

(2014) 12 KAR CK 0059
In the Karnataka High Court
Case No : Criminal Appeal No. 1172/2011

Thimanna

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2014) 12 KAR CK 0059

Hon'ble Judges : P.D. Waingankar, J;N. Ananda, J

Bench : Division Bench

Advocate : Vijayakumar Majage, HCGP, Vishal Kumar, Advocate for Lex Pioneers
R. Kothwal and Associates, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (hereinafter referred as "accused") was tried and convicted for an offence punishable under section 302 IPC for committing the murder of his son namely Mylarappa at about 5.30 p.m. on 15.04.2009 in his house at Arehalli Village, Hosadurga Taluk.

2. We have heard Sri Vishal Kumar, learned standing counsel appointed by High Court Legal Services Committee and Sri Vijayakumar Majage, learned HCGP for State.

3. Before advertng to appreciation of evidence and submissions made by the learned counsel for parties, it is necessary to state the relationship between accused and some of the prosecution witnesses and certain facts which are not in dispute.

4. Deceased Mylarappa was the eldest son of accused. In all, accused had four sons. PW7-Srinivasa is the second amongst four sons of accused. The wife of accused, PW7 and his two younger brothers were living in Bangalore, since 7 years prior the date of incident, as there were some differences between accused and his wife. Therefore, accused alone was staying in his old ancestral house at

Arehalli Village, Hosadurga Taluk. The family of accused did not possess immovable properties, other than the ancestral house at Arehalli Village. The accused was sustaining by physical labour, so also deceased Mylarappa.

5. PW1-Manjulamma is the wife of deceased Mylarappa. PW2-Chikkamma is the mother of PW1. PW3-Murthappa is the elder brother of PW1. Deceased Mylarappa and his wife (PW1) were living in the house of parents of PW1 in Brahmaidyanagar. There were no property disputes between accused and deceased and his remaining sons. On 15.04.2009, deceased Mylarappa, his wife (PW1), his mother-in-law (PW2) and his brother-in-law (PW3) had performed "javala" function of son of deceased in Aralamma Temple at Arehalli Village, Hosadurga Taluk. The accused had been invited to function. The accused had attended "javala" function.

6. It is the case of prosecution that after performing "javala" function, deceased Mylarappa came to the house of accused in Arehalli Village. The accused had stored 10 bags of tamarind fruits in his house. Deceased Mylarappa told accused to remove 10 bags of tamarind fruits from house to accommodate his relatives/guests. The accused refused to remove tamarind bags from house. When deceased Mylarappa had thrown away few tamarind bags from house, accused assaulted deceased with a chopper and caused multiple injuries to him. Deceased Mylarappa became unconscious and fell down. Thereafter, accused strangled deceased with a twine thread. On the following day i.e., on 16.04.2009, at about 9 a.m., PW1-Manjulamma (the wife of deceased) lodged first information. The Investigating Officer investigated the place of incident and seized incriminating articles.

7. PW1-Manjulamma (wife of deceased), PW2-Chikkamma (mother-in-law of deceased) and PW3-Murthappa (brother-in-law of deceased) have given consistent evidence of incident of assault, which took place in the house of accused. During cross-examination, PW1 to PW3 have reiterated their versions given in examination-in-chief. The visit of deceased Mylarappa to the house of accused has not been disputed by accused.

8. The contents of first information would lend substantial corroboration to the evidence of PW1-Manjulamma. PW1-Manjulamma is the wife of deceased Mylarappa. PW2-Chikkamma is the mother-in-law and PW3-Murthappa is the brother-in-law of deceased Mylarappa. PW1 to PW3 being the close relatives of deceased would be least disposed to falsely implicate the accused, leaving aside the real culprit.

9. The post-mortem examination was conducted by PW14-Dr. J.S. Raghavendra Prasad. The medical evidence reveals that deceased Mylarappa had suffered following injuries:--

"a. A cut wound is seen over left temporal region of skull measuring 2 cms x 1 cm x 1 cm, it is fresh in nature.

b. Ligature mark - around the neck is seen 31 cms in length about 1/4 inch width, finger nail marks is seen around the neck. Eyes are opened.

c. Multiple abrasions seen over left anterior aspect of thigh, abrasions are fresh in nature.

d. A cut wound over left side of neck measuring 1/2 inch x 1/2 inch x 1/2 inch is seen, fresh in nature.

e. A cut wound over left leg measuring 1 cm x 1 cm x 1 cm, fresh in nature."

