SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sherappa Vs. the State

Sherappa Vs. the State

SooperKanoon Citation : sooperkanoon.com/376089

Court : Karnataka

Decided On : Jun-25-1990

Reported in : 1991CriLJ2215; ILR1991KAR1129

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

Appeal No. : Criminal Appeal No. 26 of 1988 (Against judgment of S.J., Bidar, D/- 29-12-1987)

Appellant : Sherappa

Respondent : The State

Advocate for Def. : B.H. Satish, Govt. Pleader

Advocate for Pet/Ap. : M. Mahabaleswara Goud, Adv.

Judgement :

Hiremath, J.

1. In this appeal, the accused-appellant challenges his conviction and sentence under S. 302, I.P.C. passed by the Court of Sessions at Bidar. The charge against the accused is that on 15-1-1987, at about 6.30 p.m., on the public road near the tailoring shop of one Vittal and Ambedkar temple at Chillergi village in Bidar Taluk, he committed the murder of Shankarappa by assaulting him with a knife. The motive for this murder is said to be the illegitimate connection of deceased for 4 or

5 years, with the wife of the accused and he did not even heed to the advice of the Panchayathdars. On that evening, at about 6 or 6.30 p.m., when P.W. 1 and his wife were near the Ambedkar temple in the village, the accused was standing there and when the deceased came from the opposite direction, he immediately rushed towards him alleging that his wife had been the keep of the deceased. He chose the centre part of the chest for the assault with the knife and his brother who had sustained injury ran towards the house of Bhimappa screaming and fell behind it. The accused also was grappled by the complainant P.W. 1, but, then he ran away. The injury was tied with 'kunchige' that was with the wife of P.W. 1 and the injured removed to the local hospital. There was no doctor but only a compounder. Having seen that the deceased had died, they were asked to take back the body and place it where the injured was lying. P.W. 1 took a phone call to the Police Control Room of Bidar. The Police Constable who received it, in turn, transmitted it to the Circle Inspector of Police who went to the spot. Because of oral complaint given by P.W. 1, he made arrangement to send it to the jurisdictional Police Station at Janwada Police Station for the purpose of registering a case and thereafter took up investigation. He examined the witnesses to the incident including P.W. 3, held inquest over the dead body, subjected it for autopsy and had made a search for the accused. The accused however was taken to the custody on 17-1-1987 when he was produced by Head Constable 315 and Police Constable 601. The banian and dhoti worn by him had stains of blood were seized under panchanama Ex. P-10 and thereafter, on his voluntary information furnished under section 27 of the Evidence Act, the knife used in the commission of the offence of murder was seized. It was kept concealed in a sugarcane field. On completion of investigation, the charge-sheet came to be filed for the aforesaid offence.

2. The Sessions Court, Bidar having considered the evidence adduced by the prosecution believed the eye-witnesses P.W. 1 and P.W. 3 and also considered the other circumstantial evidence and found him guilty for this offence.

3. In this appeal, learned counsel for the appellant has urged that one of the eye-witnesses did not support the case of the prosecution and the evidence of P.W. 1 and P.W. 3 who are the brother and brother's wife of the deceased respectively

ought not to have been relied upon by the Court. Secondly, the Court below was in error in considering Ex. P-1 as a F.I.R. Thirdly, the motive is not so strong as to provoke the accused to commit this offence and even otherwise, if the entire evidence is believed, the case does not fall under section 302, I.P.C. as it is the prosecution evidence that after some altercation the deceased was stabbed.

4. Taking the point that Ext. P-1 does not constitute a F.I.R., it was argued for the appellant that the message was received by P.W. 10, P.S.I. in charge of Police Control Room of Bidar at 9.10 p.m., on 15-1-87. It was conveyed therein that there was a murder at Chillergi village. Immediately he informed it to the C.P.I. - P.W. 15 through wireless system. Thus, the evidence of P.W. 10 supports the evidence of P.W. 1 that he had taken a phone call to the Police. He does not say that it was taken to the Police Station. P.W. 15 swears that at about 9.15 p.m., he received information conveyed by P.W. 10 through wireless that there was a murder at Chillergi village. Immediately, he left for Chillergi along with Police Constable and went to the spot where the dead body was lying. He contacted P.W. 1 - Gundappa the elder brother of the deceased who gave his oral complaint to him. The same was reduced to writing as per Ex. P-1 on which his thumb impression was taken and immediately, it was dispatched to the Police Station at Janwada through Police Constable 659 - P.W. 11 for the purpose of registering the case. Thereafter, he made a search for the accused.

