

Balappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-08-1985

Reported in : ILR1985KAR3286; 1985(2)KarLJ583

Judge : Narayan Rai Kudoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 109; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 319

Appeal No. : Criminal Revn. Petn. 519 of 1984

Appellant : Balappa

Respondent : State of Karnataka

Advocate for Def. : S.S. Koti, Govt. Pleader

Advocate for Pet/Ap. : B.V. Deshpande, Adv.

Judgement :

ORDER

1. The petitioner Balappa has challenged the order of the Sessions Judge, Bijapur in Sessions Case No. 93 of 1983 dt. 18th August, 1984, by which the learned Sessions Judge took cognizance of the offence under S. 302 read with S. 109 of the Penal Code against the petitioner and directed issue of summons to him to appear before his Court on 29-8-1984 for being tried along with accused Nos. 1

and 2 in the said Sessions Case, who were proceeded with under S. 302 read with S. 34 of the I.P.C.

2. The matter arises in this way :

3. Two accused by names Kalingappa and Parasappa were charge-sheeted for an offence under S. 302 read with S. 34 I.P.C. for causing the death of one Bhimappa and they were tried for the said offence in Sessions Case No. 93/83 on the file of the Court of Sessions Judge at Bijapur. The prosecution examined eight witnesses in support of the case. After examining those eight witnesses, an application was filed by the prosecution under S. 319 of the Cr.P.C. (the Code) requesting the Court to proceed against the petitioner as from the evidence adduced by the prosecution an offence punishable under S. 302 read with S. 109 was made out against the petitioner. The learned Sessions Judge allowing the application passed the impugned order, the correctness and legality of which is sought to be assailed by the petitioner in this revision petition.

4. Heard Sri B. V. Deshpande, the learned Advocate for the petitioner and Sri S. S. Koti, the learned High Court Government Pleader for the State.

5. The only contention urged by Sri Deshpande was that the evidence of the witnesses relied upon by the trial Court taken as a whole does not establish any offence much less an offence punishable under S. 302 read with S. 109 I.P.C., for which the learned Sessions Judge proposed to proceed against the petitioner. On these grounds, he submitted that the impugned order was wholly without jurisdiction and liable to be set aside.

6. Per contra, Sri S. S. Koti argued in support of the order.

7. It is seen from the impugned order that the learned Sessions Judge proposed to proceed against the petitioner for an offence under S. 302 read with S. 109 of the I.P.C. in respect of the death of Bhimappa, for which the two accused Kalingappa and Parasappa are being proceeded with for an offence under S. 302 read with S. 34 I.P.C. and the trial of the case has gone through half way and at that stage on the application filed by the prosecution, the impugned order was passed. The

order in question also reveals that the learned Sessions Judge has relied upon the evidence of P.Ws. 1, 2, 4, 7 and 8. Sri Deshpande in the course of his arguments took me through the relevant portion of the evidence of all these witnesses. The evidence of P.Ws. 1, 2, 4, and 8 does not establish that either the petitioner abetted the other two accused to commit the murder of Bhimappa or that the crime in question was committed in consequence of the abetment of the petitioner. These are the ingredients necessary to be made out, in order to hold the petitioner liable for the offence of murder punishable under S. 302 read with S. 109 I.P.C. P.W. 7 has not referred to the alleged activities of the petitioner in relation to the offence said to have been committed by accused 1 and 2. The petitioner happens to be the uncle of the first accused, the witnesses have referred to certain activities of the petitioner in relation to the alleged conduct of the first accused. Barring this, I find nothing in their evidence to hold that the evidence adduced by the prosecution discloses an offence against the petitioner under S. 302 read with S. 109 I.P.C.

8. No doubt, it is open to the prosecution to produce evidence at any stage of the trial of a criminal case and satisfy the Court that any person not being the accused, has committed any offence for which such person could be tried together with the accused and in such a case the Court may proceed against such person for the offence which he appears to have committed and try him along with the other accused who were already before the Court. However, it must be noticed that this power given to the Court is really an extraordinary power and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken and the Court proposed to take action only in the course of the trial of the other accused, of course on the basis of the evidence produced by the prosecution in the course of the trial. The Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, : 1983 CriLJ159 , observed thus :

'In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try

them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.'

9. The view I take in this case is fully supported by the decision of the Supreme Court in the above case. As stated earlier, there is no material placed by the prosecution to show that there were compelling reasons to proceed against the petitioner in the interest of justice. The view taken by the learned Sessions Judge in a casual way directing summons should be issued to the petitioner for being tried along with the other accused for a serious offence like murder punishable under S. 302 read with S. 109 was wholly unwarranted on the basis of the evidence adduced in the case.

10. In the result, for the reasons stated above, the petition is allowed, the impugned order is set aside and the proceedings proposed to be taken against the petitioner is directed to be dropped.

11. Petition allowed.