

Laxman Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-05-1996

Reported in : 1997(1)ALT(Cri)578; 1997CriLJ1806; ILR1997KAR129; 1997(2)KarLJ168

Judge : H.N. Narayan and; M.F. Saldanha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 325; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 294 and 313; Evidence Act - Sections 5, 45 and 67

Appeal No. : Criminal Appeal No. 54 of 1995

Appellant : Laxman

Respondent : State of Karnataka

Advocate for Def. : S.R. Bannurmah, S.P.P.

Advocate for Pet/Ap. : M.V. Devaraju and ;M. Nagaraju, Advs.

Judgement :

1. The appellant before us was the original accused in Sessions Case No. 171/93. He was charged with having committed an offence punishable under Section 302, I.P.C. The charge was that on 21-2-1993 at 8 p.m. on the road in front of Mahadevappa Hundekar's house at Tadaslur Village, that he had assaulted his

younger brother Basavaraj with an iron rod which assault ultimately resulted in the death of Basavaraj. The accused was originally arrested for an offence punishable under Section 325, I.P.C. which was thereafter altered to Section 302, I.P.C. after Basavaraj died. On completion to the investigation, the accused was chargesheeted and subsequently, came to be committed for trial to the Court of Sessions. The learned I Addl. Sessions Judge, Belgaum, by his judgment and order D/- 29th December 1994, held the accused guilty of the offence with which he was charged and sentenced him to suffer R.I. for life. The present appeal is directed against that conviction.

2. Briefly stated, the prosecution case was that the accused was the elder of the two sons of PW-1 Parvatevva. It was alleged that the accused had sent his wife away and that he was not doing any worthwhile job in so far as even as far as the agricultural work was concerned, this had been delegated to some other persons. The prosecution alleges that the mother had agreed to sell her house and that the accused was objecting to this pursuant to which it was decided to pay him Rs. 5,000/- on the transaction taking place. The prosecution alleges that this transaction did not materialise and that the accused was under the impression that his younger brother was responsible for what happened. On the night of the incident, the accused is alleged to have followed the deceased Basavaraj who was returning to his residence and at that time, he was carrying an iron rod approximately 33 inches in length. It is alleged that he approached the deceased from the rear and dealt four blows to him with the iron rod as a result of which, the deceased sustained head injuries and had to be held by the person present. The deceased was taken in a tractor to the hospital at Belgaum where he was administered medical attention despite which, he died the following night. The prosecution case was that the accused had done away with his younger brother because he was angered about the house transaction. The accused denied the incident completely and it is his case that the charge against him is totally groundless. The first submission canvassed by the appellant's learned advocate is that undoubtedly, on the night of 21-2-1993, the deceased was assaulted by some person, but it is his submission that merely because the accused was a person who was not doing any work and was not well thought of either in family circle or by others, that the immediate suspicion fell on him. The learned advocate

submitted that the evidence of the mother does not assist the prosecution at all because, PW-1 Parvatevva has come on the scene some time after the incident. This position is undoubtedly true, but the fact remains that she has deposed to the general background and her evidence does support the prosecution case that there was some problem with regard to the house transaction about which the accused was not happy. The same position applies as far as PW-2 Shantawwa is concerned because, even though she is the sister of the deceased, she came to the spot along with her mother after the incident had taken place. Her evidence however, does indicate that the accused had got into a violent quarrel with her husband in the recent past. PW-3 Baswaraj is an eye witness to the incident. He has deposed about the house transaction which is the background and he also states that he resides at the spot where the incident took place. According to him, the accused gave four full-blooded blows with the iron rod to the deceased in his presence, three of which landed on the head and one on the arm. He states that he was instrumental in helping the deceased and taking him to hospital. The main ground of attack as far as this eye witness is concerned has been concentrated on the fact that the defence had, through two witness PW-9 Mallappa, who is the person in charge of switching on the road lights and PW-14 Shankar, who is a K.E.B. Officer, sought to contend that since the electricity bill was outstanding, the power supply had been cut off and that the road lights were not burning on that day. The contention was that Basawaraj could not have seen the incident even assuming he was there because it was dark. On a scrutiny of the evidence, we find that PW-9 has very clearly deposed to the fact that he had switched the road lights on that date and that the lights were burning and PW-14 has also deposed to the fact that the road lights were burning on that day. This evidence is quite conclusive and even though the learned defence counsel had seriously contended that since PW-14 has admitted that the bill was outstanding and that if the bills are outstanding, the power supply is cut off, that the Court must accept the position that the power supply was not in existence on that date. We are however, unable to accept this because of the positive evidence to the contrary. As far as the visibility problem is concerned, there does not appear to be any difficulty because, there was enough of light and the witness who is a resident of the village and who lives in the house opposite to where PW-1 resides, had no difficulty in identifying

