
(2014) 10 KAR CK 0101
In the Karnataka High Court
Case No : Criminal Appeal No. 621 of 2010

Suresh	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2014) 10 KAR CK 0101

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : H.V. Subramanya, Advocate for the Appellant; K.R. Keshava Murthy, State Public Prosecutor, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the appellants and the learned State Public Prosecutor.

2. The facts of the case, as alleged by the prosecution, are as follows:

That one Patel Krishnappa is said to have contested the Grama Panchayat elections against one Jayamurthy, who was supported by both the accused. As a result of Patel Krishnappa having contested the election, Jayamurthy was driven to spend a large sum of money to win the election. This, according to the prosecution, was the cause for animosity between Patel Krishnappa and Jayamurthy and the accused, who were strong supporters of Jayamurthy.

It was alleged that on 1.4.2005, at about 10.30 p.m., when Patel Krishnappa was on his threshing field in the vicinity of his house and was sleeping there, both the accused had picked up a quarrel and pounced on Patel Krishnappa as he was sleeping. While accused no. 2 had held him down and accused no. 1 had assaulted Patel Krishnappa on his head with a club, as a result of which, Patel Krishnappa had shouted for help. On hearing his cries, his sons Ravikumar, PW. 2 Thimmegowda, PW. 3 as well as one Venkata Swamy PW. 5 are said to have

rushed to the spot on seeing that Krishnappa was seriously injured, they had tied a towel around his head as he was bleeding, to prevent further bleeding and they took him to NIMHANS Hospital. The doctor had suggested that he be taken to another hospital and he was then taken to Baptist Hospital for immediate treatment. But even the doctors at Baptist hospital had suggested that he be shifted to NIMHANS or other hospital for immediately treatment since he had suffered a head injury. He was then shifted to M.S. Ramaiah Hospital, where he was treated as an inpatient from 1.4.2005 to 11.4.2005.

According to the prosecution, the doctors at M.S. Ramaiah Hospital had informed the Chikkajala Police about the admission of Patel Krishnappa with serious head injuries and on receipt of the information, the Chikkajala Police recorded the statement of PW. 5 Venkata swamy and on the basis of the same, a case came to be registered for offences punishable under Sections 307 read with 34 of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC, for brevity) in Crime No. 72/2005. On the basis of Exhibit P.2, the written information provided by PW. 5, the law was set in motion. After further investigation, a First Information Report was lodged before the Jurisdictional Magistrate at 5 p.m. on 2.4.2005 and thereafter, a charge sheet was filed on conclusion of the investigation, for offences punishable under Sections 143, 147, 148, 427, 324, 506 read with Section 149 of the IPC. The matter having been committed to the Court of Sessions, the charges had been framed against the accused and the accused having pleaded not guilty and having claimed to be tried, the prosecution had tendered evidence through eight witnesses and had produced seven exhibits apart from four material objects. On the basis of the said evidence and after recording the statement under Section 313 of the Code of Criminal Procedure, 1973 and after hearing both the sides, the court below has framed the following points for consideration:

"1. Whether the prosecution has been able to prove that there was serious political rivalry between P.W. 1 and his family members on one hand and accused on the other hand?

2. Whether the prosecution has been able to prove that as a result of this political rivalry accused nos. 1 and 2 went to the thrashing field of Patel Krishnappa at about 10.30 p.m. on 1.4.2005 where he was sleeping, picked up a quarrel with him and thereafter Accused no. 2 held him forcibly and A1 assaulted on the head of Patel Krishnappa with an eucalyptus club and caused severe injuries with an intention of murdering him?

3. Whether the prosecution has been able to prove that the accused have committed offence punishable under Section 307 read with Section 34 of IPC?"

The Court below held the said points in the affirmative and has accordingly convicted the accused and sentenced them to rigorous imprisonment of 7 years and to pay a fine of Rs. 50,000/-, each and out of the same, Rs. 90,000/- was to be paid to Patel Krishnappa, the victim, as compensation under Section 357 of

the CrPC. It is that which is under challenge in the present appeal.

