SUPREME COURT OF INDIA

R. Prakash

Vs.

State of Karnataka

Crl.A.No.1179 of 1997

(Doraiswamy Raju and Arijit Pasayat JJ.)

11.02.2004

JUDGMENT

Arijit Pasayat, J.

1. The High Court of Karnataka found the appellant guilty of offences punishable under Section 307 of the *Indian Penal Code, 1860* (in short 'the IPC') and sentenced him to undergo rigorous imprisonment for two years, by upsetting the order of acquittal recorded by the Trial Court. Three accused persons were acquitted, but the High Court did not interfere with the order of the acquittal of two other persons (A-2 and A-3), who are brothers of the appellant and faced trial with him.

2. Factual scenario giving rise to the present appeal is as follows:

> "On 1.5.90 between 11.00 to 11.30 a.m. PWs. 1, 3, and 6 to 9 had gone to a hotel to take tea. While they were taking tea, appellant (A-1) came there. The sister of the three accused persons was supposed to be the mistress of one Narasimha @ Dasi. When A-1 reached near PW-3 and the others, he was questioned by PW3 as to why he and his brothers had assaulted Narasimha. There was verbal exchange between P-3 and A-1. A-1 left the place. After taking tea. PW-3 and others went towards Vishvas Cut-piece Stores. Suddenly, three accused persons reached there, and quarreled with PW-3 and stated that it was none of his business, if Narasimha was assaulted. A-2 and A-3 held shirt collar of PW-3 and in turn PW-3 also held his collar. While pulling and pushing was going on, the appellant went out and brought a weapon (Machu) and assaulted PW-3 on his dead, left hand and thigh. On receiving the injuries, PW-3 fell down and he was taken to the hospital where he was treated by doctor (PW-10). Oral complaint was lodged by Krishna (PW-1) which was reduced to writing by the officer-in-charge (PW-11). He visited the place of occurrence, and started investigation. On the next day, A-1 gave information about the concealment of weapon by him he took PW-11 and other witnesses to the place where weapon of assault (Machu) was concealed in a pushcart. The same was seized. After completion

of investigation charge sheet was placed. Accused persons pleaded innocence and faced trial."

3. The Trial Court did not believe the evidence of PWs1, 3 and 6 to 9 on the ground that being friendly with PW-3 were interested witnesses. It is noted that PWs 1 and 8 resiled from their statements made during investigation partially. Holding that the evidence of PW-3 was not very cogent and credible, the order of acquittal, as noted above, was recorded. The State of Karnataka filed an appeal before the High Court which by the impugned judgment confirmed the acquittal of A-2 and A-3 but held acquittal of A-1 was uncalled for, convicted him for the offences punishable under Section 307 IPC, and sentenced him to undergo imprisonment for two years.

4. Learned counsel for the appellant submitted that the High Court ought not to have interfered with the well-reasoned order of the Trial Court. Cogent reasons were given to discard the evidence of the injured witness and PWs 1, and 6 to 9 who claimed to be the eyewitnesses. Significantly, PWs 1 and 8 did not support the prosecution version. That being so, the judgment of the High Court is vulnerable. The genesis of the controversy has not been established in view of the admission of PW-3 that he had not met Narasimha, and therefore the question of his asking A-1 about the differences between the accused and Narasimha is highly improbable. It is also submitted that offence under Section 307 IPC is not made out.

5. Per contra, learned counsel for the respondent-State submitted that the High Court noticed the infirmities in the conclusions arrived at by the Trial Court. It noticed that the cogent evidence of the injured witness and the eyewitnesses was discarded on unsustainable grounds, eyewitnesses was discarded on unsustainable grounds. Therefore, there is no scope for interference with the impugned judgment.

6**.** It is to be noted that the Trial Court referred to the evidence of the eyewitnesses, and observed that only on the ground that the eyewitnesses were friendly with PW-3, their evidence was not to be discarded. It is strange that the Trial Court having observed that their evidence was not to be discarded only on the ground of friendship, did so without indicating any plausible reason as to how their evidence suffers from any infirmity otherwise. It is a fairly well settled position in law that the evidence of a witness who is related to either the deceased or the injured is not to be automatically rejected, notwithstanding the fact that it is cogent, credible and trustworthy. The reasons indicated by the Trial Court to discard the evidence have no acceptable or supportable basis. So far as genesis of controversy is concerned, it is to be noted that the Trial Court itself with reference to the evidence came to hold that there was exchange of hot words between accused and PW-3. The Trial Court has even gone to the extent that there was no ostensible reason for PW-3 to abuse A-1 during the course of such occurrence. Therefore, the plea that if genesis of occurrence has not been established is clearly without substance, and High Court has rightly not accepted it. The Trial Court though referred to the evidence of PW-3 the injured witness did not indicate any reason as to why his evidence was not worthy of credence. Mere cryptic observation of general nature that it appears to be suspicious is without any material to support the conclusion and is indefensible.

7. The High Court has rightly acted on the evidence of PW-3 and other eyewitnesses. We find no infirmity in their evidence. Even though PW-1 and 8 had resiled from the statements made during investigation to some extent, their evidence does not get wiped out in toto, as the evidence of such witnesses does not get washed off.

8. Therefore, the only question which needs to be dealt with relates to the applicability of Section 307 IPC. The evidence of the eyewitnesses goes to show that they tried to intervene and save PW-3 from being assaulted by the appellant A-1, but he continued to assault PW-3. The first blow was on a vital part that is on the temporal region. Even though other blows were on non-vital parts that does not take away the rigor of Section 307 IPC. It is to be noted that in spite of interference by five persons, appellant continued to assault PW-3. This clearly indicates the intention of the appellant A-1.

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overtact in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.

10. The above position was highlighted in State of Maharashtra vs. Balram Bama Patil and others) and in (Criminal appeal No. 1034 of 1997) decided on 4.2.2004).

11. As rightly held by the High Court, evidence on record clearly establishes commission of offence punishable under Section 307 IPC. The sentence of two years as awarded cannot be called to be in any manner higher or disproportionate. The appeal is dismissed. The appellant who is on bail is directed to surrender to custody to serve remainder of his sentence.