

Narayan Vs. The State Through Honnavar of Police, Represented by State Public Prosecutor

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Court : Karnataka Dharwad

Decided On : Jan-09-2017

Judge : Ravi Malimath & K. Somashekar

Appeal No. : Criminal Appeal No. 2816 of 2012 (C)

Appellant : Narayan

Respondent : The State Through Honnavar of Police, Represented by State Public Prosecutor

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure seeking to set aside the Judgment of Conviction and Order of Sentence Dated 13.10.2009, passed by the District and Sessions Judge, Uttara Kannada, Karwar, in Sessions Case No.11 of 2007.)

1. The case of the prosecution is that C.W.1/Keshi is the wife of the deceased Amakusa Gouda. Both were residing in Sanmote, Mavinkurve, Honavar Taluk. By the side of their house, the accused who is the brother of the deceased was residing with his family members. There was a quarrel took in between the complainant and the accused frequently, since the deceased had caught red handed, the accused while committing theft of coconuts from the trees. On

24.09.2006 at about 02:00 p.m., wherein the accused was abusing the deceased in filthy language as to why that he has committed theft of coconuts. When the deceased told him that he has caught red handed him while committing theft of coconuts, accused brought a spade and from the backside of the spade, assaulted the deceased on his head. The deceased fell down to the ground and he was been shifted to Honavar Government Hospital, as he sustained injuries.

2. C.W.23 PSI of Honavar Police Station on receiving MLC from the Hospital, visited Honavar Government Hospital along with his staff. Since the injured Amakusa Gouda was not in a position to speak, that he took a complaint from Keshi, the wife of the injured and he returned to the Police Station. Based upon on the complaint given by C.W.1/Keshi, he registered the FIR in Honavar Police in Crime No.193 of 2006 for the offences punishable under Sections 324, 504, 506 of Indian Penal Code, as per Ex.P-1. Thereafter, on 25.09.2006 he visited the scene of offence along with panchas and he conducted mahazar, as per Ex.P-4, in the presence of C.Ws.2 and 3. C.W.10/Mamata showed the scene of crime and pointed out spade/M.O.1 which was the weapon used by the accused. The said M.O.1 was also seized by him under Ex.P-4 panchanama. On 03.10.2006 he received the information regarding the death of the injured Amakusa Gouda in Udupi Hi-tech Hospital and he sent a requisition to the JMFC, Honavar to substitute Section 302 of Indian Penal Code in place of Section 324 of Indian Penal Code, as where he registered the case in Crime No.193 of 2006. Subsequently, he visited Udupi Hi- tech Hospital and conducted inquest over the dead body as per Ex.P-5 in the presence of C.Ws.5 and 6. The dead body was sent through P.C. No.1497 for postmortem examination. C.W.19 produced clothes of the deceased. They were seized under panchanam/Ex.P-6 in the presence of C.Ws.5 and 6. M.Os.2 and 3 are the articles which were seized under the mahazar/Ex.P-6. On 04.10.2006 he visited the scene of crime and recorded the statement of C.Ws.10, to 15 and 17. He conducted personal search panchanama/Ex.P-7 of the accused in the presence of C.Ws.7 and 8. Ex.P-2 is the sketch given by the Engineer and prepared the sketch, as per Ex.P-13 at the time of spot panchanama conducted by him.

3. C.W.24 is the CPI who took the case for further investigation. He sent the seized weapon/M.O.1 for the opinion of the Doctor which required to be sought for. He received Ex.P- 11, the opinion of the Doctor relating to M.O.1/spade. After recording statement of C.Ws.18 to 20 during the course of investigation by him that he completed the investigation and laid the charge sheet against the accused before the committal Court. The charges were framed against the accused and the accused pleaded not guilty.

4. In order to prove the case against the accused, the prosecution in all examined 11 witnesses, got marked 15 documents, as Exs.P-1 to P-15 and so also got marked M.Os.1 to 3.

5. The Learned Sessions Judge analyzed the prosecution witnesses as P.Ws.1 to 11 and also got marked the documents as Exs.P-1 to P-15, apart from that material objects as M.Os.1 to 3, held conviction against the accused for the offence punishable under Section 302 of Indian Penal Code. The impugned judgment of conviction and sentence held by the learned Sessions Judge against the accused has been questioned by preferring this appeal by the appellant/accused.

