State of Karnataka Vs. Veeresh Alias Bende and Others

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Court : Karnataka

Decided On : Jan-02-2015

Judge : Mohan M. Shantanagoudar &Amp; P.S. Dinesh Kumar

Appeal No. : Criminal Appeal No. 691 of 2010 connected with Criminal Appeal No. 371 of 2011

Appellant : State of Karnataka

Respondent : Veeresh Alias Bende and Others

Judgement :

Mohan M. Shantanagoudar, J.

1. Criminal Appeal No. 691 of 2010 is filed by the State questioning the judgment and order of acquittal dated 30-1-2010 passed by the Fast Track Court-I, Bengaluru City in S.C. No. 330 of 2004. Criminal Appeal No. 371 of 2011 is filed by the original complainant questioning the very judgment and order of acquittal.

13 accused were charged and tried for the offences under Sections 147, 148, 323, 324 and 302 read with Section 149 of Indian Penal Code, 1860.

2. Case of the prosecution in brief is that the deceased Manjunath had got verbal altercation with accused 5-Jagadeesha in a marriage choultry at about 9 p.m. on 11-6-2003; accused 3 had puffed cigarette against the face of the deceased

Manjunath and in that regard altercation took place and ultimately due to intervention of friends, there was no quarrel between the two; with the said background, all the accused who are stated to be friends of accused 5 grouped together, armed themselves into an unlawful assembly and came near a godown wherein the deceased was talking with P.W.2-Sabut Peter; accused 1 and 2 assaulted the deceased Manjunath with beer bottles and thereafter with clubs; all the other accused also fisted and kicked the deceased Manjunath, consequent upon which he fell to the ground. The incident is witnessed by P.Ws. 1 to 5, 8 and 9; two of the eye-witnesses viz., P.Ws. 1 and 2 shifted the deceased Manjunath in an autorickshaw for treatment to the hospital; firstly, the deceased was taken to Bangalore Baptist Hospital wherein he was given first aid treatment; thereafter he was taken to M.S. Ramaiah Hospital and subsequently to Mallige Nursing Home, Bangalore; the deceased breathed his last on 14-6-2003 at 7 a.m. while under treatment at Mallige Hospital. It is relevant to note here itself that P.W.2 being the friend of the deceased Manjunath and talking with the deceased at the relevant time also allegedly sustained injuries on his head. P.W.2 also allegedly took treatment in the M.S. Ramaiah Hospital. However neither the wound certificate is forthcoming nor the doctor who treated the victim- P.W.2 is examined.

P.W.1 being the relative of the deceased and whose house is situated in the nearby area, came to the spot after hearing the cries and saw the incident; he along with P.W.2 shifted the deceased to the hospital in an autorickshaw; the Police came to M.S. Ramaiah Hospital, Bangalore and recorded the statement of P.W.1 at 21.45 hours as per Ex. P. 1; based on which Crime No. 205 of 2003 is registered in Hebbal Police Station by the Investigation Officer-P.W. 21. The complaint was initially lodged against five named persons (accused 1 to 5) and others. Charge-sheet came to be filed against 13 persons.

3. During the course of trial, accused 8 expired and therefore case against him abated and trial went on against other 12 accused.

4. In order to prove its case, the prosecution in all examined 22 witnesses and got marked 26 exhibits and 7 material objects. On behalf of the defence, one exhibit is got marked from the statement of P.W. 4. The Trial Court on evaluation of the

material on record acquitted all the accused.

5. Sri Venkatesh, learned Additional State Public Prosecutor taking us through the material on record and the judgment of the Court below submitted that the entire approach of the Trial Court while deciding the matter is erroneous; the appreciation of evidence by the Trial Court was improper and incorrect; the Trial Court has given more weightage to the minor variations in the evidence of the prosecution witnesses; based on certain minor variations which are against the prosecution, the entire evidence of the prosecution witnesses, more particularly the versions of the eye-witnesses are disbelieved by the Court below. He further submits that the Trial Court ought to have evaluated the material on record in its entirety and not in piecemeal. Finally, he fairly submits that the prosecution may have case against accused 1 and 2, if not against accused 3 to 5.

