Gauhati Express train came to the Cantonment Railway Station; since the condition of the deceased was serious, the Police took the injured to the Bowring Hospital and thereafter he was taken to Rajiv Gandhi Hospital.

P.W. 11 is another Constable of Railway Police. He speaks about shifting of the dead body from Rajiv Gandhi Hospital to Bowring Hospital and handing over the dead body to the relatives for the purpose of cremation after the post-mortem examination.

P.W. 12 is the Inspector of Police. He has deposed that on receiving the information, he visited Rajiv Gandhi Hospital on 28-12-2007 and recorded the statement of P.W. 4 as per Ex. P. 8 and the same was sent to Police Station along with HC No. 17. He conducted investigation and after completion of investigation, he laid the charge-sheet.

6. It is relevant to note few facts which are not in dispute:

The recovery of weapons-M.Os. 5 and 6 was made by the Police during the course of investigation after one month of the incident at the behest of the accused. However the said weapons were not sent for Forensic Science Laboratory examination. There is no material to show that the knife so seized was bloodstained. Even otherwise, this Court cannot comprehend as to how the accused could have allowed the bloodstains to remain on the knife.

P.Ws. 4, 8 and 9 are the eye-witnesses. They are strangers to Bangalore. They did not know the accused earlier.

7. During the course of investigation, P.W. 4 supplied certain information to P.W. 12 for identifying the accused. Based on the description given by P.W. 4, the concerned Police prepared the computer sketch of the accused. Such computer sketch prepared by the Police during the course of investigation was got counter-checked by C.W. 10, who is stated to be the habitual offender in the Railways. C.W. 10 stated to have identified the faces of the persons whose sketches were drawn on computer. C.W. 10 is not examined before the Court.

The accused were identified by P.Ws. 4, 8 and 9 in the Police Station for the first time and thereafter before the Trial Court. No test identification parade was held as per law before the Independent Officer of the State.

8. As mentioned supra, based on the information supplied by P.W. 4, P.W. 12-Inspector got prepared the computer sketch of the accused. Though P.W. 12 has deposed that he got information from P.W. 4 and got prepared computer sketch of the accused, P.W. 4 in his deposition has not deposed anything about the aforementioned factors. He has not all deposed that he gave information to the Police about the accused and based on which the computer sketches of the accused were drawn. However P.W. 4 has deposed about re-playing of the CCTV recording by the City Railway Police to P.W. 4. As mentioned supra, the evidence of P.W. 12 discloses that the computer sketches of the accused so prepared were identified by C.W. 10-Raja alias Chopper Raja alias Raghu and he identified assailants as accused 1 and 2. But C.W. 10 on whom the prosecution bases its case is not examined before the Court. Thus it is clear that the link is missing. There is no concrete material available on record to connect the accused to the crime.

9. P.Ws. 4, 8 and 9 who are the eye-witnesses to the incident were strangers to Bangalore. They had not seen the accused earlier. They have seen the accused only in the Police Station after three months of the incident and identified them as assailants. Thereafter they have identified the accused in the Court. No test identification parade was conducted by the prosecution. In the absence of Test Identification parade, it would be very hard for this Court to believe the version of the prosecution that the accused were the real culprits. If really the prosecution witnesses were able to identify the actual assailants, the Investigating Officer could have arranged for test identification parade. In the absence of this vital material, the Trial Court, in our considered opinion is justified in disbelieving the version of the prosecution.

10. The evidence of the doctor-P.W. 1 at paragraph 11 discloses that the injuries sustained by the deceased could not have been caused by the weapons-M.Os. 5 and 6 seized during the course of investigation. However second opinion was taken from another doctor-P.W. 2, who has deposed that the injuries sustained by the deceased could be caused by means of other sharp cutting weapon. The explanation offered by the doctor-P.W. 2 is not specific. His evidence cannot be relied for the purpose of definitely concluding that M.Os. 5 and 6 can cause such injuries. In view of the medical evidence regarding M.Os. 5 and 6, it is clear that those weapons can cause cut injuries, but the stab injuries cannot be caused by such weapons. The deceased had sustained stab injuries which are grievous in nature. The stab injuries were the cause for the death of the deceased.

11. In the light of the above material on record, in our considered opinion, the Trial Court is justified in acquitting the accused. Even on re-appreciation of the material on record, we do not find any ground to interfere in the impugned judgment and order of the Trial Court. We find that the view taken by the Trial Court while acquitting the accused is one of the possible view under the facts and circumstances of the case.

12. Hence no interference is called for in this appeal. The impugned judgment

and order of acquittal dated 22nd July, 2010 passed by the Additional Sessions Judge, Fast Track Court-XIV, Bangalore in Sessions Case No. 1088 of 2008 is confirmed.

13. Appeal fails and the same stands dismissed.

14. Since the appeal filed by the State is dismissed, respondent 3-Bharath (accused 4 before the Trial Court) who is stated to be in custody shall be released forthwith, in case if he is not required in any other case.

15. We place on record the valuable services rendered by Sri Amar Correa, learned Amicus Curiae. In token thereof, we direct the Registry to pay Rs. 10,000/- (Rupees ten thousand only) as honorarium to the learned Amicus Curiae.