

Manjula Vs. The State of Karnataka

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Court : Karnataka

Decided On : Jan-05-2015

Judge : Anand Byrareddy

Appeal No. : CRL.A 814/2009

Appellant : Manjula

Respondent : The State of Karnataka

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE05H DAY OF JANUARY, 2015 BEFORE THE HONOURABLE MR. JUSTICE ANAND BYRAREDDY CRIMINAL APPEAL No.814 OF 2009 BETWEEN:

1. Manjula, W/o. Krishna, Aged 21 years, Occupation: Household.

2. Savithramma, W/o. Durgappa, 3. Manjunatha, S/o. Durgappa, Aged 21 years, All are residents of Gorigadde, Kanuthota, Iduvani Village, Sagara Taluk, Shimoga District. (By Shri B.S. Prasad, Advocate) AND: The State of Karnataka, APPELLANTS. 2 By Kargal Police Station, Sagara Taluk, Shimoga District. (By Shri K.R. Keshavamurthy, State Public Prosecutor-1) RESPONDENT ***** This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set-aside the conviction and sentence dated 24.09.2009 passed by the Principal Sessions Judge, Shimoga in S.C.No.161/2008, convicting the appellants / accused No.1 to 3 for the offence punishable under Sections 504 and

326 read with Section 114 of the Indian Penal Code, 1860 where Accused Nos.1 to 3 were to undergo simple imprisonment for six months for the offence punishable under Section 504 of the Indian Penal Code and further to undergo simple imprisonment for two years for the offence punishable under Section 326 of the Indian Penal Code, which sentences were to run concurrently. This appeal having been heard and reserved on 13.11.2014 and coming on for pronouncement of orders this day, the Court delivered the following:-

JUDGMENT

This appeal is filed by the accused before the trial court. The facts leading upto this appeal are as follows. It was the case of the prosecution that the accused were the daughter, wife and son, respectively, of one Durgappa. Durgappa is said to have deserted his family and is said to have 3 taken another woman, as his wife. Durgappa was said to be residing with that woman near Siddapura. Chowdappa, the elder brother of Durgappa was said to be living in the neighbouring house of the accused, at Gorigadde, Kanuthota, Sagar Taluk. They also had lands abutting each others. There was said to be a long standing enmity between the two families. There was constant acrimony in respect of a particular well from which the accused were drawing water. Therefore they had decided to have their own, which was being constructed near their home. On 24.5.2008 at about 4.00 p.m., when Chowdappa was passing by their house, and is said to have peeped into the well under construction, out of curiosity, at which accused No.3, who was present along with the other accused, is said to have hailed him with the words : Yeno Soollay maganay, at which Chowdappa is said to have turned on them and entered their house to confront them. Accused nos.1 & 2 are said to have angrily called on Accused no.3 to murder him, and at the same 4 time Accused no.1 is said to have run into the interior of the house and brought out a machete and it was alleged that Accused no.2 and Accused no.3 has held Chowdappa from front and behind and Accused no.1 is said to have delivered three blows at the elbow joint of Chowdappas right forearm and had chopped off the right forearm of Chowdappa, at the elbow joint, which is said to have fallen to the ground, leaving Chowdappa writhing in pain and screaming for help. Janakamma, the wife of Chowdappa on hearing the commotion is said to have come into the house of the accused to find her husband in the above state. By

then several people are said to have gathered there. One Gopalkrishna is said to have called for an ambulance and taken Chowdappa to the Government hospital at Sagar. But his forearm could not be saved. The station house officer at Kargal Police Station on receiving information via phone is said to have visited Chowdappa at the hospital and is said to have recorded his 5 statement. After returning to the police station a case is said to have been registered in Crime no.31 /2008, against the accused for offences punishable under Sections 504, 114, 307 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC, for brevity). After further investigation and after recording the statements of several witnesses, a search was made for the accused who were said to be absconding. Accused no.2 is said to have been finally arrested on 21.8.2008 and Accused 1 & 3 were said to have been arrested on 13.9.2008. A final report was said to have been filed on 10.10.2008 before the jurisdictional magistrate, who in turn is said to have taken cognizance of the offences and after having secured the presence of the accused, had committed the case to the court of Sessions. Charges having been framed by the trial court, the accused are said to have pleaded not guilty and claimed to be tried. The prosecution is then said to have tendered evidence through 13 witnesses apart from marking several documents 6 and material objects in support of the case. Thereafter the trial court having recorded the statements of the accused under Section 313 of the Code of Criminal Procedure, 1973, it had framed the following points for consideration : 1. Does prosecution prove that on 24.5.2008, the accused no.1 in her house voluntarily caused grievous hurt to CW1 Chowdappa by giving sickle blow on his right forearm and cut it into piece and thereby amputated his right forearm and caused permanent disability to him?.