Sri Raghavendra, Advocate appearing for Sri C.V. Nagesh, learned Advocate for the original complainant/appellant in Criminal Appeal No. 371 of 2011 also argued in support of the case of the prosecution. He supported the argument of Sri Venkatesh, learned Additional State Public Prosecutor by submitting that the prosecution has made out case against accused 1 and 2 for the offence under Section 302 of IPC inasmuch as both the accused have assaulted the deceased on the head with the help of beer bottles; the very fact that the accused have chosen the vital portion of body of the deceased for committing the crime itself would clearly reveal the intention on the part of accused 1 and 2 to commit the murder of the deceased.

Per contra, Sri Dinesh Kumar, Advocate appearing for Sri. R. B. Deshpande, learned Advocate for the accused argued in support of the judgment of the Court below. He submits that the Trial Court is justified in acquitting all the accused including accused 1 and 2 inasmuch as the evidence of the eye-witnesses is shaky and unbelievable; P.Ws. 1, 2, 3, 4, 5, 8 and 9 who are projected as eye-witnesses are not real eye-witnesses, but have come to the spot subsequent to the incident in question; the so-called eye-witness-P.W.2 who is stated to be injured cannot be treated as injured eye-witness inasmuch as he has not sustained any injury; his presence is not spoken to by P.W.s. 3 to 5, 8 and 9 at all.

On these among other grounds, he argued for confirmation of the judgment of the Court below.

6. P.W. 1 is the eye-witness to the incident in question. He has lodged the first information as per Ex. P.1 before the Inspector of Police of Hebbal Police Station, based on which Crime No. 205 of 2003 is registered in the said Police Station. P.W. 1 is the relative of the deceased. He took the victim to the hospital in an autorickshaw.

P.Ws. 2, 3, 4 and 5 are also the eye-witnesses. Out of them, P.W. 2 claims to be the injured eye-witness. However no supporting material or document is produced to show that P.W. 2 has sustained injury to any portion of his body.

P.W. 6 is the witness for the incident which occurred one day prior to the incident in question. Virtually, he has deposed about motive for the incident in question.

P.W. 7 is the witness for the scene of offence panchanama-Ex. P. 2 under which beer bottle pieces and clubs were seized.

P.Ws. 8 and 9 are also eye-witnesses to the incident in question.

P.W. 10 is a witness for the inquest panchanama-Ex. P. 5 The said panchanama was drawn at Victoria Hospital, Bangalore.

P.W. 11 is a witness for seizure of club (M.O. 6) from accused 5; the panchanama is at Ex. P. 6.

P.W. 12 is a Police Constable who took the articles to Forensic Science Laboratory for examination.

P.W. 13 is the Engineer who drew the sketch of scene of offence as per Ex.P. 9.

P.W. 14 is the doctor who conducted the post-mortem examination on the dead body of deceased Manjunath and gave his report as per Ex. P. 12.

P.W. 15 is the doctor working in the Bangalore Baptist Hospital. He examined the deceased Manjunath and gave first aid and thereafter referred the patient to M.S.

Ramaiah Hospital since neuro surgery was not available in the Baptist Hospital during the relevant time.

P.W. 16 is the Head Constable who arrested accused 1 and 5.

P.W. 17 is the Police Constable who arrested accused 7.

P.W. 18 is another Police Constable who carried the first information report to the Court. It is relevant to note that the first information report reached the Court at 11.30 a.m. on 13-6-2003 i.e., with a delay of about 12 hours from the date of registration of the complaint.

P.W. 19 is the Police Constable who carried the dead body for post-mortem examination.

P.W. 20 is the officer of Mallige Nursing Home. He issued the death memo as per Ex. P. 19 consequent upon the death of the deceased Manjunath and he in turn sent the same to Hebbal Police Station.