both the assailant as also the victim. Nothing has emerged in his cross-examination to shake his credibility and in this background, the learned Trial Judge was perfectly justified in having accepted this evidence.

3. More or less the same position emerges as far as the next eye-witness PW-4 is concerned because, his house is next to the house of P.W. 3 and he states that he was seated on the Katta when the incident occurred. He has seen the incident and has deposed about it like P.W. 3. As far as this witness is concerned, the learned defence counsel has submitted that his evidence is unnatural because of one crucial fact namely that had he been present on the spot, he would certainly have intervened in the incident and either prevented the assault or at least chased the accused or caught him. We find it difficult to accept this line of attack because, the incident was one of very short duration and the opportunity of intervening in the incident was virtually non-existent and the witnesses themselves state that they went to the assistance of the injured person rather than run after the accused and this conduct is fully understandable because, the injured was profusely bleeding and it was he who required assistance.

4. We have on record the evidence of one more eye-witness P.W. 5. This witness also claims to have seen the incident and the description of the incident given by him is in consonance with the version of P.Ws. 3 and 4. Nothing appreciable has emerged in his cross-examination even though he was subjected to a very rigorous cross-examination when in the witness box. There is no ground that has been brought out that would tend to shake his credibility or to indicate that he is deposing falsely. It is these three eye-witnesses who are really the backbone of the prosecution case, and even though the learned defence counsel has submitted that the police have virtually picked them up because they are chance witnesses from the area, on a scrutiny of the quality of their evidence, we find no reason to interfere with the grounds on which the learned Trial Judge has accepted this evidence and recorded the finding that on the date of incident, the accused had assaulted the deceased with an iron bar principally on his head after which, the accused ran away and the deceased was taken by these persons to the hospital.

5. As far as the supportive evidence is concerned, we do not need to deal with it in any detail because the defence had made some effort in the course of the evidence of P.Ws. 10 and 11 to demonstrate that the house transaction which is supposed to be the basic incident which triggered of the anger of the accused had not taken place. This aspect of the matter, in our considered view, is not of much consequence. Though the learned defence counsel vehemently submitted that the Court cannot lose sight of the fact that the accused and the deceased are fully brothers, that there is no background of enmity between them and if the motive which the prosecution attributes is shown to be doubtful, that it would be impossible to accept the prosecution case, that the accused would have severely assaulted his own brother unless there was a very valid reason for it. Motive is undoubtedly an important ingredient in criminal cases, but it is not an essential one and there may be a class of cases in which despite investigation, the prosecution is not able to clearly establish that precisely the reason for the violent attack was, but this aspect of the matter becomes incidental in cases where there is direct and acceptable evidence before the Court which conclusively indicates that the accused had indulged in the acts of violence. That in fact is the position as far as the present case is concerned and even though the learned defence counsel did address us at considerable length in an effort to demonstrate that the witnesses were biased against the accused and that they have been tutored by the police, we find it impossible to accept that defence as the evidence does appear to be clear, cogent and unbiased.

6. As far as the medical evidence is concerned, we have on record the evidence of P.W. 13 Dr. Rajshekhar from the Preliminary Health Centre. He was the first doctor who treated the deceased on the night of 21-2-1993 at about 11-30 p.m. He has deposed to the fact that he noted four injuries out of which, three were on the head and one was on the left arm of the deceased. He administered preliminary treatment and referred the patient to the Civil Hospital, Belgaum. He certified that the injuries could have been caused by an iron rod and has issued a certificate to that effect. The post-mortem in this case was conducted by Dr. K. A. Mulla. According to the prosecution, this doctor has gone away to Dubai. In his place, Dr. Terdalkar has been examined as P.W. 22 and he has produced and proved the postmortem report Ex. P. 22. This witness has stated that he was a colleague of

Dr. Mulla, that he is familiar with his handwriting and signature and he has identified the same on the original postmortem report. The prosecution has relied on this document and the learned Trial Judge has, on the basis of the medical evidence, which indicates that injury No. 1 on the head was serious enough and sufficient in the ordinary course of nature to cause death, recorded the finding that the deceased had died a homicidal death and has convicted the accused under S. 302, IPC.

