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Court : Karnataka

Decided On : Aug-28-1974

Reported in : 1975CriLJ1159

Judge : C. Honniah and ;M.S. Nesargi, JJ.

Appellant : The State of Karnataka

Respondent : Sidda

Judgement :

M.S. Nesargi, J.

1. In this appeal by the State, the judgment of acquittal passed by the Sessions Judge, Mysore, in Sessions Case No. 17 of 1973, acquitting the respondent, who was the accused therein, of the offence punishable under Section 302 of the Indian Penal Code on two counts, is challenged.

2. The prosecution case is that the accused had illwill towards P. W. 4 C. M. Madaiah called Yayaman Madaiah on account of the distribution of sites to Harijans by P. W. 4. He had picked up quarrel with P. W. 4. By about 6.00 P. M. on 15-8-1972 the accused stabbed Basavanna who is the brother-in-law of P. W. 4 near the house of P. W. 1 Nanjamma when Basavanna and P. W. 4 were there. At that time Nagabasava, brother of P. W. 8 Powla, intervened and the accused stabbed him also. Basavanna died on the spot while Nagabasava sustained a

severe stab injury. He was lying injured there when P. W. 8 Powla went to him and Nagabasava stated to him that the accused had stabbed him. P. W. 1 Nanjamma and P. W. 2 Mallaiah saw this incident. P. W. 3 Chamamma, P. W. 4 Madaiah and P. W. 8 Powla also saw the fag-end of the incident. Information was reached to the police station and Nagabasava was sent to the hospital at Kollegal where P. W. 7 Dr. P. N. Krishna Murthy attended on the injuries on Nagabasava. It is also the case of the prosecution that Nagabasava gave his statement as per Ex. P.4 in the after-noon or evening of 16-8-1972, in the presence of P. W. 7 Dr. Krishna Murthy, when contacted by P. W. 9 S. Y. Lakkanavar, the Sub-Inspector of Police and P. W. 15. M. Siddegowda, the Circle Inspector of Police. Nagabasava died on 18-8-1972. The accused was arrested on 7-9-1972 as he was absconding till then. He voluntarily gave information as per Ex. P.21 that he had hidden a knife and blood-stained clothes in a brick kiln, and would show the place and produce them. Panchas were collected and the accused took them to the brick kiln and produced M. O. 1 knife, M. O. 6 jubba and M. O. 7 dhoti, and they were sealed and seized under panchanama Ex. P. 17. Investigation was completed and a charge-sheet was filed.

3. The learned State Public Prosecutor took us through the relevant portions of the judgment of the learned Sessions Judge and argued that the reasoning on which the learned Sessions Judge has based the acquittal, cannot stand scrutiny. We found some force in this contention of the learned State Public Prosecutor, While perusing the judgment we noticed that a standing counsel Sri H. Dwarakanath had been appointed to defend the accused and he defended the accused from 3-12-1973, On looking into the order-sheet maintained in the sessions case, we noticed that the accused had engaged his own counsel by name Sri. D. V. Rama Rao. Sri D. V. Rama Rao had filed his memo of appearance and had attended on certain dates. After the charges were framed and the case was posted for trial, Sri Rama Rao sustained a fracture and, hence, was unable to attend the Court. He requested for adjournment and the case was adjourned on 2 or 3 occasions. On 19-11-1973, the date on which the case was posted for trial, the accused filed an application, supported by a medical certificate in regard to the fracture of Sri Rama Rao, praying for adjournment of by two months on the ground that according to the Doctor's opinion Sri. Rama Rao would not be able to walk about, come to Court

and conduct the case at least for two months from that date. The learned Sessions Judge wrote a lengthy order adjourning the trial to 3-12-1973. He in the course of the order directed the accused either to bring his lawyer Sri Rama Rao on 3-12-1973 or engage another Lawyer. He warned the accused that in case he failed to do either of the above things, a standing counsel would be appointed by the Court on his behalf. In fact he appointed Sri H. Dwarakanath as standing counsel by the very same order by way of abundant caution. On 3-12-1973 the accused filed an application for adjournment beyond 25-12-1973. In that application he urged that the Court had through oversight ignored the opinion of the Doctor as mentioned in the certificate produced by him on 19-11-1973 that Sri Rama Rao would not be able to attend the Court at least for about two months from 19-11-1973, and posted the case for trial on 3-12-1973, in spite of his request for an adjournment to 19-1-1974. The learned Sessions Judge wrote a lengthy order rejecting this application and directing the standing counsel to defend the accused. Thereafter he took up the trial and closed the trial. He then after hearing arguments, acquitted the accused.

4. Every accused has a right to defend himself by engaging a counsel of his choice and particularly so in a case where he is charged for an offence punishable with death. In case an accused, tried for an offence punishable with death, is not possessed of sufficient means to engage a counsel of his choice, it is enjoined on the Sessions Judge trying the case to engage a suitable counsel at the cost of the State Government to defend such an accused. That is Rule 3 in Chapter VIII of the Karnataka Criminal Rules of Practice, 1968. This rule is based on the provision in Section 340 of the Code of Criminal Procedure (old). What are the duties of a Sessions Judge in engaging a suitable counsel at the cost of the State Government to defend such an accused, has been succinctly put by the Supreme Court in *Ranchod Mathur Wasawa v. State of Gujarat* : 1974 CriLJ799 as follows:

We find no reason to disagree with the findings of guilt and refuse special leave. Even so, we are disturbed, having a look at the proceedings in this case, that the Sessions Judges do not view with sufficient seriousness the need to appoint State Counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should

be paid to appoint competent Advocates, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar. Sufficient time and complete papers should also be made available, so that the advocate chosen may serve the cause of justice with all the ability at his command.' It must be remembered that a Sessions Judge is enjoined to appoint a suitable counsel at the cost of the State to defend such an accused only when the concerned accused is not possessed of sufficient means to engage a counsel by himself. As we have already pointed out, the accused in this case had engaged a senior counsel. Sri D. V. Rama Rao to defend him. On all the dates when the trial of the case was posted, he made diligent efforts to secure presence of Sri Rama Rao to defend him, but failed in view of the unfortunate accident that Sri. Rama Rao suffered. It cannot at all be said, under these circumstances, that there was any kind of want of diligence or there was indifference on the part of the accused or Sri Rama Rao in the conduct of this case. The request of the accused made on 19-11-1973 was very well supported by the certificate of the Doctor. The learned Sessions Judge ought to have adjourned the case beyond two months or at least by two months on 19-11-1973. The request made by the accused on 3-12-1973 to adjourn the case to a date beyond 25-12-1973, according to us, was absolutely justifiable and ought to have been granted by the learned Sessions Judge. Under these circumstances, the action taken by the learned Sessions Judge to thrust a counsel of his choice on the accused and make that counsel defend the case against the will of the accused, was not proper. All these facts and circumstances are sufficient to disturb the conscience of any Court. We are clearly of opinion that the accused was not allowed adequate opportunity to defend himself in this case. Therefore, we hold that there has to be a retrial.

5. In the result, we allow this appeal, set aside the judgment of acquittal passed by the Sessions Judge, Mysore, in Sessions Case No. 17 of 1973 and direct the Sessions Judge, Mysore, to take the case on file and dispose of the same according to law, bearing in mind the observations made above.