

State of Karnataka

Vs

Siddappa Basanagouda Patil and Another

Criminal Appeal No. 453 of 1988

(S. Ratnavel Pandian, Smt. M. S. Fathima Beevi, K. Jayachandra Reddy JJ)

15.03.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. This appeal by the State of Karnataka is directed against the judgment dated July 27, 1987 rendered in Criminal Appeal No. 55 of 1986 by the High Court of Karnataka by altering the conviction recorded by the trial court under Section 302 IPC into one under Section 304 Part II IPC and the sentence of imprisonment for life to imprisonment for a period of 4 years. The gravamen of the charges against the respondent may be stated as follows :

Respondent 1 is the father of respondent 2. Balawwa (witness No. 15 in the charge-sheet) is the wife of the respondent 1 and mother of respondent 2. They were all agricultural coolies. The deceased lived in the same village cultivating his own land. According to the prosecution, the deceased had surplus manure of about four cartloads of cow dung in his manure pit. Respondent 1 purchased the said manure and paid a sum of Rs. 40 towards the part of the price of the manure promising to pay the remaining amount, removed two cartloads of the manure. But later on, respondent 1 refused to carry the remaining manure stating that it was not of good quality. The deceased was insisting upon respondent 1 to remove the remaining manure and pay him the balance amount as promised. Respondent 1 had refused to do so. About three days prior to the incident in question, when respondent 1 and his wife Balawwa were in the bazar, the deceased met respondent 1 and insisted him to remove the manure and pay the balance amount. This resulted in a verbal altercation between the deceased and respondent 1. During the altercation, Balawwa is stated to pull out the dhoti of the deceased. The deceased got enraged and abused Balawwa.

2. On August 14, 1984 i. e., the day of occurrence, PW 2, the nephew of the deceased wanted to go to Sambra, where he was working. PW 1, the son of the deceased and others went along with him up to the bus stand. It was then 6.00 p. m. While PWs 1, 2 and others were chitchatting sitting on a culvert near the bus stand, the deceased was found going towards the land of Kulkarni (PW 7). Within a short time, Balawwa came hurriedly from her house and told PWs 1, 2 and others that the deceased was quarrelling with her husband and son. So saying, she went back. Immediately, PWs 1, 2 and others followed Balawwa and on reaching near the house of the respondents found respondent 1 and 2 attacking the deceased by sickle and knife respectively. On seeing the witnesses, both the respondents went inside their house carrying their respective weapons. PW 1 held the victim and tried to take him towards his house but the deceased on account of the injuries sustained by him, was unable to move and fell flat on the road, and breathed his last. Thereafter, PW 1 went to the

post office and informed the police about the incident over the phone. Then he went to the police station where he gave a written complaint Ex. P-1 to PW 14, the Sub-Inspector of Police. On the basis of the said report, Pw 14 registered a case in Crime No. 170 of 1980. PW 14 sent the first information report Ex. P-19 to the court and took up investigation. Further investigation was taken up by PW 15, the CPI of Bailhongal Circle. After holding the inquest over the dead body of the deceased, PW 15 sent the dead body to the Medical Officer for post mortem examination with his report Ex. P-3. PW 4, the Medical Officer who conducted the autopsy on the dead body of the deceased has noted as many as 11 incised wounds which he has described in the post mortem certificate Ex. P-4. In the opinion of PW 4 the external injuries Nos. 1 to 7 might have been caused with a sickle (MO 1) and the rest by a knife (MO 2) and that the external injury No. 5 which is described as an incised wound across the abdomen starting from right hypochondriac area to left, was the fatal one.

3. On August 15, 1984, at about 4.30 p. m., PW 15 arrested respondents 1 and 2 and seized their apparels in the presence of panchas. After completing the investigation, PW 15 laid the charge-sheet. The defence of the respondents is one of denial. The trial Judge found both the respondents guilty and convicted them under Section 302 IPC and sentenced each of them to imprisonment for life.

4. Aggrieved by the judgment of the trial court, both the respondents preferred an appeal before the High Court which placing reliance on the testimony of PW 1 and 6 and also on the evidence of PW 2, whose evidence has been discarded by the trial court, concluded thus :

"We see no reason to doubt that it is the accused, who were responsible for inflicting the injuries on the deceased."

5. Coming to the nature of the offence committed, the High Court taking into consideration of the facts namely : (1) the deceased had gone to the house of the accused and picked up a quarrel, (2) the blood stains were found on the floor inside the house as well as on the front door of the house indicating that the deceased had trespassed into the house of the respondents, (3) the incident had been preceded by a quarrel, (4) the genesis and origin of the incident are suppressed, and (5) the attack was not a calculated one, held thus :

"Of course having regard to the nature of the weapon used and indiscriminate manner, of assault they can be attributed with the knowledge that the accused were thereby likely to cause death of the deceased and the offence made out would be one punishable under Section 304 Part II IPC having regard to the fact that the deceased had invited this trouble, and he himself had gone up to the house of the accused, and picked up quarrel, the ends of justice would be met if the accused are sentenced to imprisonment for period of 4 years."

