

State of Karnataka

Vs

Diwakara Bhat

Criminal Appeal No. 29 of 1989

(M. K. Mukherjee, Faizan Uddin JJ)

23.09.1996

JUDGMENT

FAIZAN UDDIN, J.

1. This appeal by the State has been directed against the reversing judgment of the High Court of Karnataka in Criminal Appeal No. 660 of 1986 setting aside the conviction of the respondent recorded by the Sessions Judge, Kannada, Bangalore in Sessions Case No. 65 of 1985 for which the respondent was sentenced to pay fine of Rs 5000, in default to suffer simple imprisonment for one year. It was directed by the learned Sessions Judge that the entire fine amount, if realised, shall be paid to Thara Kini, PW 1, widow of the deceased N.B. Kini.

2. The deceased N.B. Kini was working as a Manager in Navabharath Printing Press at Mangalore. The deceased along with his wife, Thara PW 1 and son were living in a rented premises belonging to the respondent since about more than decade from the date of occurrence. A part of the house was occupied by the respondent and his father while the other part of the said house was in occupation of the deceased and his family there being a common wall between the two tenants. There were four steps leading from the tenement in occupation of the deceased to the courtyard. Those steps were also common to both the tenements. The house of witness Prabhakar, PW 2 was on the opposite side of the house of the deceased beyond the road while the house of Nagvekar PW 3 was on the right side of the tenement occupied by the deceased. According to the prosecution on 3-7-1985 the deceased brought a T.V. antenna and pipes which were kept in the Angala which has a concrete flooring. At about 2.15 p.m. the deceased and his wife were sitting in the verandah after taking their lunch. It is said that at that point of time the respondent opened the door and entered into the verandah and started talking to the deceased in raised voice saying with whose permission he had brought that antenna. The respondent is alleged to have abused the deceased and told him that he would see as to how he fixes the antenna. The deceased, however, asked the respondent not to get agitated and requested him to sit so that they could talk over the matter calmly. But the respondent went away with the said threat. Shortly thereafter when the deceased was going to his office and asked his wife to close the door and while he was so standing on the door itself on the steps, the appellant suddenly came from his house and again objected as to how he was going to fix the antenna and so saying he pushed the deceased with great force on account of which the deceased fell down on the Angala with his face upwards. His wife Tara, PW 1, raised a cry attracting the attention of the neighbours Prabhakar, PW 2 and Nagwekar, PW 3 and others who came to the spot. Thereafter Pw 1 as well as PWs 2 and 3 lifted injured Kini and made him to lie on the cot inside the house. Suresh, the son of the deceased, was informed on phone who rushed back home from his college. Suresh and other witnesses took the injured Kini to the nearest Vinaya Clinic for medical aid but the doctor declined to provide any medical aid and advised them to take him to Government

Hospital as it was a case of assault. Injured Kini was, therefore, immediately removed to the Government Hospital where he was admitted and given treatment. Thara PW 1 lodged the report. Injured Kini, however, died in the hospital at about 2.15 p.m. on 4-7-1987.

3. The respondent was charged for an offence under Sections 448 and 304 of the Penal Code. The respondent pleaded not guilty to the charge. Dr Arun Kumar Rao, PW 5 who first attended the victim in the Government Hospital found the following injuries on his person :

1. Haematoma 3" x 3" on the right side of forehead.
2. Haematoma 2" x 2" on the occipito-parietal area in the middle.
3. Abrasion 1/3" x 1/3" occipito-parietal region close to Injury 2.
4. Abrasion 1/3" x 1/3" on the left lateral malleolus.

In the opinion of Dr Rao, PW 5 the injuries were caused by a fall on account of being pushed. After the death of the victim Dr Prakash, PW 6 performed an autopsy over his dead body on 4-7-1985 and found the following injuries :

1. Abrasion over mid occipital region.
2. Bruises over right nipple areola and around.
3. Bruises over the left areola.
4. A horseshoe shaped operation scare over the right part of skull starting from right bone to occipital bone, through which right hemisphere of brain has come out.
5. A linear fissure fracture on the skull to the right of midline from frontal bone to parietal bone to occipital bone measuring about 10 inches is seen.
6. Defect in skull due to operation in right temporo-parietal region measuring about 6 inches.
7. Extensive contusions of the brain.
8. Right occipital and parietal lobes protrude through the skull.