3. The learned Counsel appearing for the appellant would contend that there was inordinate delay in lodging the complaint, in that, the alleged incident had taken place at 10.30 p.m., on 1.4.2005 and the complaint was lodged only as on 2.4.2005 at about 12.15 p.m., and therefore, there was delay of over 14 hours, which is unexplained. It is further to be noticed that the Police, on receiving information from M.S. Ramaiah Hospital, had gone there and had received the complaint as per Exhibit P.2 and thereafter proceeded to the police station and handed over the same to PW. 6, the Police Inspector and PW. 6 has registered a case in Crime no. 72/2005 and hence, there is no explanation as to why there was no attempt to lodge a complaint immediately or early in the morning on the next day, when the actual complainant is not the injured victim, but a relative of the injured victim. Hence, the very incident having taken place would be doubtful when the delay is not properly explained and in the backdrop there being rivalry between the injured victim and the accused, who were supporting the staunch rival of the injured victim Jayamurthy. This circumstance having been elicited in the course of the trial, it would be a serious circumstance, which would vitiate the proceedings, when the delay is not properly explained. On this aspect PW. 3 Thimmegowda has admitted that they had left PW. 2 Ravi Kumar at the Hospital and all others came back to the village by 5.30 a.m. or 6 a.m., on 2.4.2005 and that they had their own transportation and that they had not chosen to lodge a police complaint and this was unbecoming of witnesses, who were said to be sons and close relatives of PW. 1, which creates a strong suspicion about the manner in which a case was sought to be foisted against the accused.

It is further pointed out that any person could reach the court at Devanahalli from the Police Station within 30 minutes and though the case was registered at 12.15 p.m., the First Information Report reached the Magistrate only at 5 p.m. Therefore, that is yet another lacuna which is not accepted by the prosecution. The court below has also overlooked this aspect of the matter as to the prompt lodging of the complaints and the immediate prosecution of the cases.

Insofar as the allegation of a grievous hurt having been caused to the victim, is concerned, though the allegation was that on account of the injuries caused by the accused, the victim was profusely bleeding and therefore, the witnesses PWs. 2 and 3 had tied a towel around his head to prevent further bleeding, the same is belied by the fact that the Medical Practitioner has indicated in the would certificate that there were no bleeding injuries. Whereas the injury as defined by the Medical Practitioner is left fronto temporo parietal acute subdural haematoma and the same is described as grievous in nature.

The learned Counsel would point out that the said Medical Practitioner, apart from reiterating the description of the injury as stated in the wound certificate, has not furnished any further details of the treatment that the alleged victim had undergone during his stay at the hospital between 2.4.2005 to 11.4.2005. He has further stated in his cross-examination that the discharge summary, Exhibit

D.1 was issued by a Neuro Surgeon and the said Neuro surgeon was never examined at the trial. Hence, the mere description of the injury as reflected in the wound certificate by itself would not establish that the injury had been caused by virtue of the victim having been struck with a club by either of the accused and that it was a grievous injury. The definition of a "grievous injury" as emanate from Section 320 of the IPC would require that it is capable of causing death of the victim. Hence, in the absence of any medical evidence to indicate that the haematoma or the blood clot that was said to have noticed as per the wound certificate, was capable of causing the death of the victim and that it was prevented before his discharge, it cannot be said that there was grievous hurt and in the absence of which, the injury itself is doubtful and cannot be said to have been established before the court below.

It is also pointed out by the learned Counsel that even according to the complaint, the witnesses namely, sons of the victim and PW. 5, who was a close relative, had not witnessed the actual assault of the victim by the accused, but had come to the spot only on hearing the cry out of the victim. Therefore, the only eye witness who is alleged to have implicated the accused was the injured victim himself and in the absence of a serious injury having been caused being established, it cannot be said that the accident itself had taken place in the manner as sought to be suggested, merely on the basis of the oral testimony of the injured victim, who was admittedly the staunch rival of the mentor of the accused, of whom they were strong followers and it is only to implicate and frame them in a false case since they had supported Jayamurthy, who had won at the elections against injured victim, that a false case has been engineered. It is in this vein that the learned Counsel would seek to point out other infirmities in the case of the prosecution and would contend that the appellant being visited with a serious punishment of imprisonment of 7 years apart from fine of Rs. 50,000/- each, on the basis of the nebulous evidence, results in a miscarriage of justice and would emphasize that the prosecution had miserably failed to establish its case beyond all reasonable doubt, Doth in respect of the manner in which the incident is said to have occurred or by virtue of the same, the victim having been seriously injured and that the injury was caused by any of the accused and so on so forth and hence seeks acquittal of the accused.

