

**Pujappa Vs. the State**

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**Court :** Karnataka

**Decided On :** Jul-20-1990

**Reported in :** 1991CriLJ1189; 1990(3)KarLJ213

**Judge :** B. Jagannatha Hegde and ;D.P. Hiremath, JJ.

**Appeal No. :** Criminal Appeal No. 756 of 1987

**Appellant :** Pujappa

**Respondent :** The State

**Advocate for Def. :** M.V. Nanjundiah, Addl. S.P.P.

**Advocate for Pet/Ap. :** M.V. Seshachala, Adv.

**Judgement :**

**Hiremath, J.**

1. The appellant herein has sent this jail appeal challenging his conviction under section 302 IPC for the murder of one Durgavva and another Veereshappa. He has been sentenced to suffer imprisonment for life for the offence under section 302 IPC. Though there were charges under section 323 IPC for having caused injury to Lachmavva his mother and criminal intimidation under S. 506 IPC for having intimidated Huligeppa, he was acquitted of those two charges.

2. Briefly stated it was the prosecution case that there was some property dispute. When two deceased were sleeping in their house, the accused inflicted fatal blows with Vanike on them and when his mother attempted to intervene she was also assaulted. The accused did not engage any counsel in the Sessions Court, but a Standing Counsel was appointed during the trial. Though specifically the accused appellant did not plead in his defence under section 313 Cr.P.C. that he was of unsound mind when the offence is alleged to be committed the trend of the cross-examination was to that effect. The Sessions Court found that the prosecution has established guilt against the accused for the main offence under section 302 IPC and did not agree with the contention of the defence counsel that the appellant should have the benefit of S. 84 IPC.

3. We appointed Sri M. V. Sheshachala the learned counsel as amicus curiae to assist the Court in this appeal. He placed on record his able assistance as he had applied his mind to the vitiating circumstances in the case and urged that the Sessions Court has failed in its primary duty of holding an enquiry into the mental condition of the appellant accused as required under section 329 Cr.P.C. and giving a finding on that mental condition before proceeding with trial. Before taking up the appeal on merits, we heard the amicus curiae as well as learned Addl. State Public Prosecutor on this preliminary point and perused the records. We find that the fact of unsoundness of mind of the accused was brought to the notice of even the Committal Court at the earliest when on 24-3-1986 it received a requisition from the Medical Officer, Central Prison, Bellary that the accused be referred to the Mental Hospital, Dharwar or Nimhans, Bangalore for observation for his abnormal behaviour. On this requisition he directed the Superintendent, Central Prison, Bellary to transfer him to the Mental Hospital at Dharwar. Even on 19-4-86 on which date the appellant was required to be produced before the learned Magistrate even before the chargesheet was filed it was reported to the learned Magistrate that he was still in Mental Hospital at Dharwar and he recorded this fact in the proceedings of that date. However, he directed the prison authorities to produce the accused before him soon after he was discharged from the Mental Hospital. Chargesheet was filed on 30-4-1986. Even on that date, a note was made in the order sheet that the accused was transferred to the Mental Hospital, Dharwar for treatment as per the Court order dated 24-3-1986. However,

it appears the accused was produced on 19-5-1986 and on 21-5-1986 the case came to be committed to the Sessions Court, Raichur.

4. The proceedings of the Sessions Court reveal that on 19-6-1986 the appellant was produced before it from the Mental Hospital where he was in-patient. The Sessions Court however appointed the Standing Counsel on the same day to defend him. Thereafter, it has been noted in the order-sheet that the accused was being produced from judicial custody from time to time till the trial ended.

5. Learned amicus curiae has invited our attention to the medical certificates issued by the Mental Hospital from time to time. Charges were framed against the accused on 28-1-1987 for the offences under Sections 302, and 506 I.P.C. The letter of the Superintendent, Mental Hospital, Dharwar dated 15-5-1986 addressed to the Committal Court states that though there was improvement in the condition of the appellant and was manageable in view of the nature of illness long term treatment was advised and therefore he requested the learned Magistrate to direct him to attend personally for check-up and treatment along with his relatives. The Superintendent, Central Prison by his letter dated 9-6-1986 requested the District Surgeon, District Hospital, Raichur to furnish a certificate as to the mental condition of the accused. In reply, the Dist. Prison Superintendent sent the medical certificate issued by the R.M.O. of the District Hospital, Raichur dated 18-6-1986. In that, the Medical Officer clearly reported the facts indicating insanity in the accused that were observed by him and in addition he reported that the accused was not responding to questions properly, that repeatedly he went on talking and his being an old case treated at Mental Hospital, Dharwar, he may be shifted to Dharwar. Perhaps for this reason as already stated above, the Constable who had produced the accused before the Sessions Court informed the Court that he was in the hospital.

