

The State of Karnataka Vs. Kamalaksha

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Court : Karnataka

Decided On : Sep-21-1977

Reported in : 1978CriLJ290

Judge : C. Honniah, Actg. C.J. and; M.N. Venkatachaliah, J.

Appellant : The State of Karnataka

Respondent : Kamalaksha

Advocate for Def. : Shri. M. Gopalakrishna Setty

Judgement :

C. Honniah, Actg. C.J.

1. Kama-laksha, aged about 25 years, of Yeyyadi village of Mangalore Taluk, was charged with having committed the murder of one Mohan, husband of one Sundari (P.W. 5) at about 10.30 p.m. on 8-10-1976 in front of his house. The Sessions Judge, Dakshina Kannada, Mangalore, acquitted the accused of the charge of murder in Sessions Case No. 47 of 1976. Aggrieved by this decision, the State has preferred this appeal.

2. Deceased Mohan everyday was going to the hotel of his mother situate at Gurupura village which is at a distance of about 8 miles from Yeyyadi village and used to return back to his house by about 8 p. m. Sundari, wife of Mohan was working in a factory at Mangalore. On one side of the house of Mohan, there was

the hotel of P. W. 13 Pundalika Prabhu where the accused, who was a nephew of the said Pundalika Prabhu, was working, On the other side of the house of Mohan, there was the house of Srinivasa Prabhu, P.W. 9 who is the brother of P.W. 13 Pundalika Prabhu. P. W. 13 Pundalika Prabhu, as mentioned earlier, is the paternal uncle of the accused. On one or two occasions, Mohan saw the accused coming to his house in his absence, apparently for the purpose of fetching her coffee from his hotel and talking to Sundari. The visits of the accused to the house were suspected by Mohan and he was entertaining a suspicion that the accused had some amorous relationship with his wife Sundari. Having entertained this suspicion, Mohan started abusing his wife as well as the accused now and then.

3. On 8-10-1976, as usual, Mohan came to his house at about 8 p.m. He abused his wife and thereafter came out of his house and went on abusing the accused who was in the hotel of P.W. 13 till about 10.30 p.m. The prosecution case was that the accused came near Mohan armed with a knife, grappled with the deceased and inflicted a number of injuries on Mohan P.W. 5 Sundari was inside the house. On hearing the sound, she came out of the house and saw the accused stabbing her husband Mohan. On seeing this, she raised a cry and on hearing her cries. Sanjiva Rao P.W. 6, Srinivas Prabhu, P.W. 9 Tukaram P.W. 10, Pundalika Prabhu, P.W. 13 and Rathna P.W. 14, who are neighbours came running to the spot, They saw the accused standing near the place of incident. P.W. 6 Sanjiva Rao secured a tempo in which the injured Mohan was transported to the hospital along with Sundari. On the way Mohan died, P.W. 2 Dr. M. Seetharama Maria, examined Mohan and pronounced him dead. He sent the information to the police station at Pondeswar. B. M. Uthaiab P.W. 15, Sub-Inspector of Police, on receipt of the information, rushed to the hospital where he recorded the statement of Sundari as per Ex. P. 5. He registered a case in Crime No. 138/76 Under Section 302 I.P.C. and sent F.I.R. to the court and express reports to his superiors. Thereafter P.W. 16 K. M. Belliappa, Circle Inspector of Police, took up further investigation in this case. He arrested the accused on the same night and also seized his underwear M.O. 3 which was stained with blood. After completing the investigation, he placed a charge-sheet alleging that the accused had committed the murder of Mohan.

4. The defence of the accused was one of total denial. However , during the course of cross-examination of witnesses, it was suggested that the accused stabbed Mohan in exercise of his right of private defence when Mohan attempted to attack him with a knife. It was also suggested that the accused, being disgusted with the continuous abuses hurled at him by Mohan, lost his self-control and in that process, acting under grave and sudden provocation, inflicted the injuries on Mohan.

5. The main evidence on which the prosecution relied was the evidence of Sundari P.W. 5. She has given evidence that she was inside the house attending to some work when her husband was in the verandah and abusing the accused in 'the most filthy language.'. Having heard the cries of her husband, she came out and saw the accused stabbing her husband. According to her, she cried out and on hearing her cries, P.W. 6 Sanjiva Rao, P.W. 9 Srinivasa Prabhu, P.W. 10 Thukaram and P.W. 13 Pundalika Prabhu and many others came there. The accused was standing near the place of incident and he threw weapon. P. W. 9 and P. W. 13 beat the accused stating why he committed such a ghastly thing. All these - witnesses who came there stated that they noticed, the injuries on Mohan and also on the accused when they came near the place of incident. In addition to P. W. 5 Sundari, the other witnesses mentioned above, were also put up by the prosecution as eye-witnesses to the occurrence. They however, did not support the case of the prosecution in full but they have supported the case of the prosecution to a great extent in that they stated that when they went near the place of the incident, P.W. 5 Sundari was weeping and the accused was standing nearby holding the weapon. This evidence, in our opinion, corroborates the version of P.W. 5 and establishes the complicity of the accused in the crime beyond all reasonable doubt. P.Ws. 9, 13 and 14 are near relatives of the accused and nothing is alleged against their veracity. Indeed the prosecution complains that these witnesses were interested in the accused. The learned Sessions Judge, on a reasoning, which does not appear to us to be tenable, has rejected the evidence of these witnesses; he has given undue importance to minor discrepancies which are discrepancies of truth and not discrepancies of falsehood. He has missed the essence in the evidence of these witnesses and exaggerated certain circumstances out of proportion to their legitimate scope, with the result, he

has arrived at an entirely wrong conclusion.