6. Learned counsel for the appellant during the course of his argument in this appeal has been contended that in order to bring home the guilt of the accused, the prosecution in all examined 11 witnesses, out of that P.W.3 is the complainant. P.W.5 is an eyewitness and P.W.6 is neighbour of the deceased. P.W.1 is the Doctor and P.W.2 is an engineer. P.Ws.7 and 11 are the Police witnesses. However, the prosecution mainly relied upon the evidence of P.Ws.3, 5 and 6 in order to bring home the guilt of the accused. But there are inconsistencies and contradictions which were arise in the evidence of the prosecution, as placed reliance to held conviction against the accused. The learned Sessions Judge has not been analyzed the evidence of the prosecution in a proper perspective. The learned Sessions Judge was misdirected the evidence as putforth by the prosecution and so also misread the evidence of P.Ws.3, 5 and 6, as they are the prime witnesses for the prosecution to prove the guilt against the accused. Therefore, it requires to be called for interference of the impugned judgment of

conviction and sentence held against the accused, as the motive behind committing the murder of the deceased by infliction of injuries, as indicated in the postmortem report does not constitute the elements of Section 302 of Indian Penal Code.

7. On controvert to the arguments advanced by the learned counsel for the appellant in this appeal, the learned Additional State Public Prosecutor who has taken up a contention that the prosecution has mainly relied upon the evidence of P.Ws.3, 5 and 6 to bring home the guilt against the accused, as the accused who inflicted injuries as indicated in the postmortem report at Ex.P-1. The motive behind commission of an offence it reveals as that of accused who committed theft of coconut from the trees of the deceased, as he was caught red handed. As subsequently, the accused and the deceased were frequently quarreling to each other, as in this background that the accused who had an intention to eliminate the deceased. For that reason, kept in mind that the accused who made to assault with means of M.O.1 on the head of the deceased, as there was only one injury on the right parietal region resulting in fracture of skull.

8. P.W.1 being the Doctor conducted the autopsy over the dead body of the deceased and he issued the postmortem report, as per Ex.P-1 and also opined that the death was due to head injury and its consequences. At Exs.P-5 and P-1 there cannot be any much dispute regarding the homicidal death of Amakusa Gouda, who inflicted to the injuries as indicated in Ex.P-1/the postmortem report. As the evidence of P.W.1 coupled with the evidence of P.Ws.3, 5 and 6 for the prosecution has been consisting with each other, as this evidence which were to be analyzed by the learned Sessions Judge and come to the conclusion that the prosecution has putforth the evidence with beyond all reasonable doubt by consisting to each other and also positive for the probability of the death which has committed by the accused who inflicted injuries over the skull of the deceased as indicated in the postmortem report at Ex.P-1. Therefore, it does not call for any interference in the impugned judgment and the same may be maintained by dismissal of the appeal.

9. Heard the arguments and examined the material evidence available on record. P.W.3 who is the complainant filed the complaint as per Ex.P-3. Based upon the complaint, FIR came to be registered as per Ex.P-10 and so also that P.W.11 who conducted the spot panchanama as per Ex.P-4 in the presence of P.Ws.4 and 5 and also inquest panchanama over the dead body was conducted as per Ex.P-5. Seizure panchanama as per Ex.P-6 has been conducted by him in the presence of panch witnesses relating to the clothes of the deceased. Ex.P-7 is the personal search panchanama has been conducted by the I.O. Ex.P-8 is the certificate issued by the Doctor. Ex.P-10 is the FIR recorded by the I.O. Ex.P-11 is the opinion report relating to the M.O.1/spade which was used by the accused at the time of assaulting the accused over the skull of the deceased. Ex.P-13 is the rough sketch which was conducted by P.W.11 in the course of investigation as held by the I.O. All these evidences were putforth by the prosecution to prove the guilt against the accused that he committed the murder of the deceased by infliction of injuries over the skull of the deceased, with means of M.O.1/spade, as indicated in the postmortem report as per Ex.P-1 and also the opinion report of the Doctor regarding the examination of the weapon i.e., M.O.1/spade at Ex.P-11.

10. As already been stated that the prosecution placed much reliance of the evidences of P.Ws.3, 5 and 6, as they are the prime witnesses for the prosecution to bring home the guilt against the accused, as the accused who inflicted injuries over the skull of the deceased and also P.W.1 being the Doctor who has opined that the death was due to head injuries and its consequences. P.W.1 is the complainant, who has filed the complaint as per Ex.P-3. In her evidence, she has stated that the accused is her husband's younger brother. The accused was residing with his wife and also children in a separate house. The house of the accused is adjoining with their house. There is a division of properties in between the brothers, herself and her husband who were enjoying their properties separately. However, on the day of incident, herself, her husband and C.W.1/Mamatha were present in the house. Her husband who had seen the accused committing theft of coconuts from the trees, in that regard there was ill-will developed in between her husband and the accused. At about 02:00 p.m., the accused who came saying that he has not removed the coconuts and abused the deceased in filthy language. When her husband went out of the house and was

