State of Mysore Vs. Nanja

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Court : Karnataka

Decided On : Sep-16-1957

Reported in : AIR1958Kant48; AIR1958Mys48; 1958CriLJ529; ILR1957KAR159

Judge : Hombe Gowda and ;Malimath, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342, 417, 417(1), 417(3) and 423; Constitution of India - Article 14; Indian Penal Code (IPC), 1860 - Sections 300, 304 and 324; Limitation Act - Schedule - Article 157

Appeal No. : Criminal Appeal No. 44 of 1956

Appellant : State of Mysore

Respondent : Nanja

Advocate for Def. : B.L. Ramanathan, Adv.

Advocate for Pet/Ap. : Addl. Asst. Adv. General

Judgement :

1. This is an appeal by the State of Mysore against the order dated 9-3-1956, passed by the Sessions Judge, Mysore Division, in Mandya Sessions Case No. 9 of 1956, acquitting the accused of an offence under Section 304, I. P. C.

2. The case for the prosecution is that on 29-11-54 when all the inmates of the house had gone out to the fields leaving the accused and his old father, the former

is alleged to have beaten the latter with an axe and a stone. The result was that the old man lay unconscious and was taken to the hospital at Malavalli. The Doctor found that his condition was serious and that it needed X-Ray examination. He was therefore, sent to the Mandya Hospital the same day. But he died there at 6-15 p.m. on 2-12-1954. The respondent is a boy aged about 30 years. He was charged with the offence under Section 304, Part II but he pleaded 'not guilty'. The learned Sessions Judge held that the prosecution has failed to bring home the guilt to the accused beyond all reasonable doubt and acquitted him by giving him the benefit of doubt. The State has filed this appeal under Section 417, Cr. P. C. against that order.

3. As abovesaid, there was no one inside the house barring the deceased and the accused when the offence is said to have taken place. The principal witness in the case is one Nanjegowda son of Chikkamadegowda, P.W 12. He states that at) about 8 O'clock in the morning while he was passing by the house of the deceased, he heard some groaning sound. Through curiosity he went to the front door and as it was closed, he pushed it. It was found that it was bolted from inside. But through a crevice in the door he could see that the deceased Nanjegowda had fallen and that the accused was standing there with an axe and hitting Nanjegowda again.

He could, however, only see the waving of the hand of the accused with an axe. Thereupon he proceeded by the side of the house towards the hind door and as that door was open, he entered and found the accused standing by the side of his father who was lying. The accused had an axe in his hand which the witness snatched and asked him why he assaulted the old man. The accused told him that he somehow did it without giving any reason for the assault--'(Expression in Kanaries--Ed.)' He was immediately followed by Kempegowda P. W. 11 who questioned P. W. 12 as to what had happened. The latter replied that the accused beat his father with an axe. By that time, the accused was found sitting in the corridor about 5 or 6 feet away. A stone M. O. 1 and an axe M. O. 2 were found to be blood-stained and lying nearby.

In the meantime, Nanjegowda P.W. 10. the brother of the accused, also arrived and some others also came in. They brought a car and re-moved the injured person to Malavalli Hospital. P. W. 13 is Patel Chikkegowda. He states that P.W. 11 came to his house and informed him that the accused beat his father. He went to the house and found the bleeding injuries on the person of the deceased. He wrote the report Ex. P-28 and carried the report himself after sending the accused with Thoti Uriya. P.W. 28 is said to have reached the Police Sub-Inspect or at 4-20 p.m. as the latter had returned by that time after visiting another village.

4. So far as the motive is concerned, the prosecution case is that the accused who was the youngest of the three brothers was an idler. He was often in need or money and used to demand the same from his father; sometimes the father gave and sometimes he rebuked. The suggestion is that on the date of the offence, the father must have refused to give money and rebuked the accused, and enraged at that, the accused must have given some blows to his father.

5. The learned Advocate for the respondent raised a point of law. According to him, the provisions Of Section 417, Cr. P. C., are discriminatory and they contravene the provisions of Article 14 of the Constitution of India He contends that whereas Clause (3) of Section 417 requires that a private complainant wanting to file an appeal against an order of acquittal should take special leave from the High Court the State is under no such obligation: since under Clause (1) thereof it can directly present an appeal to the High Court against an order of acquittal through the Public Prosecutor.

