

Babu Poojari

Vs

State of Karnataka

Criminal Appeal No. 389 of 1981

(K. Jayachandra Reddy, G. N. Ray JJ)

11.08.1992

ORDER

1. The sole appellant before us is convicted under Section 302 IPC and sentenced to imprisonment for life. The prosecution case is that on April 18, 1978 at about 9 p. m. the accused entered the hotel of PW 1 and made some 'ghalata'. The deceased obviously asked him not to make 'ghalata' and a quarrel ensued. Thereupon, the accused, who was armed with a knife stabbed the deceased several time and the deceased raised hue and cry. PW 1 witnessed the occurrence. PWs 2 and 3, who were also working in the hotel saw the occurrence. The information was sent to the police and PW 1 gave a complaint on the basis of which the FIR was registered. The ASI reached the scene of occurrence and found the deceased dead. An inquest was held and the dead body was sent for post-mortem. Doctor found seven incised wounds. The doctor opined that Injury No. 2 an oblique incised wound in front of left shoulder passing through the axillary wall to the armpit was the fatal injury and was sufficient in the ordinary course of nature to cause death. The accused pleaded not guilty and set up a defence that he was falsely implicated because of the enmity at the instance of PW 17.

2. PWs 1 to 3 participated in identification parade and identified the accused as the assailant. This part of the evidence has been believed by both the courts. We have also perused the evidence of PWs 1 to 3 and the record pertaining to the identification proceedings. We are satisfied that the three eyewitnesses, who have been believed by both the courts below gave cogent evidence.

3. Learned counsel for the appellant, however, submits that in the FIR it is mentioned that the name of the assailant was not known, but his name is mentioned in the inquest report which was held next day at 10.30 a. m., and according to the learned counsel there is no explanation as to how the name of the accused could be mentioned when he was not even arrested by then and when PWs 1 to 3 did not know him previously. The Inspector, who held the inquest has explained by saying that on the material gathered from the statements of some of the persons who were examined, he suspected that the accused was the person who was responsible and it was accordingly mentioned. It must be pointed that inquest report is not evidence by itself and at any rate, an explanation has been put forward in this regard. But the real question is whether PWs 1 to 3, who are independent witnesses, had any reason to implicate the accused falsely. From the beginning their stand was that they did not know the accused.

4. However, the eyewitnesses have identified the accused in the test identification parade and we do not find any infirmity or suspicious feature regarding their identification of the accused. Both the courts below have in detailed judgments elaborately considered the evidence of these eyewitnesses and have given good reasons for accepting their evidence.

5. We see absolutely no merit in this appeal. The appeal is dismissed.

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