
(1993) 07 SC CK 0058

In the Supreme Court Of India

Case No : Criminal Appeal No. 397 of 1984

The State of Karnataka

APPELLANT

Vs

Rama Reddy

RESPONDENT

Date of Decision : 27-07-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1993) 4 JT 350

Hon'ble Judges : K. Jayachandra Reddy, J;G.N. Ray, J

Bench : Division Bench

Advocate : R. Venkataramani and M. Veerappa, for the Appellant; B.S. Shant, for the Respondent

Judgement

K. Jayachandra Reddy, J.—This appeal filed by the State of Karnataka is directed against the judgment of the High Court of Karnataka acquitting the Respondent-accused for an offence u/s 302 I.P.C. The Respondent, who is the sole accused in the case, was tried for the said offence by the Sessions Judge, Tumkur and was convicted and sentenced to undergo imprisonment for life. The High Court took the view that the prosecution had failed to establish the guilt of the accused and accordingly set aside the judgment of the trial court. Hence the present appeal by the State.

2. This is a case of patricide and the allegation is that the accused killed his own father. The material facts are as under:

The deceased Kare Thimmaiah had two daughters namely Parwathamma, P.W. 2 and Choodamma and a son, who is the accused. Thimmakka was the wife of the deceased and is the mother of P.W. 2, Choodamma and the accused. The deceased had 2 acres of wet land and 5 to 6 acres of dry lands. According to the prosecution, 2 acres of wet land and 3 acres of dry land were ancestral property. The remaining was the self-acquired property of the deceased. The deceased gave the ancestral property to the accused alongwith the major portion of the family house. The deceased out of self-acquired property gave one and a half

acres of dry land to his daughter P.W. 2 and the remaining to his another daughter Choodamma under a gift deed Ex. P.2 dated 5.12.1980. On account of this gift to the daughters, the relations between the accused and the deceased became strained. It is further alleged that the deceased sold away Honge trees 3 to 4 months before the incident and retained the sale proceeds for himself. The accused asked the deceased to hand over the sale proceeds to him but the deceased refused to do so. The accused had married a girl against the wishes of the deceased. The accused was residing with his mother in a major portion of the house and the de-ceased was residing in a small room and a verandah. The deceased brought his daughter P.W.2 to his house as there was nobody to look after him. P.W. 2 also brought her sister's daughter alongwith her. On 28.4.1981 at about 7 P.M. the deceased, after taking bath, was wearing dhoti in the verandah. It is alleged that at that time the accused suddenly emerged from the portion of his house and held the mouth and the chin of the deceased with his left hand and cut the neck of the deceased with a barber's razor Ex. M.O. 4. The deceased as well as P.W. 2 started shouting. On hearing this, P.W. 3 Hanumantha Reddy, a neighbour and deceased's another brother Thimma Reddy also came there. On seeing them the accused ran away. P.W. 3 and Thimma Reddy chased the accused but could not catch him. The accused is said to have thrown the razor near a place where P.W. 4 had laid the foundation for his house. Thereafter P.Ws. 3, 4 and others engaged a bullock-cart and put the injured in that cart for the purpose of taking him to the hospital but the deceased breathed his last on the way. The dead body was brought back and kept, near the verandah. Next day morning, P.W. 3 wrote a complaint Ex.P.3 to the dictation of P.W. 2 and both of them went to the Police Station and handed over the same. The Police Sub Inspector, P.W. 13 registered the case and issued the F.I.R. He came alongwith the staff to the scene of occurrence, held the inquest over the dead body and recorded the statements of P. Ws. 2, 3 and others. He sent the dead body for post-mortem. He seized the blood-stained razor. The Doctor, P.W. 6, who conducted the post-mortem, found an incised wound about 3-1/4" in length 2" in breadth and 1" in depth across the front of the neck above the Hyoid bone, cutting all the structures like Trachea, Larynx and Oesophagus and intervening muscles. He found another incised wound above this injury and a third incised wound in the middle of the left side of the neck. On dissection, he found the Trachea and Larynx cut and he opined that the death was due to shock and haemorrhage due to injuries to these vital organs. After completion of the investigation, the charge-sheet was laid.