2. Does prosecution further prove that the accused no.1 attempted to murder CW1 Chowdappa by giving him sickle blow on his right forearm and cut it into piece?.

3. Does prosecution further prove that the accused no.2 and 3 abetted accused no.1 to cause grievous hurt and attempt to commit murder of CW1 Chowdappa?.

4. Does prosecution further prove that the accused no.1 to 3 intentionally insulted and thereby gave provocation to CW1 Chowdappa to commit any offence or to

break the public peace?. 7 5. Does accused no.1 to 3 prove that in the exercise of their right of private defence of their body and property, they cut the right forearm of CW1 Chowdappa and so they are exempted from legal punishment?.

6. To what order?. Point nos. 1, 3 and 4 were answered in the affirmative and point nos.2 and 5 in the negative. The court below had convicted the accused nos. 1 to 3 for the offence punishable under Section 504 IPC and sentenced them to undergo simple imprisonment for a period of 6 months. They were also convicted for the offence punishable under Section 326 IPC to undergo simple imprisonment for two years. The sentences were to run concurrently. It is that judgment which is under challenge.

2. The learned counsel for the accused while taking this court through the record would seek to canvass that the only evidence on the basis of which the trial court has held all the 8 three accused guilty is on the testimony of PW-1, as to the alleged manner in which the incident is said to have taken place. It is sought to be pointed out that the possibility of Accused No.2 and 3 holding the accused from front and behind, while Accused no.1 was repeatedly chopping at his arm is difficult to visualize and not readily believable. For it is pointed out that a human forearm to be severed completely at the elbow joint would require precise blows to be struck with some force at the same spot. This was hardly possible with a struggling man to be made to stand still and to repeatedly strike blows, when the reflex action on the first blow and the desperate struggle of even a weak man is itself sufficient to throw off restraining hands and to elude the blows. It is further contended that Janakamma, the wife of Chowdappa is said to have thereafter come on the scene to have noticed the presence of the accused. Hence there was no other witness who was in a position to have corroborated the version of Chowdappa. 9 It is pointed out that the evidence of all the other witnesses is of a formal character and in the absence of an acceptable narration of the actual manner in which the alleged offence was committed, the doubt expressed by the trial court itself as to the manner in which the offence was committed would clearly entitle the accused to claim the benefit of doubt.

3. The learned State Public Prosecutor on the other hand would seek to justify the judgment under appeal.

4. From a perusal of the record and after having heard the arguments, it is seen that there is no dispute about the relationship of the parties. The crucial aspect for consideration is the manner in which the offence is said to have been committed and the overt acts that could be attributed to each of the accused. It is claimed on the basis of the oral testimony of Chowdappa that when he sought to confront the accused for abusing him, by walking into their house, Accused nos. 1 and 2 10 are said to have exhorted Accused no.3 to kill Chowdappa. Accused no.1 is then said to have rushed inside the house and come out with a machete, (which is apparently incorrectly described as a sickle, which is a light curved tool used to cut grass and hardly capable of cutting through flesh, muscle and bone of a human arm - with three blows struck by a young woman.) while Accused nos.2 & 3 held him still, she is said to have struck three blows, completely severing the forearm of Chowdappa. The evidence of the medical practitioner, who has tendered expert evidence of the possible manner in which the arm was severed and the effort of the trial court to reconcile the serious doubt that arises as to the manner in which the offence was alleged to have been committed makes interesting reading. The relevant portions as stated by the trial judge are reproduced verbatim for ready reference. 23. PW8 Dr. M.S. Subbanna is the first doctor who saw the injured PW1 Chowdappa on 11 24.5.2008 at 4 p.m. and on examination he found that the right forearm of Chowdappa was completely amputated 4 inches below the elbow joint. There were blood clots around and all internal structures exposed with broken ends of bones were visible and even the amputated right forearm of Chowdappa was also separately brought, packed in a dirty cloth and further this PW8 on inquiring with PW1 Chowdappa directly, he found the history of his injury as the assault by accused no.1 Manjula with a sickle in her residence and accordingly, he has issued his report Ex.P15. The next doctor examined this PW1 Chowdappa is Dr. Sangameshwara G.M. who is the Medical Officer in Wenlock Hospital, Mangalore and he has also reiterated about the injuries found on the right forearm of PW1 Chowdappa as that of PW8 M.S. Subbanna and accordingly, this PW9 Dr. Sangameshwara G.M. has issued the certificate as per Ex.P18. This PW8 Dr. M.S. Subbanna basing the findings on his examination as well as the further

