

(2015) 01 KAR CK 0065
In the Karnataka High Court
Case No : Criminal Appeal No. 2939/2012

Yellappa Siddappa Kotur

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 504, 506

Citation : (2015) 01 KAR CK 0065

Hon'ble Judges : A.S. Bopanna and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Santosh S. Hattikotagi, Advocate, for the Appellant; V.M. Banakar, Addl. SPP, for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Bopanna, J.—The appellant is before this Court assailing the judgment dated 25.10.2012 passed in S.C. No. 92/2010, whereunder he has been held guilty of the charge alleged against him and has therefore been sentenced to rigorous imprisonment for life and payment of fine.

2. The brief facts are that, in respect of the offence committed on 13.12.2009, due to which the appellant is alleged to have caused the death of his brother late Basappa Kotur, the appellant was charged under Sections 302, 504 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC", for short). Proceedings in Crime No. 377/2009 was converted as C.C. No. 125/2010, thereafter committed to the Sessions Court in S.C. No. 92/2010. The Court below having completed the trial, has taken note of the evidence tendered through the witnesses P.Ws. 1 to 17, the documents marked at Exs. P1 to P30, Material Objects produced as M.O. 1 to M.O. 8 and on analysing the evidence, has arrived at a conclusion that the prosecution has proved the case against the appellant beyond doubt and accordingly, the punishment has been imposed.

3. Having heard the learned counsel for the appellant and the learned SPP, we

have perused the judgment passed by the Court below and also the evidence recorded and the exhibits marked before the Court below to re-appreciate the matter in its correct perspective.

4. The complaint was lodged by the wife of the deceased Smt. Savakka Basappa Kotur and also the son of the brother of the deceased. The said Smt. Savakka Basappa Kotur was examined as P.W. 1, while Sri. Pundalik Mahadevappa Kotur, a nephew of the deceased as also of the accused was examined as PW2. The said two witnesses, namely P.W. 1 and PW2 are the eyewitnesses to the incident. In addition to the evidence of P.W. 1 and PW2, the evidence of PW5 and that of P.W. 16 namely, M.S. Naikar, the Investigating Officer would be relevant in the instant case for the purpose of re-appreciation. Insofar as the other witnesses who had been examined, the evidence of PW7 - Dr. P.G. Churchihal would also be relevant. The remaining witnesses are panch witnesses as also the scribe, photographer and the police constables who had carried the complaint and also submitted the material to the forensic laboratory.

5. In that view of the matter, we would advert to in some detail to the evidence that has been tendered by P.W. 1 and PW2, since they are eyewitnesses to the incident. The wife of the deceased - P.W. 1 in fact has stated in her evidence in the same manner as she had stated in her complaint. As per the same, she had gone to their land in Giddamari at Akkisagar village within Saundatti police station limits, in the morning hours at about 8.10 am, since her husband had already gone to the land. She carried breakfast and was thereafter doing certain agricultural work in the said land. At this stage, at about 9.30 am, when the request was made to the appellant by the husband of P.W. 1 for release of water to his land, the appellant shouted at the deceased, charged at him stating that he would kill him and assaulted him with a spade on his head, face and other parts of the body. Though P.W. 1 tried to intervene with the help of PW2, who was working in the adjacent land, the appellant threatened to kill them also if they came near and continued to assault the deceased. The deceased succumbed to the injuries at the spot. Thereafter, she requested PW2 to inform her son. Subsequently the complaint was lodged.

6. In that light, perusal of evidence tendered by PW2 would indicate that, he is none other than the son of another brother of the deceased as also that of the appellant. The land belonging to PW2's father is abutting the land belonging to the appellant. Hence PW2 was also at that time carrying out certain agricultural work in his land and on noticing the appellant attacking the deceased, he had also rushed to the spot, but could not prevent the attack as they had been threatened. The evidence of PW2 corroborates the evidence of P.W. 1 with regard to the incident and also the manner in which it had occurred.

7. Apart from the said two persons, one other adjacent land owner - Smt. Basamma was present at the spot. If in that light, the evidence of P.W. 1 and PW2 is perused, the incident which occurred on the said day and the manner in which the appellant had attacked the deceased and killed him would stand

established. Though the learned Counsel for the appellant sought to contend that the said witnesses are the relatives of the deceased and therefore, not reliable, we are unable to accept such contention. Apart from the fact that their presence at the spot is natural in the circumstance, PW2 is related to appellant also, being his nephew and nothing is pointed out to show that he had any animosity to depose falsely and implicate the appellant.