6. The proceedings of the Sessions Court clearly indicate that at no stage the learned Sessions Judge applied his mind to this aspect of the matter. Though it has been noted in the order-sheet that from 26-7-1986 onwards the accused was being produced from judicial custody nowhere the Sessions Court states about it being satisfied about his mental condition and the fitness of the accused appellant

to take his trial. S. 329 Cr.P.C. prescribes the procedure to be followed by a Court trying an accused in case of a person of unsound mind. It reads thus :

'329. (1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.'

7. It is thus clear that in the first instance it is mandatory that the fact of unsoundness of mind and incapacity to make defence have to be tried after taking such evidence including the medical evidence that may be necessary for the purpose. The records do not reveal whether the Sessions Court at any stage at least sought a final report from the Mental Hospital, Dharwar about the condition of the accused-appellant and on the question whether was capable to make his defence. The amicus curiae invited our attention to a decision of the Bombay High Court in the case of Balu Ganapat v. State of Maharashtra, 1983 Cri LJ 1769 in which the learned Judges of the Division Bench observed that under section 329 Cr.P.C. if at the trial of any person, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance.' try the fact of such unsoundness and incapacity'. In the instant case as in that case as well the record did not indicate compliance with this mandatory provision. All that happened was that the trial Court did take a prima facie view in favour of the accused and did postpone the trial pending his medical examination. But after medical examination the trial Court did not try the fact of the purported unsoundness and incapacity of the accused, did not record finding as to his mental condition and defending capacity and without fulfilling this initial obligation forth with resumed and concluded the trial on the main charge itself. The resulting lacuna was not innocuous but vital. This vital lacuna would vitiate the

trial.

8. Learned Amicus Curiae has also invited our attention to a Bench decision of the Kerala High Court in the case of State v. Peter, 1981 Cri LJ NOC 127 (Kerala) in which on similar ground the committal order was challenged. The learned Judges referring to Section 328 Cr.P.C. which is similar to the provisions of S. 329 Cr.P.C. observed that while complying with the provisions contained in Sections 208 and 209 the Magistrate has to peruse the records and satisfy himself that the case is one triable by a Court of Session and should remand the accused after furnishing the documents referred to in S. 208. What the Magistrate is expected to do under sections 208 and 209 involves enquiry as defined in S. 2(g). If after enquiry the Magistrate is of opinion that the accused is of unsound mind and consequently, incapable of making defence he should enter a finding to that effect and should, postpone further proceedings in the case. If having perused the certificates produced on behalf of the accused the Magistrate thought it fit to send him for observation to the Mental Hospital, he must be deemed to have had reason to suspect that the accused was of unsound mind and it was incumbent on the Magistrate to have inquired into the fact of unsoundness of mind. In such a case committal order passed by the Magistrate without such enquiry is unsustainable. While we find ourselves in agreement with this proposition of law u, S. 328. Cr.P.C. we need not turn the clock back to that stage. It is for this reason that S. 329, Cr.P.C. is attracted in the instant case and it was the duty of the Sessions Court to try the fact of unsoundness of mind and incapacity or otherwise of the appellant to make his defence. If only the Sessions Court had looked into the certificate issued finally by the R.M.O. of the District Hospital, Raichur it could have been able to understand its mandatory duty under section 329. Cr.P.C. In our view therefore failure to comply with this mandatory requirement has vitiated the trial and for that reason the judgment of conviction and sentence passed by the Sessions Court cannot sustain. The same have to be quashed and the case has to be remanded to the Sessions Court for its trial with a direction to comply with the provisions of S. 329, Cr.P.C.

9. Accordingly, we allow this appeal and quash the judgment of conviction and sentence passed by the Sessions Court, Raichur and remit the case to the

Sessions Court with a direction that it shall try the unsoundness of mind and incapacity of the appellant as required under section 329, Cr.P.C. and if it find that he is capable of making his defence and is found of sound mind then to proceed with the trial in which the accused shall be at liberty to make his appropriate defence.

10. In view of the Government Order dated 20th April, 1968 we are compelled to determine the fees of the amicus curiae as Rs. 60/- though we find that it is wholly inadequate looking to the present day circumstances when even a Standing Counsel in the Sessions Court is paid the maximum of Rs. 400/- per case and the fees are higher than Rs. 60/- per case in the case of criminal appeals when handled by High Court Government Pleaders. In our view, it would be reasonable to fix such fees at Rs. 250/- per case for which necessary steps shall be taken by the Registrar for revising the fees determined in the year 1968 in such cases.

11. Appeal allowed.

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