examination findings recorded as per Ex.P18 by PW9 Dr. Sangameshwara G.M., he has issued the wound 12 certificate as per Ex.P15 and further the I.O. has sent the MO.1 sickle to this PW8 Dr. M.S. Subbanna for his examination and opinion and this PW8 Dr. M.S. Subbanna after examining MO.1 sickle, he has furnished his opinion as per Ex.P.17 stating that the amputation of the right forearm of PW1 Chowdappa is possible with the sickle MO.1 and further he has given his opinion that the injury caused to PW1 Chowdappa was grievous in nature. In the cross-examination to this PW8 Dr. M.S. Subbanna, it is elicited that with one blow from the sickle MO.1, the amputation is possible and if three blows are given, it may hit on different places and caused different injuries. So, in the instant case, there were no different injuries except one cut injury. Tuis, this PW8 has given his opinion that the right forearm of PW1 Chowdappa was amputated with only one sickle blow. Whereas, in the report Ex.P1 and in the evidence of PW1 Chowdappa, it has come that accused no.1 gave three blows with sickle MO.1 and in view of these inconsistency with regard to the one blow and three blows with sickle, Sri. G. Madhu, learned advocate for accused 1 to 3 contended that 13 it raises a reasonable doubt. But it is a fact that the right forearm of PW1 Chowdappa was amputated with the sickle blow and the amputated part of the right forearm was shown in the open court by PW1 Chowdappa in the witness box and it has been noted down and recorded in the deposition. If the three sickle blows were hit on different places, in that situation, three visible injuries are possible. But if three blows are given on one place, then, the injuries on other parts of the forearm are not visible. It is pertinent to note that the entire muscle, skin and bones of the right forearm were cut and 2/3rd of the forearm was separated and it fell on the ground and in my opinion, with one sickle blow, the bone, muscle and skin in the usual course cannot be cut and it needs more than one blow and in this context, the opinion furnished by this PW8 Dr. M.S. Subbanna basing on probabilities may not be correct and only on this count, it cannot be said that a doubt has arisen in the prosecution case. (emphasis supplied) PW1 specifically has stated in the evidence that it is accused no.1 who gave three blows on his right 14 forearm when the accused no.2 and 3 were holding him from the front side as well as from the back side. No doubt, this PW8 has further stated in the cross-examination that if the forearm has stretch ahead, at that time, if the

sickle blow is given on it, then in such circumstance, the amputation is possible with the sickle. It appears to this extent, this opinion appears to be probable. PW1 has specifically stated in his evidence that accused no.2 and 3 were physically holding him, one from the front side and another from the back side. So, the person who has holding from his front side may also hold his hand and stretch ahead while accused no.1 was giving sickle blow on his right forearm. (emphasis supplied) Under the circumstance, the medical evidence adduced by the prosecution before this court shows that while accused no.2 and 3 were holding PW1 Chowdappa one from the back side and another from the front side, at that time, accused no.1 gave three sickle blows on his right forearm till it is completely cut and thus, the accused no.1 with the assistance and instigation of accused no.2 and 3 cut the right forearm of PW1 Chowdappa 15 and thereby amputated it, thus, caused grievous injury. From the above it is seen that the trial court has visualized a scene where Accused nos.2 & 3 held Chowdappa from the front and back. It is not clear as to who was holding him from which side and how. Was he hugged ?. If so how was the arm held outstretched for Accused no.1 to deliver neat blows with the weapon, on the same spot on his arm, leading to an impression that the arm had been severed with one blow - when actually three blows were delivered. Were the three, Accused no.2, Chowdappa and Accused no.3, standing frozen in position for Accused no.1 to deliver the blows ?. Even a weak man when in mortal fear puts up a resistance and a struggle, sufficient to elude accurate blows to the same spot on the arm, to effectively severe it.

4. Therefore, in the opinion of this court there is a serious doubt of the manner in which the incident has taken place or the overt acts committed by each of the accused. The findings of 16 the trial court cannot be sustained. The accused are given the benefit of doubt. The judgment of the trial court is set aside, the accused are acquitted. The bail bond furnished by the accused stands cancelled. Sd/-
JUDGE KS*

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