P.W. 21 is the Investigating Officer who completed the investigation and laid the charge-sheet.

P.W. 22 is the officer of the Forensic Science Laboratory.

7. It is not disputed that the death of Manjunath is homicidal in nature. The post-mortem report-Ex. P.12 clearly depicts that the death is due to come as a result of head injury sustained. The doctor has also mentioned in the post-mortem report that all the injuries are ante-mortem in nature. The victim has sustained as many as 10 injuries and the first injury is on the vital portion of the body i.e., head. Even on reconsidering the material on record, we find that the death is homicidal in nature inasmuch as the post-mortem report is supported by the version of the doctor-P.W. 14 who conducted the post-mortem examination.

8. The case of the prosecution fully rests on the ocular testimony of P.Ws. 1 to 5, 8 and 9. We have meticulously perused the versions of the eye-witnesses.

9. P.W. 1 is the relative of the deceased Manjunath. He has deposed to the effect that at about 8 p.m. on 12-6-2003, when he was standing in front of his house talking with his father, he heard hue and cry from about 200 feet from the house; immediately he rushed to the spot and saw the incident of assault on Manjunath by the accused; on seeing him, all the accused ran away from the scene; he, with the help of P.W. 2 shifted the victim Manjunath in the autorickshaw to the hospital; he has lodged the first information as per Ex. P. 1 in the Hebbal Police Station immediately after the incident i.e., at about 9.45 p.m.

10. In the matter on hand, the first information is lodged without any delay. The first priority for the complainant/eve-witness was to save the life of the victim. Therefore he immediately took the victim to the Bangalore Baptist Hospital at the first instance and thereafter to M.S. Ramaiah Hospital. In the mean while, the authorities of the Baptist Hospital have informed the police about the medicolegal case. Therefore the Police rushed to the hospital (M.S. Ramaiah Hospital) and recorded the statement of P.W. 1 as per Ex. P. 1. Ex. P. 1 contains the names of five accused i.e., accused 1 to 5. However it is stated therein that other persons also assaulted the deceased. We find that the complaint is lodged immediately after the incident without any premeditation. There was no opportunity for P.W. 1 to concoct the false story. Crime is registered based on Ex. P. 1 at 9.45 p.m. on 12-6-2003. It is no doubt true that the first information report has reached the Magistrate with the delay of about 12 hours from the time of registration of the complaint. However the contents of the first information are not changed during the interregnum. Even the first information report as sent to the Court reveals the names of accused 1 to 5 specifically. The first information report which is lodged instantaneously may have to be given due credence looking to the other material on record. Though it names accused 1 to 5 as the persons who assaulted the deceased, it specifies that accused 2 took out beer bottle and assaulted on the victim Manjunath and others have assaulted with a club on him. The complaint also depicts that P.W. 2 has sustained certain injuries. Same is the version of P.W. 1 before the Court. However there is some improvement in the version of P.W. 1 before the Court to the effect the accused 1 to 5 assaulted the deceased.

11. The version of P.W. 1 fully supported by the version of P.W. 2. Though it is the case of the prosecution that P.W. 2 has sustained injury on his head, there is no supporting material to that effect on record. Neither the wound certificate is produced nor the doctor who examined the victim nor the case sheet is brought on record in support the case of the prosecution that P.W. 2 is the inured eye-witness. Even ignoring that P.W. 2 has sustained any injury, his presence on the spot cannot be doubted. His presence is forthcoming specifically in the first information report lodged by P.W. 1 immediately after the incident. P.W. 2 has also emphatically deposed that it was accused 2 who assaulted on the head of the deceased. In the examination-in-chief itself P.W. 2 has deposed that accused 2 all of a sudden hit the victim Manjunath with the bottle on his head; accused 3 assaulted with a club on the head of P.W. 2. No overt act is specified against accused 1 or accused 4 and 5. We find that the presence of P.W. 2 cannot be doubted on the spot. He is the only person who was talking with the deceased during the relevant point of time. Therefore the version of P.W. 2, even according to the case of the prosecution, needs to be believed. If the version of P.W. 2 as found in the examination-in-chief itself is believed in toto, it makes clear that it was accused 2 who assaulted on the head of the deceased with the beer bottle and others must have been present.