6. On the basis of the above finding, the High Court altered the conviction of both the respondents and the sentence therefore as stated in the earlier part of this judgment.

7. On being dissatisfied with the alteration of the conviction, the State has presented this appeal.

8. The learned counsel appearing on behalf of the State, Mr. M. S. Nasragi assailed the reasoning of the High Court stating that the offence committed by the appellants would clearly fall within the mischief of Section 300 IPC punishable under Section 302 IPC, that the appellants are entitled to

any of the exceptions enumerated under Section 300 IPC, and that the nature of the weapons used and the nature of the injuries caused would clearly indicate that the appellants attacked the deceased with intention of causing death of the deceased. According to him, the finding of the High Court that the prosecution has suppressed the genesis and origin of the occurrence and that there was a quarrel preceding the incident are not supported by acceptable evidence.

9. The fact that the deceased died on account of the injuries sustained by him at the hands of the respondents on August 14, 1984 at about 6.00 p. m. cannot be disputed. The sole question that arises for our consideration is whether the alteration of the conviction by the High Court warrants interference.

10. It is in the evidence of PW 1, who is none other than the son of the deceased that the house of the respondents is at a distance of about half a furlong from the house of the deceased and that about three days prior to the incident, there was a wordly altercation between his father and respondent 1 in the bazar during which Balawwa pulled out the dhoti of the deceased and the deceased abused respondent 1 and Balawwa. His further evidence is that on the date of the occurrence at about 6.00 p. m. while he along with PW 2 and others were conversing, sitting on a culvert near the bus stand, he saw his father going towards the agricultural land of PW 7 situated behind the house of the respondents and about 2 or 3 minutes thereafter respondent 1's wife, Balawwa came running to them from her house and informed that the deceased was quarrelling with her from her husband and son (respondents) in connection with the transaction of the purchase of cow dung manure and that after saying so, Balawwa went towards the village, followed by her, PW 2 and others and that on reaching the house of the respondents, he saw his father being attacked by respondent 1 with a sickle and respondent 2 with a knife and that both the respondents on seeing the witnesses went inside their house carrying their respective weapons and closed the door. He continued to state that the deceased had sustained number of cut injuries on his person, that his intestines had protruded out, that he fell down on the road, and within a few minutes, the deceased breathed his last. In the cross-examination, he has admitted that his father was a good wrestler and in fact, he had earned the title 'Karnataka Hooli' in wrestling. PW 2 who corroborates the testimony of PW 1 is the son of the younger brother of the deceased. PW 6 has deposed that at about 6.00 p. m. on hearing some verbal altercation, he proceeded to the house of the respondents and on reaching there he witnessed the occurrence. This witness admits that the deceased there he witnessed the occurrence. This witness admits that the deceased was distantly related to him and he was a famous wrestler. PW 15, the Investigating Officer testifies to the fact that he went to the scene of the occurrence which was near the front door of the house of respondents and found blood stains and that after entering the house of respondents and found blood stains and that after entering the house by breaking open house as well as on the front door, and also on the threshold. According to him, there was splash of blood both inside and outside the scene house. This piece of evidence of the Investigating Officer discloses that the deceased had trespassed into the house of the respondents, received the injuries, then came to the road with bleeding injuries and fell down. As to how the occurrence originated there is no clear evidence. But we have to infer from the circumstances that the deceased had not received all the injuries while he was on the road as spoken to by PWs 1, 2 and 6 but even earlier to the arrival of the witnesses to the scene when the deceased trespassed into the house of the respondent and picked up quarrel with them. Hence, we are in full agreement with the view expressed by the High Court that there is suppression of genesis and origin of the occurrence. There is no clear evidence as to what was the justifiable cause for the deceased who was a well known wrestler, to enter the house of the respondents, and to pick up a quarrel. As we have pointed out earlier, the irresistible inference is that the deceased should have fallen victim at the hands of the respondents only after he entered the house of the respondents.

11. Now let us examine the nature of the injuries sustained by the deceased.

12. The Medical Officer has not given the depth of all the injuries except injury No. 5 in the post-mortem certificate. None of the injuries seem to have been deep cut injuries. In the absence of evidence in regard to the depth of the injuries and of the opinion of the Medical Officer with regard to the nature of the injuries except injury No. 5 we have to infer that the injuries Nos. 1 to 4 and 6 to 11 were not serious in nature. Evidently, the High Court taking into consideration the peculiar facts and the exceptional and special circumstances and the case coupled with the nature of injuries, as could be inferred from the post-mortem certificate, has concluded that the offence is not one of murder but of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. As the High Court has drawn its conclusions only on certain facts and telling circumstances, we are of the view that it is not a fit case for interference under Article 136 of the Constitution of India.

13. In the result, the appeal is dismissed.

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