talking to the accused, the accused with M.O.1/spade assaulted on the backside of her husband, as a result of which the deceased fell on the ground. That herself and C.W.1 have seen the incident which alleged to have committed by the accused. When she went near by the scene of crime, the accused came to assault her and she started shouting. By hearing her shouting, the neighbourers came there. As the deceased suffered bleeding injuries on the backside of his head, he fell unconscious and was not in a position to speak. The injured was taken to the Government Hospital at Honavar for treatment and from there he was shifted to Udupi Hi-tech Hospital for further treatment. But while he was in the treatment at Udupi Hi-tech Hospital, he lost his breath. In Honavar Government Hospital while the deceased was under treatment, the Police approached her and taken the complaint as per Ex.P-3. M.O.1 is the spade which was used by the accused to assault over the person of the deceased, as indicated at Ex.P- 1/postmortem report. M.Os.2 and 3 are the half pant and waist thread of the deceased respectively. In the cross-examination of P.W.3 by the defence counsel, nothing has been elicited to disbelieve the theory as putforth by the prosecution regarding the accused who assaulted the deceased with means of M.O.1/spade on the head of the deceased, as indicated in the postmortem report/Ex.P-1 and also that the accused who removed the coconuts from the tree of the deceased as the accused caught hold red handed. As regard that there was an enmity between the accused and the deceased and also the frequent quarrel which were took in between them.

11. P.W.5 Mamata is the sister's daughter of P.W.3. She has specifically stated that Amakusa Gouda is her mother's sister's husband and Keshi, P.W.3 is her mother's sister. She knew that the accused is the brother of the deceased. On the date of the incident, she had come to the house of her mother's sister/P.W.3. The house of the accused adjoins the house of her mother's sister. At about 02:00 p.m., accused was abusing her mother's sister's husband in filthy language and the accused assaulted the deceased with M.O.1/spade on the head of the deceased. As this incident was seen by herself and also P.W.3. On hearing the sounds of P.W.3, C.Ws.11 to 13 came to the scene of crime and the accused thrown the M.O.1/spade at the spot and ran away. Her mother's sister's husband, who is the deceased suffered bleeding injuries and he fell unconscious and was not in a position to speak. Thereafter, the injured was shifted to the Government

Hospital at Honavar and later he was shifted to Udupi Hi-tech Hospital, where he succumbed to the injuries. P.W.5 further stated that on the very next day, the Police and the panchas had come to the scene of crime and she showed the scene of crime and identified the spade/M.O.1 which was lying there. The Police conducted a panchanama, as per Ex.P-4 and seized the spade at the scene of crime.

12. P.W.6/Rama Nilkanth Gouda claims to be a neighbour of the deceased and accused. He has specifically stated in his evidence that his house is at a distance of 25 feet from their house and he stated that there used to be frequent quarrels between the deceased and the accused. On the date of incident i.e., 24.09.2006 himself, C.Ws.11 and 13 were watching cricket match in the TV and on the said date at about 02:00 p.m. they heard sounds from the side of the house of Amakusa Gouda. As such, P.W.6, C.Ws.11 and 13 went near the house of Amakusa Gouda. When the accused saw the said persons, he ran away from the spot by throwing the spade/M.O.1 at the scene of crime itself. Amakusa Gouda had fallen down and was unconscious. Thereafter, Amakusa Gouda was shifted to the Government Hospital at Honavar for treatment, as he sustained grievous injuries on the head. Later on, Amakusa Gouda was shifted to Udupi Hi-tech Hospital for further treatment. As this P.W.6 was also been subjected to cross-examination, nothing had been elicited to disbelieve the theory of the prosecution putforth by the prosecution.

13. P.W.3/Keshi is the wife of the deceased Amakusa Gouda. She has specifically stated in her evidence that there was a frequent quarrel between her husband and the accused. On the date of the incident, the accused abused her husband in filthy language and also he assaulted on the head of the deceased with the help of spade/M.O.1, as a result, the deceased sustained bleeding injuries and fell down on the ground and became unconscious. The evidence of P.W.3 for the prosecution, it is corroborated by the evidence of P.W.5/Mamata who is her sister's daughter. P.W.5/Mamata too has stated in her evidence that the accused abused the deceased in filthy language and assaulted him with a spade/M.O.1 on the head of the deceased causing grievous bleeding injuries. As a result of the said injuries inflicted over the head of the deceased, as indicated at Ex.P-

1/postmortem report, the deceased succumbed to the injuries at Udupi Hi-tech Hospital while he was under treatment.