10. The defence has made an unsuccessful attempt to establish that deceased Mylarappa in a drunken state had fallen on a stone and suffered above injuries.

11. The injuries noticed in the post-mortem examination report, stated supra would belie the defence theory that deceased had fallen on a stone and suffered injuries.

12. The learned Sessions Judge on appreciation of evidence of eye-witnesses (PW1 to PW3) and medical evidence of PW14 has held the accused guilty of an offence punishable under section 302 IPC.

13. The learned counsel for accused would submit that even if the case of prosecution is accepted, the acts committed by accused would not attract an offence punishable under section 302 IPC. The learned counsel for accused would further submit that assault was not premeditated. In a way, genesis of incident can be attributed to high handed acts of deceased, who in fact had overpowered his father (accused) to throw away bags containing tamarind fruits from the house of accused. PW1 and deceased Mylarappa had come to the house of accused about 8 days prior to the date of incident and stayed in the house of accused, without any quarrel and differences between the two. The attempt made by deceased Mylarappa to throw bags containing tamarind fruits was with ulterior motive. Even if deceased had brought his relatives to the house of accused, there was no difficulty for him to take them to his house in Brahmaidyanagar, which is at a distance of 7 kilometres from Arehalli Village. The prosecution has introduced a theory that accused strangled the deceased after he fell down unconsciously. It is evident that there were deliberations before lodging first information. The first information was lodged at 9 a.m., on 16.04.2009. The ligature (twine thread) recovered from the place of incident does not show presence of bloodstains.

14. The learned counsel for accused would further submit in the post-mortem examination report, cause of death is shown as:- 1) asphyxia 2) vagal inhibition and 3) shock. Thus, prosecution has shown multiple causes of death to implicate the accused for an offence punishable under section 302 IPC.

15. The learned counsel for accused, relying on a decision reported in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, , would submit that the acts committed by accused do not attract an offence punishable under

section 302 IPC and the acts would squarely attract an offence punishable under section 304 Part I IPC.

16. The learned HCGP would submit that accused had inflicted multiple injuries on deceased with a chopper. The accused had strangled the deceased. Thus, accused had acted in a cruel and unusual manner. Therefore, accused had both intention and knowledge to commit the murder of deceased and acts committed by accused would squarely attract an offence punishable under section 302 IPC.

17. We have to consider the acts committed by accused, having regard to the background, relationship between accused and deceased and events which preceded the incident.

18. The evidence of PW1 (the wife of deceased) and PW7 (the second son of accused) would reveal that accused alone was staying in his house at Arehalli Village, Hosadurga Taluk. The deceased was staying in the house of his parents-in-law in Brahmavidyanagar. The wife and remaining three sons of accused were staying in Bangalore. Except the 100 years old house in which accused was living, the family of accused and deceased did not possess any other immoveable properties. There was no property dispute between accused and his sons. The deceased and PW1 (wife of deceased) to perform "javala" function of their son had come to Arehalli Village about 8 days prior to 15.04.2009. The accused and deceased did not have any confrontation and quarrels during aforesaid period of 8 days. PW1 (the wife of deceased) has admitted that accused had been invited to "javala" function and he had attended "javala" function. Therefore, genesis of incident can be traced to the events that occurred after the deceased, PW1 and others came to the house of accused after performing "javala" function in a temple. Deceased Mylarappa had come to the house of accused along with his wife (PW1), his mother-in-law (PW2) and his brother-in-law (PW3). The deceased wanted to remove bags containing tamarind fruits stored in the house of accused to accommodate his guests, presumably his mother-in-law (PW2) and his brother-in-law (PW3).