4. While the learned State Public Prosecutor would vehemently seek to justify the judgment and would contend that the injury having been established, in the sense that the victim was admitted in a hospital and was an inpatient for nine days, is testimony to the effect that he was attacked with a weapon and had therefore suffered an injury. The presence of the accused having been spoken to by the injured victim himself and duly supported by three witnesses, cannot be brushed aside. The suggestion that the witnesses, PWs. 2, 3, and 5 had not actually witnessed the accused attacking the victim is a presumption and though they may not have seen the blows being delivered to the victim, their immediate presence on hearing the cries of the victim, cannot negate the case of the prosecution. The delay in lodging the complaint and the prosecution of the case

by presenting the First Information Report before the court of the Magistrate is not fatal to the case of the prosecution. The Medical Practitioner, who had initially examined the victim, having tendered evidence, in support of the medical records, would not enable the appellants to claim that the entire episode was imagined and a false case was sought to be foisted against the accused. The hospital records could not have been manipulated nor concocted and it is an independent source of information as to the injury caused to the victim and the treatment that he had received. And therefore, the learned Prosecutor would submit that even though the maximum punishment attracted was much more, the court has been extremely liberal in restricting it to the period of punishment that it has imposed and would submit that there is no warrant for interference.

5. On a consideration of the rival contentions, and the record of the case, it is evident that the allegation that the accused had attacked the victim PW. 1 and had struck him on his head with a club and thereby he had suffered bleeding injuries, as stated by the witnesses, is belied by the fact that the Medical practitioner has not indicated that he had suffered any bleeding injuries. The injury, on the other hand, is described as an internal injury. This itself raises a doubt as to the allegation that the injured was bleeding profusely and the witnesses PWs. 2, 3 and 5 sought to stop the bleeding by tying a towel against the skull of the victim. This is obviously a statement to bolster the case against the accused, which is patently false and incorrect, as it is not reflected in the medical record. The delay in filing the complaint is also a serious lapse that would have to be taken into consideration. The Police in turn having taken their own time to place the matter before the jurisdictional court is again another lapse, which would seriously belie the case of the prosecution.

Coming to the injury, the claim that there was haematoma or in other words, a clot in the brain which could have possibly caused the death of the victim, is sought to be suggested only with reference to the wound certificate and there is no attempt to examine other medical practitioners, who might have actually treated the victim nor is there any indication of the nature of treatment that he received and whether the clot in the brain that was initially diagnosed was rendered ineffectual or it was declared that he was out of danger from the risk of any clot being developed. There is no clear evidence that by virtue of a blow delivered to the skull of the victim, there was no sign of swelling and that haematoma may be caused even without there being swelling on the external surface of the skull. On the other hand, as seen from the Modi's Medical Jurisprudence and Toxicology, 23rd Edition, at Page 687, bruise's or contusions are injuries which are caused by a blow from a blunt weapon such as a club. These injuries are normally accompanied by painful swelling and crushing or tearing of sub-cutaneous tissues without solution of continuity of the skin. The swelling is normally due to the rupture of the small sub-cutaneous blood vessels producing in the cellular tissues, extra-vasation of blood, which is known as ecchymosis. The term effusion of blood is ordinarily limited to extravasation of blood in a pleural cavity. The haematomas are formed when large blood vessels

are injured. Swelling, tenderness and discolouration of the skin are the signs of contusion/haematomas. They appear after sustaining the injury. Sometimes, it is delayed by one or two days. They can appear either at the site of impact or away from it. Blood may gravitate to some other place in the same anatomical plane-"black eye" There is extravasation of blood, which is known as ecchymosis with or without abrasion over it. They do not occur due to post-mortem violence. Therefore, the contention that by virtue of an injury caused with a club, there was a haematoma that was formed and it was life threatening and even it was also established that the injury was caused by the accused, could possibly result in the offences having been established by the prosecution.

6. Having regard to the nature of the infirmities in the present case on hand and there being no evidence as to how haematoma was dissolved or rendered harmless, and in the absence of the medical evidence of the Neuro Surgeon, who had actually issued the discharge summary of the victim, there is no material evidence on record which is available to demonstrate that the injury was indeed caused and it was a grievous injury. A "grievous hurt" is defined under Section 320 of the IPC and the manner in which the injury is projected as a grievous hurt would probably fall under the definition as contemplated under the IPC. This aspect of the matter was required to be established by the prosecution in the absence of any evidence in this regard, except to state that he was an in-patient in the hospital during the period from 2.4.2005 to 11.4.2005. There is absolutely no evidence. Therefore, the court below having imposed a rigorous imprisonment of 7 years and fine of Rs. 50,000/- on each of the accused is certainly without the prosecution having established its case beyond all reasonable doubt.

Therefore, on the infirmities that are highlighted by the appellants herein, the appeal is allowed. The judgment of the court below is set aside. The accused are acquitted. The fine amount, if any, paid shall be refunded to the appellants. The bail bonds stand cancelled.