It requires to be pointed out and that indeed is the daily experience of courts that it is wholly improper to reject the substance of a case by reason of some apparent inconsistency, or diversity in the circumstances with which it is related. When accounts of a transaction come from the mouth of different witnesses it is seldom that it is not possible to pick out inconsistencies between them. Main strands of truth have to be identified and separated where discrepancies are discrepancies of truth. Too minute an attention to immaterial detail may lead to serious failure of justice. 'A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction-of the innocent.' (See *Stirland v. Director of Public Prosecution*, 1944 AC 315 at p. 324).

6. Shri M. Gopalakrishna Setty, learned counsel for the respondent-accused, sought to support the acquittal on the reasoning of the learned Sessions Judge. We are not impressed with this reasoning. He then contended that taking into consideration some circumstances which are not in dispute, the accused must have acted in a fit of anger and must have acted under grave and sudden provocation. He further urged that the accused must have stabbed Mohan in exercise of the right of private defence.

7. So far as the first contention is concerned, it could be discerned from the circumstances available in the case that the accused must have lost his self-control owing to the 'most filthy abuses' that were (admittedly) hurled at the accused by Mohan continuously for more than two hours. When the accused bears the evidential-burden of showing grave and sudden provocation, it cannot be necessary for him to go so far as to make out a case which, if uncontradicted, would satisfy a reasonable tribunal on the balance of probability. It must be sufficient for the accused to adduce such evidence as would, if uncontradicted, leave a reasonable tribunal in reasonable doubt as to whether his contention might not be right. The material in this behalf is available in the evidence for the prosecution itself.

As observed by the Supreme Court, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring

his act within the first exception to Section 300 I.P.C. The test of grave and sudden provocation is whether a reasonable man, not a hot-tempered or hyper-sensitive or unusually-excitabile and pugnacious person, belonging to the same class of society as the accused placed in the situation in which the accused was placed, would be so provoked as to lose his self-control. No abstract standard of reasonableness can be laid down. What a reasonable man would do under certain circumstances depends upon the customs, manners, way of life, traditional values etc. It is for the court to decide in each case, having regard to the relevant circumstances, whether there was such sudden and grave provocation.

However, to have that effect, the provocation must be such as temporarily to deprive the person provoked of the power of self-control as a result of which he commits the act which caused death. The fact that the defending counsel may not have stressed the possibility of such an alternative case does not relieve the court from considering it, if there is material on record which satisfies such a conclusion.

The learned Government Pleader, appearing for the State, however, contended that everyday the deceased was in the habit of abusing the accused as well as his wife P.W. 5 Sundari since about three months and during all this period, the accused kept quiet and if, on that day, as usual, the deceased abused him, that would not have given the accused grave and sudden provocation. It is difficult to lay down a hard and fast rule under what circumstances an individual would lose his self-control. Each case has got to be decided on the facts and circumstances of that particular case.

8. In this connection, we may refer to a decision of the Judicial Commissioner's Court of Peshawar in Bahadur v. Emperor reported in AIR 1935 Pesh 78 : 36 Cri LJ 939. In that case, the facts were these: There was an intrigue between the deceased and the wife of the accused and the deceased was in the habit of singing songs at night-time, within the hearing of the accused, suggesting his intrigue with the wife of the accused. On several previous occasions, the accused had managed to control himself when so provoked but on that fateful day, when the same was repeated, the accused, who had a gun in his hand, lost self-control and shot at the deceased and killed him. In those circumstances, it was held that

the mere fact that the accused had managed to control himself on previous occasions when provoked was no reason for refusing to give the benefit of exception (1) to Section 300 I.P.C.

9. In this case also, although the accused controlled himself on previous occasions when 'filthy abuses' were stated to have been hurled at him, it cannot be said that on that day, when he attacked the deceased, there would have been no such grave and sudden provocation.

10. On the second point urged by the learned counsel for the respondent-accused, there is some evidence to indicate that when the accused went near the deceased being provoked, some scuffle took place between the accused and the deceased. As to what happened prior to the assault on the deceased, there is no evidence in this case. The accused has also not stated as to what happened before P.W. 5 Sundari came out of her house. However, there is one significant statement made by P.W. 5 Sundari during the course of her evidence. That statement reads as follows:

When Srinivasa Prabhu and Pundalika Prabhu asked the accused as to why he stabbed my husband, the accused told them that my husband had abused him in most vulgar language and stabbed him with a knife and that hence he stabbed my husband with a knife.

11. The accused had sustained two injuries: one on the palm and another on the lip and when he was questioned by doctor P. W. 1, he told him that the deceased had assaulted him with a knife.

12. It is unfortunate that in this case the defence did not make use of these circumstances to bring the offence under exception (2) to Section 300 I P. C. But it is well settled that the accused need not specifically plead that his case falls under any of the exceptions to Section 300 I.P.C. so as to bring the offence Under Section 304 I.P.C. If there is material available in the case to bring the offence under any of the exceptions to Section 300 I.P.C, even if the accused had not taken such a defence, the case should be brought under the exception of Section 300 I.P.C, which may be attracted by the evidence on record. In the present case,

the evidence is such as not to bring the case under the 2nd exception to Section 300 I.P.C.

13. After considering the entire material on record, we are not in agreement with the conclusions reached by the learned Sessions Judge. We, therefore, allow this appeal, set aside the judgment of acquittal passed by the Sessions Judge, Dakshina Kannada, Mangalore, in Sessions Case No. 47 of 1976 and convict the respondent-accused (Kamlakasha) Under Section 304 I.P.C. So far as the sentence is concerned, having regard to the age of the accused and the circumstances under which he inflicted the injuries on the deceased, we feel that the ends of justice would be met if we sentence him to rigorous imprisonment for three years. Accordingly, we sentence him to rigorous imprisonment for three years.

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