7. The learned defence counsel has in the first instance, seriously assailed the manner in which the postmortem report Ex. P. 22 has been exhibited. Learned counsel submitted that this is a crucial document and that the person who is proving it must necessarily be the very doctor who has conducted the postmortem and nobody else because, the defence necessarily desires to cross-examine the concerned witnesses with regard to various aspects of the findings recorded in that report and if the doctor who seeks to tender it is not the one who has actually carried out the postmortem, that he would not be in a position to either defend that report or depose correctly about it. Learned counsel pointed out that if it was the prosecution case that the doctor has left the country and is not available, that the only option would have been to seek to tender it under S. 294, Cr.P.C. in which case, it could only go on record by consent. Even as far as that procedure is concerned, the learned counsel submitted that there are a category of documents which can be exhibited by following this procedure, whereas there are certain documents in the case of which, such a procedure would not be competent. He drew the attention of the Court to the fact that this matter had been earlier remanded to the Trial Court for purposes of ascertaining whether the concerned doctor has returned and whether he should be offered for cross-examination and the order passed by the learned trial Judge indicates that the doctor has not returned and that he was therefore, not offered for cross-examination. In this background, the learned counsel submitted that the Court would have to ignore the postmortem report Ex. P. 22 and that the learned Trial Judge was in error in having relied on it.

8. In this context, the learned counsel drew our attention to some of the leading decisions on the point, the first of them being a decision of the Allahabad High

Court reported in 1979 Cri LJ 236 which decision has been overruled in the subsequent decision reported in 1981 Cri. LJ 378 in the case of Saddiq v. State which happens to be a Full Bench decision of the same Court. Similarly, the learned counsel referred up to the decision reported in 1981 Cri LJ 559 in the case of Gafur Shiekh v. The State, wherein the Court had occasion to consider the ambit and scope of S. 294, Cr.P.C. Also, learned counsel referred to a Division Bench decision of the Bombay High Court reported in 1980 Cr LJ 853 which again has been overruled by the Full Bench decision reported in 1983 Cr. LJ 487. The learned counsel did address us at considerable length on the basis of these decisions because, even though the consensus of the Courts was to the effect that in a given situation, a postmortem report can be tendered in evidence provided the defence consents to it, he pointed out that such a procedure was not valid in the present case. On the other hand, he has seriously found fault with the fact that this procedure has been by passed and his contention was that in the absence of the prosecution having produced conclusive proof of the fact that Dr. Mulla was still not available even at the time when the matter was remanded, that the prosecution had no option except to resort to the procedure prescribed under S. 294, Cr.P.C. and that it was not permissible to tender the postmortem report through any other doctor. The principal reason for this submission as put forward by the learned counsel, was that the postmortem report is not like any other piece of paper or any other document where only the handwriting or signatures are material, but the learned counsel submitted that in serious criminal cases, where the defence desires to attack the correctness of the postmortem report or the conclusions that have been recorded thereon, that it is absolutely incumbent that the person deposing must have a first hand personal knowledge of having conducted the post mortem itself or in other words, must be the very doctor who has examined the body personally and would therefore, be in a position to admit or deny various suggestions in cross-examination. Learned counsel pointed out that if the report is tendered by any other doctor, that he would be mechanically bound down to whatever is contained in that report and would not be in a position to go beyond it. In any event, he would have to admit that he had no personal knowledge of having seen the body, examined it, noted injuries and come to certain conclusions. We do concede that in criminal trials, particularly where the offences