It is contended that this offends against the 'equality before the law' guaranteed by the Constitution by Article 14. According to him the State is a juridical person and as such it should be treated on the same level as any other citizen. Now that Section 417 gives different treatment to the two, it is hit by Article 14 and hence that section should he held to be ultra vires of the Constitution and, therefore, illegal. He also contends that there is a further discrimination in that an ordinary citizen who has filed a complaint has to file his appeal within a limit of sixty days from the date of the order of acquittal, while under Clause (1) the Public Prosecutor has a period of three months by virtue of Article 157 of the Limitation

Act.

This is another discrimination contrary to the provisions of Article 14. The provisions about 'discrimination' as such are to be found in Article 15, where it is provided that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The right given by Article 14 is one about equality' before the law and equal protection of the laws. It cannot be said that a private complainant as an appellant under Sub-section 3 of Section 417, and the Government as an appellant under Sub-section 1, do not get equal opportunities of equal protection of the law.

The appeals filed by both of them will meet with the same consideration at the hands of law Courts. It has been held by Mukherjea J. in the State of West Bengal v. Anvar Ali, : 1952 CriLJ510 (A), that the term 'equal protection of the laws' means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed by the law. The learned Judge has also observed that the entire problem under the equal protection clause is one of classification or of drawing lines that classifications are no doubt permitted but it has to be seen that a classification is reasonable, and that it is reasonable when it isnot an arbitrary selection but rests on differences pertaining to the subject in respect of which classification is made.

It has been held in Kedarnath v. The State of West Bengal, : 1953 CriLJ1621 (B), that Article 14 does not insist that legislative classification should be scientifically perfect or logically complete. When a contention is raised against a particular law that it offends against equal protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of the legislation, it is generally acknowledged that classification may be based on the difference in the nature of the trade, calling or occupation which is sought to be regulated by the legislation In the case of the State of Bombay v. F. N. Balsam, 1951 SCR 682 : (AIR 1951 SC 318) (C), it was held that the differentiation between the Civil Military personnel, between foreign visitors and Indian citizens etc., made by the law of prohibition in Bombay was justifiable.

In view of these considerations, there is no doubt that the classification in favour of the State made in Section 417 is not unreasonable. In our opinion, it does not offend against Article 14 of the Constitution. We are supported in this view by the judgment of the Andhra Pradesh High Court In re: B Krishnayya, reported in (S) AIR 1957 Andhra Pra. 163 (D). A similar question was raised in that case, and Bheemashankaram J. held

'that there was no contravention of Article 14 as it did not preclude the State being treated by the Legislature on a footing different from an individual citizen and that the difference was based upon grounds of high policy.'

6. The next point to be considered is the scope of an appeal to the High Court under Section 417 of the Cr. P. C. The principles which should guide the Court while dealing with an appeal 'against an acquittal have been summarised by Lord Russel of Killowen in the case of Sheo Swarup v. Emperor, reported in . His Lordship observes :

'No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as

(1) the view of the trial Judge as to the credibility of the witnesses:

(2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial;

(3) the right of the accused to the benefit of any doubt; and

(4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.' These same principles have been reiterated by the Supreme Court in several rulings reported in Surajpal Singh v. The State, : 1952 CriLJ331 (F), Wilayat Khan v. The State of U. P., : AIR 1953 SC122 (G), Puran v. State of Punjab, AIR 1963 EC 459 (H), Narayan' Ittiravi v. State of Tray.-Co., : AIR 1953 SC478 (I), Zwinglee Ariel v. State of Madhya Pradesh, : AIR 1954 SC15 (J), Shiv Bahadur Singh v. State of V. P., : 1954

CriLJ910 (K), Madan Mohan Singh v. State of Uttar Pra-desh, : AIR 1954 SC637 (L) and Bansidhar v. State Of Orissa, (S) : 1955 CriLJ1300 (M).

6A. In the case of Ajmeer Singh v. The State Of Punjab, : 1953 CriLJ521 (N), Justice Mahajan (as he then was) has observed :

'After an order of acquittal the presumption of innocence in favour of the accused is further reinforced and that order can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons.' The same views have been reaffirmed in the recent judgment delivered by Justice S. K. Das in the case of Balbir Singh v. Punjab State, (S) : 1957 CriLJ481 (O), and by Justice Dixit in the case of State v. Babulal, : AIR1957 Bom10 (P). The term 'compelling reasons' is vague and indefinite to some extent. It is, however, explained by Justice Venkatarama Ayyar in the case of Aher Raja Khima v. State of Saurashtra, (S) AIR 1958 SC 217 (Q).