3. The prosecution in support of its case examined P.W. Nos. 1 to 15. Out of them P.W. 2 figured as eye witness and P.W. 3 as a material witness who reached the scene of occurrence immediately on hearing the shouts of P.W. 2. The trial court accepted the evidence of the material witnesses and held that the prosecution has established its case beyond all reasonable doubt and accordingly convicted the accused. The High Court confirmed the finding that the deceased died a homicidal death and the same was not seriously disputed. The High Court

also held that the relations between the accused and Thimmakka on the one hand and the relations between the deceased and his daughter P.W. on the other hand were strained. The High Court, however, pointed out certain discrepancies in the evidence of P. Ws. 2 and 3 and also commented on the delay in giving the F.I.R. and held that the evidence of P. Ws. 2 and 3 was suspicious. The High Court also observed that the circumstance that the accused was absconding by itself is not incriminating and the evidence of the eyewitness becomes doubtful.

4. We have carefully gone through the judgments of the trial court as well as of the High Court and the evidence of P. Ws. 2 and 3 and other circumstantial evidence and we are firmly of the view that the High Court has grossly erred in doubting the veracity of P. Ws. 2 and 3. The discrepancies pointed out by the High Court are trivial and the reasons given for discarding their evidence are highly unsound and do not stand judicial scrutiny. To say the least, the High Court has taken a highly unreasonable view.

5. We shall now proceed to consider the evidence of P. Ws. 2 and 3 who are the material witnesses. P.W. 2 is the sister of the accused and daughter of the deceased. In Chief Examination, she deposed about the distribution of the land, gift deed executed by the deceased and the sale of the trees etc. She clearly stated that the accused demanded the sale proceeds of the trees and in that connection there was a quarrel. This part of her evidence establishes that the relations between the deceased and the accused were strained. To that extent the High Court also agrees. P.W. 2 further deposed that on 28.4.1981 at about 7 P.M. she gave a bath to the deceased who was aged about 55 years at that time and when the deceased was wearing dhoti in the verandah, she was feeding a three years' old child of her sister Choodamma. At that time the accused came from the portion of his house and closed the mouth of the deceased with his hands and cut his throat. She has given other details of the occurrence. She further stated that on her shouting P.W. 3 Hanumantha Reddy and Thimma Reddy came to the place. On seeing them the accused ran away. He was chased but could not be caught. P.W. 3 also saw the accused throwing away the razor. She further deposed that the deceased was still alive and therefore they put him in a bullock-cart to take to the hospital but he died on the way and the dead body was brought back. Next day morning at about 7 A.M. she presented a drafted complaint before the police and she was examined during the inquest. P.W. 2 was cross-examined at length. It has been suggested to her that she had not seen any incident and when she woke up in the morning, she saw the deceased lying dead. It was denied by her. She also de-nied a further suggestion that she and P.W. 3 concocted a false story.

6. Her evidence is amply corroborated by the evidence of P.W. 3 who is no other than the brother of the deceased and paternal uncle of the accused. His house is situated at a distance of 40 yards from the house of the deceased. In his chief-examination he had deposed about the distribution of the properties etc. and the misunderstandings between the father and the son. To this extent namely on the

aspect of hostility between the two, it is not open to any doubt.