are serious, that the medical evidence is not only vital, but that it is crucial, that to a very large extent, the verdict would be tilted one way or the other by the medical evidence and that in this background, the most ideal witness would be the doctor who has carried out the postmortem. If however, that doctor is not available, as has happened in the present case, the prosecution is required to do the next best thing by tendering the report not through a mere producing witness, namely some staff member of the hospital, but by making available one of the other doctors who is in a position to identify the handwriting and signature and who also happens to be performing similar functions in that hospital and would therefore, be a competent witness to depose on finer points such as the nature of the injuries, the cause thereof, the consequences etc. The learned defence counsel has vehemently submitted that this Court must brush aside and ignore Ex. P. 22 as also the evidence of P.W. 22 in view of the aforesaid position in law. On the other hand, the learned S.P.P. has strongly supported the procedure adopted. He has submitted that the ratio of the decisions would have no application in this case because, the prosecution has followed the correct procedure as is enunciated under S. 5 of the Evidence Act which deals with the manner in which the proof of documents is required to be done. He has referred to the provisions of S. 67 of the Evidence Act and has pointed out to the Court that P.W. 22, being a colleague of Dr. Mulla, has identified the handwriting and signature, which is in keeping with the requirements of law. In addition to that, the learned S.P.P. points out that P.W. 22 is a doctor who possesses sufficient medical and practical knowledge and that he has given evidence, he has reiterated what has been pointed out in the postmortem report and he has also supported the opinion of Dr. Mulla that injury No. 1 having regard to the corresponding internal injuries 7 to 10 are sufficient in the ordinary course of nature to cause death. It is in this background, that we are required to consider as to whether the objections canvassed on behalf of the defence are liable to be upheld. In our considered view, S. 294, Cr.P.C. would have no application to the facts of this case nor was it obligatory on the part of the prosecution to have tendered the postmortem report after having obtained the consent of the defence under S. 294, Cr.P.C. We are of the view that this being a murder trial, that such a procedure would not have been the best one and that the prosecution was fully justified in having produced as a witness P.W. 22 who is a

qualified experienced doctor from that very hospital and who is in a position to identify the handwriting and signature as also in a position to depose about the nature of the injuries and the consequences thereof. We are unable to uphold the submissions canvassed on behalf of the defence as far as this aspect of the appeal is concerned.

9. The learned defence advocate submitted that P.W. 22 has recorded certain opinions as far as the postmortem report Ex. P. 22 is concerned. The learned counsel submitted that under S. 45 of the Evidence Act, that these opinions are no more than expert evidence and he relied on a decision of the Supreme Court reported in 1996 SCC 444 (sic) in support of his submission that such expert evidence was not necessarily binding on the Court. Learned counsel submitted that if one were to carefully look at the postmortem report, it will be seen that the number of injuries noted in that report is higher than those noted originally by P.W. 13 Dr. Rajshekhar. As far as this aspect of the matter is concerned, we take note of the fact that when the postmortem was done, apart from the four major injuries, the doctor has noted a couple of less significant ones and the rest of the injuries are essentially internal injuries which could not have been noted by Dr. Rajshekhar at the Preliminary Health Centre. Another head of criticism arises from the fact that the internal injuries which are held to be caused as a result of external injury No. 1 have not been directly co-related to the injuries which the witnesses depose to. The learned S.P.P. has countered this submission by pointing out that P.W. 22 has, in his deposition, pointed out that these injuries do correspond to each other apart from which, his submission was that a deeper examination of the evidence would indicate to the Court that the internal injuries do correspond to the external injury No. 1. We have carefully examined the record for purposes of ascertaining whether in fact this is so and we do find that there is sufficient material on record to indicate that the internal injuries particularly to the brain which resulted in shock and the ultimate death of the deceased can clearly be demonstrated to be correlated to external injury No. 1. It is undoubtedly correct, as pointed out by the learned defence counsel, that expert evidence is not sacrosanct nor is it binding on the Court, but if the record so justifies, the Court would be well within its rights in accepting that evidence. This is one such case.