'If these words import a limitation on the powers of a Court hearing an appeal under Section 417 not applicable to a Court hearing appeals against conviction, then it is merely the old doctrine that appeals against acquittal are in a less favoured position, dressed in a new garb, and the reasons for rejecting it as unsound are as powerful as those which found favour with the Privy Council in and 'Nur Mohammad v. Emperor', .

But it is probable that these words were intended to express, as were the similar words of Lord Russel in , that the Court hearing an appeal under Section 417 should observe the rules which all appellate Courts should, before coming to a conclusion different from that of the trial Court. If so understood, the expression 'compelling reasons' would be open to no comment.'

No doubt, these views appear in the minority judgment: nevertheless they do expound the real import of the words 'compelling reasons'.

7. On a careful consideration of the case law on the point, we come to the conclusion that in an appeal against an order of acquittal, it is open to the High Court to review the entire evidence and to come to its own conclusion. But in so

doing, the High Court has to keep in view the well established rules above referred to laid down by the Privy Council and reiterated by the Supreme Court. It would not be correct to assume that in such appeals the appellate Court can only interfere if the judgment of the lower Court is perverse. A similar view has been taken by the Allahabad High Court in the case of State v. Murli, : AIR1957 All53 (S), where it is observed:

'It follows that no limitation is placed on the power of the High Court under Sections. 417, 418 and 423, Cr. p. C. to review at large the evidence upon which the trial Court's order of acquittal is founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed, provided that proper weight and consideration is given to these four matters.' In the case of Atley v. State of Uttar Pradesh, (S) : 1955 CriLJ1653 (T), the Supreme Court further observed :

'It is also well settled that the Court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial Court continues even upto the appellate stage and that the appellate Court should attach due weight to the opinion of the trial Court which recorded the order of acquittal.

If the appellate Court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated : 1952 CriLJ331 (F) and : AIR 1953 SC122 (GO, Ref.'

8. Bearing in mind the above principles as to the scope of the powers of an appellate Court in cases of appeal against an order of acquittal, we proceed to consider the evidence in this case.

9-10. We have already referred to the facts of this case, and in doing so, we have referred to some of the salient evidence. That shows that there is no direct evidence to the assault unless it be what P.W. 12 claims to have seen by peeping through the crevice in the front door. The learned Sessions Judge commenting upon the evidence in this case has remarked :

'the prosecution appear to have manufactured an artificial, unnatural and stage managed story.'

'It has to be considered whether these remarks are justified by the evidence in the case. The first comment is against the first Information Ext. P-28. Before considering this report, it should be necessary to say how it has come into being. (After reviewing evidence, the judgment proceeded:) -

We have no hesitation in accepting the above evidence as true None of the witnesses has any reason to falsely implicate the accused nor can it be said that any of them was wrongfully induced by the brothers of the accused into giving a false story, as suggested by the accused in the course of his statement under Section 342, Criminal P. C.

11. We next come to consider the first information and the comments against it. When the incident was witnessed by the above witnesses, many more persons arrived at the spot and the front door was opened for them. In the meantime, one of the persons assembled, by name Kempegowda, is said to have gone to the Patel Chikkegowda P. W. 13 who was then near his wet land and to have informed him of the incident, P. W. 13 returned to the village and went to the house where the offence took place. He states that he found Nanjegowda lying with bleeding injuries on his person. He wrote out the report Ext. P-28 and sent it to Malavalli Police Station. In fact, he states that he carried it himself after arranging to send the accused with Thothi Uriya.

It appears that some mistake has crept in respect of Kempegowda who is said to have given the information to the Patel. In the course of the latter's deposition, the reference to Kempegowda has been made as P. W. 11. It is doubtful if this reference is correctly made. Since Kempegowda p. W, 11 does not state that he went to the Patel and gave the information, it is urged on behalf of the respondent that the above statement is not true. In Ext. P-28 it is noted that the person who gave information to the Patel was one Kempegowda, son of Nanjegowda.

From this it is clear that the informant cannot be P. W. 11. It appears that when one witness P. W. 13 spoke about the informant as Kempegowda, the Court might

possibly have wrongly-noted the said Kempegowda as p. w. 11. That appears to be the only reasonable way to ac-count for the mistake. This is further supported by the fact that in the charge-sheet at Sl. No. 31, is mentioned the name of Kempegowda, son of Nanjegowda, as the person who was to speak to the fact of having gone to the scene of Offence and then reported the same to the Patel Chikkegowda. Much capital cannot be made out of this simple mistake which is clearly explainable as above.