Same is the version of P.Ws. 3, 4, 5, 8 and 9. P.W. 3 has deposed that accused 1, 2 and 5 had assaulted the victim Manjunath with the beer bottle. P.W. 4 on the contrary has deposed that accused 1 and 2 have assaulted the victim. Manjunath with the beer bottle on his head and the bottle broke. P.W. 5 also has deposed that accused 1 and 2 assaulted the victim Manjunath with beer bottle an the hind portion of the head; the bottle broke and thereafter accused 2 pulled out a club from his back and assaulted on the head on the hind portion. Almost similar version is forthcoming from P.W. 9.

12. On meticulous evaluation of the material on record, we find that the eye-witnesses are consistent to the effect that it is accused 1 and 2 who assaulted the deceased. Out of them, accused 2 suddenly took out a beer bottle and assaulted on the hind portion of head of the deceased Manjunath and subsequently he took out club and assaulted on the deceased. Insofar as role of other accused is

concerned, we feel unsafe to rely upon the versions of the eye-witnesses for convicting them for major offence inasmuch as the material on record is not sufficient to conclude that they participated in the assault on the deceased during relevant point of time. In our considered opinion, the Trial Court is justified in observing that the evidence as against other accused is shaky and the material on record is not sufficient to convict them.

13. The post-mortem report-Ex. P. 12 mentions that the deceased had sustained as many as 10 injuries. Out of them, nine injuries are either contusions or abrasions on various portions of the body. However injury 1 is grievous injury on the head. The doctor has opined that the death is due to coma as a result of head injury sustained. The evidence of the doctor-P.W.14 who conducted the post-mortem examination also clarifies that the single injury is sustained by the deceased on his head. Another doctor who examined the victim at Baptist Hospital also has deposed that except one injury on his head, the deceased Manjunath did not sustain any other injury. Thus it is clear that the death has occurred due to one injury which is sustained by the deceased on his head. The material on record, more particularly the evidence of P.Ws. 2 and 5 clearly reveals that it was accused 2 who assaulted on the head of the deceased. P.W. 2 has further clarified that accused 2 took out beer bottle suddenly and assaulted on the head of the deceased. Therefore, we are of the opinion that the injury sustained by the deceased on his head is caused by accused 2 only.

14. Insofar as accused 1 is concerned, he is liable to be convicted for the offence under Section 324 of IPC inasmuch as he has voluntarily caused certain injuries other than the fatal injuries found on the person of the deceased. He has also participated in the incident along with accused 2, but without common intention or common object. Therefore he is liable to be punished for the act committed by him. As aforementioned, the deceased has sustained certain simple injuries on other portions of the body other than the injury 1 (which was on the vital portion of the body). Since this Court finds that accused 1 also has participated in the crime to certain extent by inflicting certain simple injuries on the deceased, he shall be punished for the offence under Section 324 of IPC.

We find from the records that accused 1 has already undergone imprisonment for about six months, which may be the sufficient sentence that can be imposed on accused 1 for the offence under Section 324 of IPC under the facts and circumstances of the case. It is needless to observe that accused 1 is entitled to the benefit of set off under Section 428 of Criminal Procedure Code, 1973 and therefore he need not be imprisoned any further in this case.

15. There is nothing on record to show that there was prior meeting of mind among the accused. It is not the case of the prosecution that all the accused have conspired together and came to the spot with a view to take away the life of the deceased. The material on record is not sufficient to conclude that the accused had the common object to do away the life of the deceased. In this view of the matter, other accused cannot be punished by taking the help of Section 149 of IPC. Accused 2 alone is responsible for this act of causing grievous injury on the head of the deceased Manjunath.