In the opinion of Dr Prakash, PW 6 the death was due to haemorrhage as a result of the injuries. On evaluation of the evidence on record the learned Sessions Judge came to the conclusion that the respondent was the author of the injuries found on the person of the deceased but took the view that from the facts and circumstances of the case it cannot be said that the respondent intended to commit the murder of the victim. He took the view that the incident took place in a sudden quarrel during the course of which the respondent pushed Kini without any intention to commit his murder or with the knowledge to cause such bodily injury as was likely to cause his death. The learned Sessions Judge, therefore, took the view that the respondent was liable only for causing grievous hurt punishable under Section 325 and, therefore, convicted and sentenced him as said earlier. The High Court, however, rejected, reversed the findings, set aside the conviction and sentence awarded to the respondent and recorded the impugned judgment of acquittal against which this appeal has

been directed.

4. The learned counsel for the appellant-State contended that the evidence of Thara, PW 1, the wife of the deceased was trustworthy which was further corroborated by the report lodged by her as well as the medical evidence and to some extent by the evidence of the hostile witnesses PWs 2 and 3 and, therefore, the High Court was not justified in interfering with the well-reasoned judgment of the learned Sessions Judge. With the assistance of the learned counsel for parties we have gone through the relevant evidence as well as the judgments of the two courts below and find much substance in the submissions made by the learned counsel for the appellant. It is true that PWs 2 and 3 who are the neighbours of the respondent had turned hostile but they had supported the prosecution story to some extent. Both these witnesses have deposed about the exchange of hot words between the respondent and the deceased which took place shortly before the occurrence. They also deposed that after the incident they saw injured Kini lying unconscious in the Angala. Thara, PW 1 had narrated the entire incident from the beginning to the end. She clearly deposed that when her husband, the deceased Kini, was about to go to the office and was standing on the steps the respondent came, objected to the installation of antenna and pushed the deceased who fell in the Angala with his face upwards. There is ample evidence to show that the said Angala is a rough and hard surface with a concrete flooring. The evidence of Thara, PW 1 is further supported by the medical evidence. There is, therefore, nothing on record to discredit the testimony of Thara PW 1 who is corroborated by the medical evidence and other material on record as discussed above. But the High Court with the aid of ifs and buts found fault with the prosecution evidence and on the basis of certain conjectures and surmises rejected the evidence of PW 1 for which we find no justification in view of the positive statement that she made.

5. The High Court also took the view that the incident had occurred at about 2.15 p.m. while the report of the occurrence was made at about 5.10 p.m. and that this delay raised a very serious suspicion about the manner in which the incident had occurred. But the fact cannot be lost sight of that the injured Kini had sustained head injury and was unconscious. The first and foremost concern of PW 1 and her son would be to see that the victim is proved with immediate medical aid without any further risk to his life. They, therefore, took him immediately to a nearby private clinic. But the private doctor declined to attend to the victim and directed them to go to the Government Hospital as it was the case of assault. The wife and son of the victim, therefore, had to take the victim to the Government Hospital where he was admitted and given medical aid. In such a situation the report was slightly delayed for which there is plausible reason. In these facts and circumstances the question of any suspicion or doubt as to the manner in which the occurrence took place does not arise. The High Court was not justified in drawing an adverse inference on this account.

6. Consequently, the appeal succeeds and is hereby allowed. The impugned judgment of the High Court is set aside and that of the trial court is restored. The respondent shall deposit the amount of fine as directed by the trial court within a period of three months and in the event of default the respondent shall be taken into custody to serve out the simple imprisonment for one year as directed by the trial court. The amount of fine if paid by the respondent shall be paid to Thara Kini, PW 1, widow of the deceased.