12. The next comment against the first information report is that, although it is said to have been written soon after the assault, i. e,, at about 10 a. m., it did not reach the Police Sub-Inspector till 4.20 p. m. that day. The distance between the village Madahalli and Malavalli where the Police Station is situated is about 3 1/2 miles. Prom this delay, it is suggested that the first information report Ext. P-28 must itself have been a concocted one so as to suit the other evidence which also must have been stage-managed. It is difficult to accept such a conclusion. (Their Lordships discussed the circumstances, and continued).

Whatever be the circumstances for the delay, it cannot be inferred that the delay was due to the fact that any story was to be concocted and the evidence cooked up.

13. Comparing the First Information Report Ext. P-28 with the statement of P. W. 12 and that of P. W. 9, the learned Sessions Judge has observed that there have been many omissions and contradictions in Ext. P-28 which are later on tried to be supplemented by the evidence of the above witnesses. Before considering the various points urged by the learned Sessions Judge, it is necessary to note that Ext. P-28 was not a document, written or dictated by P. W. 12. It has been written by the Patel P. W. 13, not on the information directly given to him by P. W. 12 but, from the information given to him by one Kemogowda, son of Nanjegowda.

How this witness came to know of the facts stated by him to the Patel is not clearly known because he has not been examined However. Ext. P;28 itself mentions the information given by P. W, 12 to this Kempegowda which the latter reported to the Police. Hence it Is not unlikely that in the course of transmission of the Information from P. W. 12 to the informant Kempegowda. son of Nariegowda. and from him to

the Police Patel and in the course of its being put into writing by the Patel. there might have crept in certain alterations owing to the differences in the powers of appreciation, retention, expression and of putting forth in writing. The omissions or alterations, it any, are explainable on this score.

Apart from this, it should also be noted that at the time when possibly P. W. 12 asked Kempegowda to inform the Patel of the incident so that the latter may come to the spot and take step for informing the Police, all that P. W. 12 must, be concerned with was to indicate that, death had occurred at a particular place at the hands of a particular person. It could not be his anxiety or idea to put forth each and every detail of the incident he had seen or heard. This accounts for the omissions. With these circumstances in view we shall consider the differences In the two versions.

14. In his statement in Court. P W. 12 stated (sic) his attention was attracted by the groaning sound coming from the house of the deceased. On going to the door he pushed it found that it was bolted from inside; then he peeped throughthe crevice in the door and saw that Nanjegowda had fallen and that accused was standing with an axe and also that his hand was waving with the axe as though in the act of beating.

He further states that there was a side door by which he could go up to the hind door and as that door was open, he went inside to the place where the deceased was lying injured. He also stated that on seeing the accused with a blood-stained axe in his hand he immediately snatched it from the hands of the accused.

At the same time, he states that he questioned the accused to which the latter replied that he did something '(Expression in Kanaries -- Ed.)'. All these are not to be found in Ext. P-28. The learned Sessions Judge considers that these were purposefully introduced in the course of the deposition of P. W. 12 'to put forward a make believe theory'. We cannot agree with this remark. They are clearly explainable on the considerations dealt with above. The learned Sessions Judge also considers it a material discrepancy, in that P. W. 9 states that he questioned the accused as to why he beat his father and that the latter replied, he somehow beat him '(Expression in Kanaries-- Ed.)', while P. W. 12 does not refer to this

conversation in the course of his deposition.

Apart from the fact that no such specific questions have been put to P W. 9 or to P. W. 12, it is not unlikely that as soon as P. W. 12 snatched the axe from the hands of the accused, he engaged himself with giving some first aid to the injured person. It is not unlikely if he was not mindful of the above said conversation between P. W. 9 and the accused. The learned Sessions Judge further comments on the absence of this conversation in Ext. P-28. It is impossible to expect the same in that document. On these considerations, he further comes to the conclusion that:

'When the so-called direct evidence is at variance with the first information report, a shadow of doubt must be said to have cast on the prosecution case.'

It is difficult to reach this conclusion by any stretch of imagination.