10. The last submission canvassed by the learned defence counsel was that there is a serious infirmity in the present trial in so far as the learned Trial Judge has omitted to mention the evidence of P.W. 22 and the corresponding medical evidence of P.W. 22 and the corresponding medical evidence consisting of Ex. P. 22 to the accused at the time when the S. 313 statement was recorded. This infirmity is in fact there and the learned defence counsel submitted that if this is the position, then this Court will have no option except to ignore that part of the evidence while deciding this appeal. The learned S.P.P. submitted that even if such an error has taken place, that it is not fatal to the prosecution in so far as it would have to be demonstrated that as a result of such an error, some real and manifest prejudice has occurred to the accused. This in fact is the correct position in law because, all or any procedural errors do not ipso facto void or affect the validity of a trial or a conviction. In some instances, the breach would only constitute an irregularity which is virtually curable in so far as it does not go to the root of the matter nor does it void or affect the validity of the proceeding. It is well settled law that the sole purpose of the statement recorded under S. 313, Cr.P.C. is in order to afford the accused an opportunity of tendering any explanation which is so desired in relation to that evidence. Where a grievance is made that a particular part of the evidence has not been put to the accused, the Court would immediately ask the question as to whether the accused has suffered any genuine or deep-seated prejudice or has been affected seriously by that lapse. In those of the cases where the answer is in the affirmative, the Court would undoubtedly direct corrective action in a given case by directing the statement to be recorded again or some such other corrective action which the law may require, but in those of the cases where the Court is satisfied that no prejudice of any type has occurred, such a procedure would be unnecessary.

11. Undoubtedly, in the present case, the learned defence counsel did vehemently submit that nothing could be more crucial than the medical evidence in relation to the injuries and the cause of death and he submitted that the accused has been deprived of the opportunity of tendering his explanation with regard to the same. We need to draw a distinction here because, the question is not with regard to how the deceased sustained those injuries, but the postmortem report and the medical evidence is virtually within the province of medical jurisprudence in so far as it is a

report of what injuries the doctor noticed on the dead body and on doing the postmortem, and what in his opinion was the cause of death. As far as this is concerned, even assuming the learned trial judge overlooked putting this question to the accused, in our considered view, no prejudice at all has been caused to the accused because, the matter has come up in appeal and the accused has been fully and adequately heard by the Court with regard to every aspect of the medical evidence. This is a more than adequate curative procedure for the error that has taken place. At the same time, we would like to sound a note of caution because, it is equally necessary for the trial Courts and particularly for the learned counsel assisting the trial Judges in such proceedings, to ensure that the statements under S. 313, Cr.P.C. are correctly recorded and this is an aspect of the matter to which special attention will have to be paid. On the facts of the present case however, we are unable to hold that any serious irregularity or for that matter, any prejudice of any nature has occurred to the accused as a result of what has happened and under these circumstances, this Court is not required to either ignore or brush aside the medical evidence.

12. The learned defence counsel submitted that on a totality of the record before the Court, the highest that could be urged against the accused was that he had assaulted the deceased with the iron rod in question. The learned counsel submitted that if one were to very carefully and correctly examine the nature and extent of the injuries, that the only conclusion would be that the accused did intend to assault the deceased and at the highest, to inflict grievous hurt on him, but that this was not a case in which S. 302 could apply. As against this position, the learned S.P.P. submitted that the weapon used was an iron rod, the dimensions of which were 33 inches in length and approximately 3 1/2 inches in circumference, that the prosecution witnesses have deposed that the blows were not casual ones, but that the accused had held the iron rod in both hands and administered four powerful full blooded blows and that too, on a vital part of the body, namely the head of the deceased, the learned S.P.P. submitted that these blows had resulted in the death of the deceased in so far as it was demonstrated that serious brain injury had occurred thereby. He also pointed out that despite medical attention, the deceased had died in the hospital on the very next day itself. Having regard to these aspects of the case, he vehemently submitted that the conviction under S.

302, IPC was correct and justified.

13. We are in agreement with the submissions canvassed by the learned S.P.P. on the facts of the present case because, we have taken note of the fact that the weapon used was within the category of what the Court would define as a deadly weapon, secondly that the injuries were inflicted on a vital part of the body and thirdly that they were of considerable intensity coupled with the fact that the blows were multiple ones. Having regard to all these factors, it would be difficult to uphold the defence plea that the Court must examine the injuries individually and accept the contention that even assuming the accused had assaulted the deceased, that the intention was anything other than to cause death. The facts of the present case unfortunately do indicate that the acts committed by the accused were such as to bring them within the definition of murder as set out in S. 300, IPC.

14. Having regard to the aforesaid position, we see no ground to interfere with the conviction and sentence recorded by the trial Court. Appeal accordingly fails and stands disposed of.

15. Appeal dismissed.