19. As per evidence of PW1-Manjulamma (the wife of deceased), there was a quarrel. The accused and deceased had grappled and they were separated. The accused assaulted deceased Mylarappa with a chopper and caused injuries to his head and inflicted injuries on his neck. The deceased became unconscious and fell down. In the circumstances, the evidence of PW1 to PW3 that accused strangled deceased with a ligature (a twine thread) does not inspire confidence.

20. As could be seen from post-mortem examination report, deceased had suffered a cut injury on left temporal region measuring 2 cms x 1 cm x 1 cm. The deceased had also suffered a cut injury on left side of his neck measuring 1/2 inch x 1/2 inch x 1/2 inch and a cut injury on left leg measuring 1 cm x 1 cm x 1 cm. The cut injury suffered by deceased on left side of his neck has resulted in fracture of hyoid bone. The death was due to shock and haemorrhage. After the incident, accused was in Arehalli Village. The accused was arrested on the same

day.

21. In a decision reported in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, , the Supreme Court has held:--

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304, Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

(underlining supplied)

In the case on hand, accused is none other than the father of deceased. They did not have any property dispute. For that matter, they did not have properties to raise dispute. Due to some differences, which are not apparent on the record, accused alone was staying in Arehalli Village. Deceased Mylarappa was staying in the house of his parents-in-law at Brahmanvidyanagar. The wife and the other three sons of accused were staying in Bangalore. It appears, accused was sustaining by physical labour. The evidence on record does not reveal that accused had a tamarind grove or he was a tamarind merchant to store tamarind fruits in his house. The deceased and PW1 had stayed in the house of accused since 8 days prior to the date of incident, during which period, there was no rift

and quarrel between accused and deceased. The accused had also attended "javala" function. The incident was not pre-meditated, on the other hand, incident occurred by chance when deceased wanted to throw away tamarind bags from the house of accused, which was followed by a brief quarrel. The accused and deceased had grappled and they were separated by PW1 to PW3. The accused had picked up a chopper, which was lying in his house and assaulted the deceased. As already stated, the theory of accused strangulating the deceased with a twine thread after he assaulted the deceased does not inspire confidence.

22. In the aforesaid judgment, the Supreme Court has held that to decide whether the case falls under section 302 or 304 Part I or 304 Part II IPC, the court should proceed to decide the pivotal question of intention with care and caution. The Supreme Court has held that many petty or insignificant matters may lead to altercations and group clashes, culminating in death. In such cases, motives like revenge, greed, jealousy or suspicion may be totally absent.

In the case on hand, there was no pre-meditation. The accused got enraged when deceased threw away bags containing tamarind fruits from his house. The accused did not bear grudge or enmity against the deceased. The accused was not awaiting for an opportunity to commit the murder of deceased. The deceased regardless of the fact that accused was his father had thrown away tamarind bags stored by the accused in his house. The deceased had also grappled with his father, yet the fact remains, accused was aware that blows dealt by him are likely to cause death of deceased.

23. We have narrated the injuries suffered by deceased and also the weapon used by accused. Therefore, it can be inferred that accused had assaulted deceased with the intention of causing death or of causing such bodily injury as is likely to cause death. The acts of accused would squarely attract an offence punishable under section 304 Part I IPC.

24. The learned Sessions Judge, without considering the relationship between parties, the background of occurrence and events that had preceded the incident has held the accused guilty of an offence punishable under section 302 IPC. The impugned judgment requires modification.

25. We have heard the learned counsel for parties on sentence.

26. Having regard to the genesis of incident and relationship between accused and deceased, the young age of deceased, we deem it proper to sentence the accused to undergo simple imprisonment for a period of 10 years and pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for a period of six months for an offence punishable under section 304 Part I IPC.

27. In the result, we pass the following:--

"ORDER

The appeal is accepted in part. The impugned judgment of conviction is modified. The conviction of accused for an offence punishable under section 302 IPC is set aside. The accused is acquitted of an offence punishable under section 302 IPC. The accused is convicted for an offence punishable under section 304 Part I IPC. The accused is sentenced to undergo simple imprisonment for a period of 10 years and pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for a period of six months for an offence punishable under section 304 Part I IPC. The period of detention undergone by accused during trial and post conviction stage is given set off under section 428 Cr.P.C."