16. As aforementioned, the evidence of P.W. 2 makes it clear that accused 2 suddenly took out a beer bottle and assaulted on the head of the deceased. There cannot be any dispute that accused 1 and 2 and others must have come to the spot in a group. But there is no material to show that they had the common object of doing away with the life of the deceased. They must have come to the spot for quarrelling with the deceased or for any other reason. At that point of time, accused 2 suddenly took out the beer bottle and assaulted on the head of the deceased. So also he assaulted the deceased with the help of club. Since the incident has taken place without premeditation and suddenly, the Advocate for the accused is justified in arguing that accused 2 may not be punished for the offence under Section 302 of IPC and the offence at the most may fall under Section 304, Part II of IPC.

However the contention that accused 2 may be punished for the offence under Section 326 of IPC cannot be accepted. The very fact that accused 2 has chosen thick beer bottle for assaulting on the vital part of the body and which has resulted in the death of the deceased would show that the offence will not fall under Section 326 of IPC. However the offence may fall under Section 304, Part II of

IPC.

17. In view of the aforementioned facts and circumstances, we are of the opinion that the Trial Court is not justified in acquitting accused 2 for the offence under Section 304, Part II of IPC. We find that the reasons assigned by the Trial Court while acquitting accused 2 cannot be sustained. The view taken by the Trial Court while acquitting accused 2 cannot be said to be plausible view under the facts and circumstances of the case. It was not open for the Trial Court to acquit the accused casually based on the minor variations in the versions of the witnesses. There are bound to be certain exaggerations or little variations in the versions of the eye-witnesses, more particularly when the versions of the eye-witnesses are recorded in the Court after some time of the incident. But the entire evidence will have to be scrutinized by the Trial Court in the proper perspective. On reconsidering the material on record, we are of the opinion that though the Trial Court is justified in acquitting other accused for the offence under Section 302 of IPC, is not justified in acquitting accused 2-Vasantha for the offence under Section 304, Part II of IPC. Accused 1 also needs to be convicted for the offence under Section 324 of IPC. Since he has already undergone imprisonment for about six months, the same may be the appropriate punishment.

18. We have heard the Sri Dinesh Kumar, learned Counsel for the accused and Sri Venkatesh, learned Additional State Public Prosecutor on the question of sentence relating to accused 2. Sri Dinesh Kumar submits that the accused 2 was 23 years old at the relevant point of time and the maximum leniency may be shown in awarding the sentence. The said submissions is opposed by the learned Additional State Public Prosecutor who submits that no leniency can be shown having regard to the fact that the crime committed by the accused is heinous in nature.

19. In view of the above, we find that it is expedient to sentence accused 2 to undergo imprisonment for six years and to pay fine of Rs. 25,000/- with default clause for the offence under Section 304, Part II of IPC.

Accordingly, the following order is made:

1. Both the appeals viz., Cri. A. Nos. 691 of 2000 and 371 of 2011 are allowed in part.

2. The judgment and order of acquittal passed by the Trial Court acquitting accused 3 to 13 in S.C. No. 330 of 2004 stands confirmed.

3. The judgment and order of acquittal passed by the Trial Court acquitting accused 1 and 2 stands set aside.

4. Accused 2- Vasantha is convicted for the offence under Section 304, Part II of IPC. He is sentenced to undergo imprisonment for six years and to pay fine of Rs. 25,000/- (Rupees twenty-five thousand only). In default of payment of fine, the convicted accused 2 shall undergo further imprisonment for 2 years. In case of recovery of fine, the entire fine so recovered shall be paid to the parents of the deceased.

5. The period of imprisonment already undergone by accused 2 shall be given set off under Section 428 of Cr.P.C.

6. Accused 1-Veeresh is convicted for the offence under Section 324 of IPC and he is sentenced to undergo imprisonment for the period which is already undergone by him. Hence he need not be taken to custody any further for the offence in question.