14. It is necessary at this stage to state that having gone through the evidence of the prosecution that the incident is alleged to have taken place at about 02:00 p.m. on 24.09.2006. P.W.11 is the PSI who recorded the complaint at Ex.P-3, given by Smt.Keshi and the same came to be registered at 05:30 p.m., as FIR at Ex.P-10. P.W.11 subsequently who visited the scene of crime and conducted spot mahazar, as per Ex.P-4 and also seized the spade as per M.O.1 which was lying at the scene of crime. P.W.5/Mamata pointed out the scene of crime and also identified the spade which was lying at the scene of crime which was alleged to be used by the accused at the time of assault over the head of the deceased, as indicated in the postmortem report/Ex.P-1. P.W.11 who is the PSI has specifically stated in his evidence that P.W.5/Mamata shown the scene of offence and has also stated that there was no delay in lodging the complaint by P.W.3.

15. Considering all these facts, the say of the defence that P.W.5 was not at all present at the scene of offence on the date of the incident cannot be accepted. As having gone through the evidence of P.Ws.3 and 5 as their evidence is vital evidence for the prosecution to prove the guilt against the accused who assaulted on the head of the deceased with means of spade/M.O.1. The evidence of P.Ws.3 and 5 finds corroborated from the evidence of P.W.6 who is the neighbour. As their evidence which were to be placed by the prosecution to prove the guilt against the accused which appears to be consistent and corroborative and positive in nature probabalize that the accused caused injuries with means of M.O.1/spade has been used by the accused, as where the deceased was lying on the ground by infliction of injuries.

16. M.O.1 is the spade which was used by the accused to assault the deceased. The said weapon was seized by the I.O. and marked it as M.O.1. P.W.3 is the complainant, P.W.5 is the eyewitness and P.W.6 is the neighbour who came to the spot after hearing the sounds which was heard by him. Having all identified M.O.1/spade which was used by the accused at the time of committing the assault over the person of the deceased. P.W.1/Doctor conducted autopsy over the dead

body and issued postmortem report and also issued opinion report as per Ex.P-11. There were injuries on the person of the deceased which were caused by the weapon spade/M.O.1 as indicated at Ex.P- 1/postmortem report. The spade/M.O.1 was seized from the scene of crime as per the evidence of P.Ws.11 and 5.

17. Having gone through the evidence of P.Ws.3, 5 and 6 for the prosecution regarding to prove the guilt against the accused, as the accused assaulted on the head of deceased with means of M.O.1/spade. P.Ws.3 and 5 have been specifically stated in their evidence which relates to the ingredients of Section 302 of Indian Penal Code, as wherein the deceased who succumbed to the injuries and their evidence goes to show that it was the accused who abused the deceased in a filthy language and ultimately assaulted the deceased with means of M.O.1/spade.

18. On considering the entire evidence which were placed by the prosecution that the learned Sessions Judge who analyzed the evidence and come to the conclusion that the prosecution has established the guilt against the accused with beyond all reasonable doubt.

19. Having gone through the evidence putforth by the prosecution, it has been clearly indicated that the learned Sessions Judge in a proper perspective analyzed the evidence, as where it has to be placed by cogent, consistent, corroborative and positive evidence to probabilize that the accused assaulted the deceased with means of spade/M.O.1 on the head of the deceased, as indicated in the postmortem report/Ex.P-1 and also the opinion report, wherein the M.O.1/spade was subjected to examination, as per Ex.P-11 issued by the Doctor/P.W.1.

20. We are of the opinion that there are no substances in the contention of the counsel for the appellant in this appeal that calls for interference in the impugned judgment of conviction and sentence held against the accused. We do not find any justifiable grounds that calls for interference in the impugned judgment of conviction and sentence, as contended by the counsel for the appellant by various grounds urged by him. Keeping in view the evidence as putforth by the prosecution, primarily the evidence of P.Ws.3, 5 and 6 coupled with the evidence of P.W.11 and so also the evidence of P.W.1 who being the Doctor, we are of the

view that the learned Sessions Judge rightly held conviction against the accused.

21. For the aforesaid reasons and findings, the appeal deserves to be dismissed. Accordingly, we proceed to pass the following

ORDER

The appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure is hereby dismissed. Consequently the judgment of conviction and sentence held by the learned Sessions Judge in S.C. No.11 of 2007 dated 13.10.2009 is hereby confirmed.

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