7. P.W. 2 is the main witness in the case. The High Court pointed out that her evidence discloses that the accused cut the deceased only once but the doctor found three incised wounds and that P.W. 2 had not explained as to how the deceased received injuries when he was cut on the throat once by the accused. The High Court also pointed out that it must have been dark when the neck was cut. Therefore it is difficult to believe that P.W. 2 saw the accused cutting the throat of the deceased and had she been present, she would not have failed to request to the accused her own brother, not to cut the neck of the father and according to the High Court, this circumstance rendered her evidence suspicious. The High Court further pointed out that P.W. 2 deposed that the blood had fallen on the floor of the verandah and that she had shown the blood on the floor to the police and the same was incorporated in the mahazar. But according to the High Court if the blood had fallen in the verandah on the stone flooring, the Police Sub-inspector would not have failed to scrap the blood and seize it and non-seizure of the blood from the verandah and failure to draw a mahazar regarding the finding of the blood are the circumstances which would show that the deceased was not done to death in the verandah. Then the High Court proceeded to comment on the delay in giving the complaint. In this context, the High Court also pointed out that no explanation was given as to why P.W. 2 did not inform about the incident to the Patel on that very night and the fact that the complaint was given only next day in the morning at about 7 A.M. would go to show that the occurrence did not take place in the manner deposed by her. Then coming to the evidence of P.W. 3 the High Court pointed out that the seizure of the razor M.O. 4 is doubtful and P.W. 3 and his brother while chasing would not have seen the accused throwing away the razor and further their identification of the accused while running away is doubtful. These are the main reasons given by the High Court for rejecting the evidence of P. Ws 2 and 3.

8. We are of the view that these reasons given by the High Court are untenable and highly unsound. The presence of P.W. 2 in the house cannot be doubted. She has given a cogent and convincing version of the occurrence. The verandah where the occurrence took place and the room in which she was there after giving bath to the deceased are quite adjacent. Even a simple cry would have attracted her attention. Her evidence is amply corroborated by medical evidence that the injuries must have been inflicted by a razor. If she had not seen the occurrence she could not have imagined that they were inflicted by a razor. This fact is mentioned even in the earliest report. It must be remembered that shouting of P.W. 2 attracted P.W. 3 who rushed to the spot and saw the accused running away. It is impossible to imagine that P. Ws 2 and 3 must have implicated the accused falsely even without seeing the occurrence. The non seizure of the scrapping contents of the blood from the floor and the absence of a mahazar or for matter of that even the seizure of razor by themselves are wholly insignificant. The occurrence took place at 7 P.M. and the evidence of P. Ws. 2 and 3 is that since the deceased was alive they wanted to rush him to

hospital and they brought back the body as the deceased died on the way. The very next morning they presented the report. We are unable to see as to how it can be said that there was delay. Even assuming there was delay that is not at all material in a case of this nature. It is not a case of faction. It is a simple case where because of property dispute, a son developed hostility towards his own father and committed this heinous crime.

9. The way in which the occurrence has taken place, P.W. 2 would have got stunned and if there are more than one injury on the neck and even if there is no explanation, that is absolutely of no consequence. P.W. 2 deposed that she heard the shouts of the deceased and she clearly saw the accused cutting the throat of the deceased and in that process it is very likely that the deceased received more than one injury. Cutting the throat was one single act and that is how it has been described by P.W. 2. There is absolutely no infirmity. The comment of the High Court on the conduct of P.W. 2 in not stopping the accused from cutting the throat is unwarranted. It all happened in a sudden manner and it must also be borne in mind that hearing the shouts of P.W. 2, P.W. 3 and Thimma Reddy rushed to the scene of occurrence. This itself shows that her conduct is highly natural. Therefore the view taken by the High Court is highly unreasonable. No two views are possible in this case. The learned trial Judge has considered the entire evidence in great detail. We ourselves have examined the evidence of P. Ws. 2 and 3 carefully and we are firmly of the opinion that one and the only view that is possible in this case is that the accused killed his father in the manner as stated by P.W. 2 whose evidence is corroborated not only by the evidence of P.W. 3 but also by the evidence of P.W. 4 and other circumstantial evidence including the medical evidence.

10. Therefore, we are constrained to set aside the order of acquittal passed by the High Court and restore the judgment of the trial court. In the result the appeal by the State is allowed and the conviction of the Respondent-accused u/s 302 I.P.C. and sentence of imprisonment for life as awarded by the trial court are confirmed. The Respondent-accused shall surrender and serve out the sentence.