8. Further, the evidence of PW5 - Ramappa Balappa Aiduddi would indicate that there had been certain disputes between the appellant and the deceased with regard to the manner of enjoyment of the lands which were partitioned and was close to each other and on earlier instances, he had mediated in bringing about the settlement of disputes between them. The said evidence would disclose that there were certain instances, due to which there were disagreements between the appellant and the deceased with regard to the enjoyment of the property and the present incident was the result of the same whereby the appellant had attacked the deceased.

9. Further, the post-mortem report, which is marked as Ex. P14 would disclose that, on the said date, the deceased had succumbed to the injuries and about ten blows had been dealt by the appellant to the deceased and the same became fatal. The blood stained clothes worn by the appellant were thereafter seized and the seizure panchanama is marked as Ex. P13. Though the panch witness PW6 - Chandrappa Basappa Kamatagi has not supported the case of the prosecution, the fact that the blood stains found on the clothes worn by the appellant at the time of the incident were that of the deceased, was established by the FSL report, which was marked as Ex. P27. Therefore, from the relevant evidence insofar as the incident, it is established beyond doubt that the appellant had attacked the deceased with the spade and had dealt about ten blows on his head, chest and other parts of the body and therefore, the deceased succumbed to said injuries at the spot and the appellant had caused the death.

10. In the said background, a perusal of the judgment passed by the Court below would indicate that, in addition to the relevant evidence to which we have made reference, the Court below has also referred to the evidence tendered by the other witnesses and the documents which had been produced, to come to the conclusion that the charge alleged against the appellant had been proved beyond doubt.

11. The learned counsel for the appellant while seeking to contend that the Court below was not justified, has at the outset referred to the document marked as Ex. P17 to contend that the story of the prosecution cannot be accepted, for the reason that there could not have been a fight with regard to release of water to the land belonging to the deceased, since from the sketch it is seen that the said canal would take the water to all the lands and thereafter the water would have to be taken to each of their lands. Having perused the document at Ex. P17, we are unable to accept the contention of the learned counsel for the appellant for the reason that, even though there is sub-canal, since the water is to flow from

beside the land of the appellant downwards to the land of the deceased, if the appellant were to block the canal, there would be no further flow of water. Even otherwise, from the evidence of P.W. 1, PW2 and PW5, it would be clear that, even on the earlier occasions, there were certain disputes with regard to the manner of enjoyment of the land, where the appellant had alleged that the deceased had encroached upon the portion of his land when the deceased had undertaken certain leveling work on his land.

12. Therefore, these aspects would indicate that there were disputes between the appellant and the deceased with regard to the manner of enjoyment of land and if this aspect of the matter is kept in view and the case as put forth by the prosecution that, on the fateful day, the issue that had arisen which led to the assault, was the release of water, it can be accepted from the evidence which is available on record.

13. Hence, in a circumstance where the evidence tendered is sufficient to come to such a conclusion, no other conclusion is possible. Having arrived at the above conclusion, while considering the conviction and the sentence thereof, the question that would also arise is that, in the instant case, the manner in which the assault had taken place, which though led to the death, whether it would constitute an offence of murder under Section 302 of the IPC.

14. As noticed, the assault had taken place in a circumstance when there was certain issue with regard to the release of water to the land of the deceased. It is in that circumstance, the attack had taken place, though ultimately it led to death. Therefore, on the face of it, it would indicate that it was not a premeditated attack on the deceased by the appellant to commit murder. If this aspect of the matter is kept in view, it would fall under Exception 4 to Section 300 of the IPC. However, taking note of the manner in which the appellant had attacked the deceased with a spade by hitting the deceased on his head and other vital parts of the body and threatened the wife of the deceased that she would also be killed if she intervenes, would indicate that the appellant had the knowledge that such attack would cause death. Therefore, we are of the opinion that the death caused amounts to culpable homicide and not murder to be punishable under Section 302 of the IPC. On the other hand, the appellant is liable to be punished as provided under Part-I of Section 304 of the IPC.

15. In view of the said conclusion, the sentence as awarded by the Court below for that offence will have to be modified insofar as the award of rigorous imprisonment is concerned. Hence in modification of the rigorous imprisonment for life, we hereby sentence the appellant to undergo rigorous imprisonment for a period of ten years and the fine as imposed at Rs. 30,000/- shall be payable in the same manner as has been indicated by the Court below. In default of payment of fine, the accused shall undergo rigorous imprisonment for one year. The sentence imposed for the offence punishable under Section 506 and 504 of the IPC by the Court below is maintained. All the substantial sentences shall run concurrently and the appellant is entitled to set off for the period of imprisonment

he has already undergone.

Appeal is allowed in part in the above terms.