15. The learned Sessions Judge then considers certain discrepancies in the evidence of the Patel P. W. 13 and that of the Police Sub-Inspector P. W. 15 and of the affidavit of Thoti Uriya Ex. P. 26. P. W. 13 says that he carried the report himself after arranging to send the accused with Thoti Uriya. Ext. P-28. however, mentions that it was received by the Police Sub-Inspector at the Police Station at 4.20 p. m. through Thoti Uriya. Before the Court P. W. 13 first stated that he himself delivered Ext. P-28 to the Malavalli Police Sub-Inspector. To the Court, he states that at about 11 a. m. or 12 noon he went to the Police Station but that it was Thoti Uriya that went to the Police Station and delivered the report.

Thoti Uriva states at Ext. P-26 that the Patel gave him the report and that he handed it over to the Duffedar at the Police Station. The Duffedar P. w. 3 does not speak to the receipt of Ext. P. 28 at all. The Police Sub-Inspector, P. W. 16, states that Uriva presented Ext P-28 to him at the Police Station at about 4-20 p.m. It is so noted on that document. No doubt, there are these discrepancies: they are of a minor nature andnothing hinges on them. Not much importance can be attached to the same. At any rate, they do not, in any sense, make the prosecution version improbable.

16. That the death is homicidal is clearly established by the medical evidence. No objection has been raised even in the trial Court on this ground. Hence we need not discuss that part of the evidence. The learned Sessions Judge has, however, commented upon the motive in this case as being very thin and too weak to substantiate such a grave offence as that of murdering his own father. He, at the same time, concedes that motive evidence is not so very essential for establishing the guilt. But he considers that where it exists, it must be in consonance with the evidence on record. He does not, however, show how in this particular case it is not to be found so. After all, motive is not a necessary ingredient of an offence.

If evidence of motive is produced, it may support the prosecution in showing that the other substantial evidence on which an offence can be established is more probable. Hence the evidence of motive is one which helps the appreciation of evidence by showing whether the evidence could be more or less probable.

There may be cases where the evidence is strong enough to sustain a conviction but where there may be little or no evidence in respect of motive or where the motive suggested may itself be very weak. In the present case, there is some evidence about motive as given by P. Ws. 8 and 10, brothers of the accused, and other witnesses.

However, it is a slender one. But it is not unlikely that being enraged by the refusal to meet his demand, the accused might have given a blow or two to the old man. Immediately thereafter, it is also possible he might have felt that he did an act of indiscretion. But that was possibly too late. There is no reason why the other evidence for the prosecution should be considered as improbable by the mere fact that this motive is not such as to be a strong urge for a desperate act. wE see no infirmity in this part of the evidence.

17. We have already mentioned in detail the evidence of the witnesses in this case. P. Ws. 9, 11 and 12 immediately came to the spot and have seen not only the father lying injured but also the son standing by his side with a bloodstained axe in his hand. That the stains on it were of human blood has been established by the reports of the Chemical Examiner and of the Serologist, Exts. P-18 and P-23 respectively. There was no third person then in the house all having gone away

to the fields. The front door was closed. Under these circumstances, the only inference is that the accused must have been the person responsible for the injuries.

Even the replies given by the accused to P. W. 12 and to P. W. 9 practically concede the act. As abovesaid, there is no reason why the above three witnesses should depose falsely against the accused. Even taking into consideration the fact that the innocence of the accused is con-firmed by the fact of his acquittal, we still find that there is no doubt about his guilt being established. Keeping in view all the four points necessary for consideration in an appeal against acquittal, we feel satisfied that the guilt is brought home to the accused by the evidence on record.

18. We have, however, to say something about the section under which the accused could be convicted. There is nothing to establish that the accused intended to kill his lather or that he intended to cause such bodily injury as was likely to cause his death. If he hit his own father, he did so in a fit of rage, possibly on account of the father's denial to pay him money.

In the trial Court, he was charged only with an offence under Section 304, I. P. C. The learned Additional Assistant Advocate-General who appears for the State before us frankly concedes that no offence under Section 304, I. P. C, also can be said to have been established against the accused. According to him, the offence could only fall under Section 324, I. P. C. We agree that the offence established is one that falls under this section.

19. So far as the sentence is concerned, looking to the nature of the injuries and to the fact that the accused is a raw youth, we are of opinion that a lenient sentence will serve the ends of justice.

20. In the result, the appeal is allowed; the order of acquittal is set aside. The accused is convicted under Section 324, I. P. C. and sentenced to undergo Rigorous Imprisonment for six months.

21. Appeal allowed.