

Basappa Vs. the State of Karnataka

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Court : Karnataka

Decided On : Jul-06-1995

Reported in : 1996(2)ALT(Cri)202; 1997(1)ALT(Cri)676; 1995CriLJ4061; ILR1995KAR2266; 1995(3)KarLJ649

Judge : Kumar Rajarathnam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 394

Appeal No. : Cri. Rev. Petn. No. 417/1992

Appellant : Basappa

Respondent : The State of Karnataka

Advocate for Def. : C. Ramakrishna, H.C.G.P.

Advocate for Pet/Ap. : Mahesh and ;R.B. Deshpande, Advs.

Judgement :

ORDER

1. This Criminal Revision Petition is against a conviction on a charge under Section 394 of the Indian Penal Code.

2. The allegation against the petitioner-accused is that on 6-11-1987 at about 4.30 p.m. in the limits of Maski at Survey No. 209, the accused committed robbery of 7 goats and one lamb and another goat, worth in all Rs. 2,500/-, by causing hurt to

one Amarappa by stabbing with a knife in the location of his eyes and has committed the offence punishable under Section 394, IPC.

3. The trial Court convicted the petitioner-accused for an offence punishable under Section 394, IPC and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 1,000/- and in default, to undergo further imprisonment for one month.

4. The appellate Court dismissed the appeal and the Judgment passed by the learned JMFC., Lingasugur was confirmed and directed the fine amount of Rs. 1000/- to be paid to the victim Amarappa. Aggrieved by the Judgments of the trial Court and the appellate Court, the petitioner has preferred this revision.

5. The case of the prosecution is that one Amarappa who is the complainant, aged about 12 years, at the time of occurrence, was grazing his goats with one Shivappa and one Chennabasappa. It was at about 8 a.m. They had spent their whole day there and at about 4 p.m. an unknown person came to them stating that he is searching for his buffalo, which was missing. The said stranger also asked Amarappa to share his meals with him. The three boys viz., Amarappa, Shivappa and Chennabasappa were all together. At about 4.30 p.m. the said person viz., the accused caught hold of the neck of Amarappa and put something into his eyes. While Amarappa was rubbing his eyes, the accused stabbed in the location of Amarappa's eye with a knife. The accused also threw Amarappa into the bushes. While Amarappa was crying, his companions Shivappa and Chennabasappa rushed to him and told him that the accused took away his goats. A little later, mother of Amarappa, Parvathamma came there and took him to Maski police station. Amarappa gave a complaint which was registered at Crime No. 54/1987 by the police on 6-11-1987. The police after investigation searched for the accused and arrested him and later filed the charge sheet.

6. Mr. Mahesh, learned counsel for the petitioner, strenuously submits though the F.I.R. was given by Amarappa, that Amarappa was not examined in Court. He further submits that the two friends of Amarappa viz., Shivappa and Chennabasappa, who were also eye witnesses to the alleged occurrence, were also not examined in Court. He further submitted that the mother of Amarappa,

Parvathamma, who came immediately to the scene of occurrence after incident, and took Amarappa to the police station, was also not examined in Court. It is the contention of the learned counsel for the petitioner that non-examination of these four witnesses is fatal to the prosecution case. The learned counsel next contended that the accused was identified at an identification parade by Amarappa, Shivappa and Chennabasappa. In the light of the fact that the accused was identified by these three witnesses, it is not safe to rely on the identification of the accused in the absence of these three witnesses being examined in Court. It is also submitted that PWs 2 and 3 who were alleged to have seen the accused some where near the village and informed the police about it, are the only two witnesses on whose evidence the conviction is based. PWs 2 and 3 are the witnesses according to the prosecution, who have seen the accused with the goats on the same day about 4 to 5 hours after the occurrence. Learned counsel for the petitioner also submits that the evidence of PWs 2 and 3 cannot be relied upon, as the evidence of PWs 2 and 3 contradicts with each other.

7. PW. 2 states that while he was taking meals, his son aged 12 years came to him stating that a boy was standing with goats near the hut of coolies near his house. Thereafter he enquired with the said boy and that boy has not given a satisfactory answer, therefore, he went and reported the matter to the police. However, the version of PW 3 is that he saw the accused near the canal with the stolen goats. The two different versions of PWs 2 and 3 cannot be relied upon because PW 3 states that PW 2 and himself along with two others were returning from cinema together and both spotted the accused. Therefore, it appears, even if any reliance can be placed with respect to the goats being in possession of the accused, no inference can be made with respect to the actual occurrence. PW 3 has also some doubt about the identification of the accused after a lapse of three years for the first time in Court. Learned counsel for the petitioner submits that PWs 2 and 3 cannot in any way implicate the accused with respect to the alleged offence. No explanation is forthcoming by the State as to why four vital witnesses namely Amarappa, Shivappa, Chennabasappa and Parvatamma were not examined in Court. It is also not known how the F.I.R. was marked in the absence of the author of the FIR Amarappa. It is submitted by the learned Public Prosecutor that Amarappa and his two friends Shivappa and Chennabasappa

being of tender age could not have been procured and therefore, it will not in any way affect the prosecution case.

8. Learned Magistrate at para 25 of this Judgment has commented all this aspect, which reads as follows :-

'Learned counsel for defence vehemently contended that to prove the alleged offence either there must be direct evidence or circumstantial evidence. It is further contended CWs 1, 5 and 6 are material witnesses and they are not examined in this case. It is pertinent to note that these witnesses were present before the Court and for the reasons stated in the order sheet case was adjourned from time to time even though Court has made best efforts to secure them again for the evidence, but process were not executed and then re-issue of process found rejected.'

9. It is also submitted by the learned counsel for the petitioner that since the father gave evidence it could have been easily possible for the father to procure CWs 1, 5 and 6 and also Parvathamma who are vital witnesses even according to the learned Magistrate. In the absence of the examination of the vital witnesses it would be difficult to sustain the conviction. Learned counsel for the petitioner relied on a decision reported in State of Punjab v. Pritam Singh : 1977 CriLJ1575 . While dealing with the facts of the case the Supreme Court has observed as follows :

'One of the most extraordinary feature of this case is that after Pala Singh left for the police station to lodge the FIR, Ajit Singh, his brother whose wife and daughter had been killed stayed at the house though he had also witnessed the occurrence. He was therefore, the most material witness to be examined in the case because his near relations had been killed in his presence and yet Ajit Singh was not examined by the prosecution at all.'

10. Reference was also made by the learned counsel for petitioner to the decisions reported in : 1983 CriLJ149 ; : 1970 CriLJ1149 ; : 1988 CriLJ842 , 1978 (1) KLJ 30 : 1978 Cri LJ 462. It is very clear from the above decisions that in the absence of the examination of vital witnesses prosecution must fail and the benefit of doubt must go to the accused.

11. In that view of the matter the Criminal Revision Petition will have to be allowed. The Judgments of the trial Court and the Appellate Court are set aside. The accused is acquitted of the charge under Section 394, IPC and set at liberty. The bail bond furnished by him, if any, shall stand cancelled. Consequently the sentence of two years and fine of Rs. 1000/- is also set aside.

12. The Criminal Revision Petition is allowed.

13. Petition allowed.

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