5. The requirement under section 154, Cr.P.C. is that if the information relating to a cognizable offence is given orally to an officer in charge of a police station, it shall be reduced to writing by him or under his direction, and after the same is read over to him shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. A copy of the information as recorded under sub-section(1) shall be given forthwith to the informant. Though nothing is said about the receipt of the information given in writing, it follows that the case shall be registered on such written information given to the officer incharge of the Police Station. In the instant case, it is in evidence that the phone message was received by P.W. 10 when he was incharge of the Control Room. Therefore, that was not an information to an Officer incharge of the Police Station. If such is the

situation what should be the course open to the Officer receiving such information came to be considered in the case of J. K. Devaiya v. State of Coorg (AIR 1956 Mysore 51) and the learned single Judge of erstwhile Mysore High Court before reorganisation of the States held that it is not correct to say that police officers superior in rank to an officer incharge of a police station may or may not record information which is given to them regarding the commission of a cognizable offence, because to accept such a proposition may lead to absurdities and ultimately to failure of justice. The first information regarding the commission of cognizable offence conveyed to a police officer superior in rank to an officer-in-charge of a police station, if not immediately recorded, may or may not become available subsequently for various reasons. Therefore, the learned Judge observed that two courses should suggest themselves to police officers superior in rank to an officer-in-charge of a police station when information regarding the commission of a cognizable offence is reported to them. When such information is conveyed, the police officer in question must, in cases where he is not inclined to record the information, make arrangements to cause the production of the informant that the said officer may record the information as required under S. 154, Cr.P.C. The other course is to record the information himself in cases where he intends to take action on the first information. It may be stated here that the facts of this case were almost similar in that case inasmuch as the information was furnished by the informant to the D.S.P. who took action and set the law in motion and started investigation. Even P.W. 1 and other police officer before whom the information as given to the D.S.P. was repeated was not correct. That was considered to be serious omission in the investigation of the case.

6. What emerges from this decision is that superior police officer cannot be considered an officer incharge of police station but his duty is to secure the information and record his information or himself record what information he received. The C.I. of Police in the instant case P.W. 15 has precisely done what is laid to be done in the case of Devaiah relied upon by the appellant's counsel. On receiving the phone message from P.W. 10 he has rushed to the spot, recorded the statement of P.W. 1 as per Ext. P-1, took his thumb mark and then sent it to the police station. In that view of the matter, it becomes the F.I.R. and therefore, the argument of the learned counsel for the appellant that the Court below went

wrong in taking it as F.I.R. does not have the support of the established law.

7. The complaint makes mention of the part played by the accused - appellant and that of course cannot be used as substantive evidence but it could be used for the purpose of contradicting or corroborating the maker of it.

8. On the point of motive, P.W. 1 has deposed that for 4 or 5 years before, the deceased had illicit connection with the wife of the accused and for that reason, the accused mustered ill will against him. There was even a panchayath in this behalf in which Arjuna and Kallappa the elders of the village advised the deceased not to behave in the manner that he was doing. In spite of such advice, the deceased had not given up this connection with the wife of the accused. It was however suggested that the deceased had thought of marrying Kamalamma daughter of Gangamma of the same village and had even illicit connection with her. This Gangamma is none else than the sister of the accused. It is suggested that this connection of the deceased with Kamalamma became known in the village even after her marriage to another Shankara of Guduru the deceased continued to visit her house and therefore, those people had grouse against him. It is also suggested that a large number of persons had enmity with the deceased. That has been denied. This evidence on the point of motive has been corroborated by P.W. 3 the wife of P.W. 1. Kallappa - P.W. 7, who was examined on the point of holding panchayati to advise the deceased was cross-examined by the prosecution on the ground that he had turned hostile. He denied that he has stated during investigation about he and other elders of the village advised the deceased not to continue such connection with her. Thus, it is only the evidence of P.W. 1 and P.W. 3 that is available on this point and as the case does not rest on the entire circumstantial evidence, the motive alleged does not assume much importance if the evidence of the two witnesses to the incident could be relied upon.

9. According to P.W. 1 at about 6 or 6.30 p.m. that evening when he and his wife were going near Ambedkar temple the accused who was standing nearby on seeing the deceased shouted at the deceased that he had kept his wife and would see him and so saying suddenly stabbed the deceased with the knife which was in

his hand. The blow fell in the middle of the chest of the deceased and the deceased having held this injury with his hand started running towards the house of Bhimappa. Having run there, he fell behind his house. The deceased could run away from the spot as this witness held the accused by grappling him. Thereafter he and his wife ran to the spot where Shankarappa was lying injured and tied the injury of Shankarappa. In addition to his wife one Kashappa and another Pandu also saw the injury on the person of the deceased. The compounder Neelakanta who examined the deceased when he was taken to the hospital pronounced that he was dead and because the Medical Officer was not in the hospital, he asked that the body be taken back to the place from where it was brought. This is how the body was found by P.W. 15 at the place where deceased had fallen when he arrived at the spot on receiving information. In the cross-examination, in addition to challenging he being a witness to the incident, it was also elicited that the accused happens to be the son of the uncle of P.W. 1 and that an Inam land was being cultivated by the family of the ancestors of P.W. 1 and the assessee. He admitted that having cultivated this Inam land all of them including the accused were apportioning the income among themselves. The only suggestion made to this witness to depose falsely against the accused is that the accused had advised him not to instigate Maruthi S/o Yellappa to create trouble in the village. As far as the actual infliction of the injury over the deceased is concerned, practically nothing was elicited in the cross-examination which would create doubt about the veracity of this witness.

10. P.W. 3 his wife corroborated P.W. 1 and she also swears about the accused assaulting the deceased with the knife over his chest and thereafter, they tied the injury with 'Kunchige'. Even according to her Kashappa and Pandu were also present when the incident occurred. In the cross-examination however she stated that when she and her husband were in the courtyard or 'angala' of their house, they heard quarreling between the accused and the deceased. She also admitted that people move about on the road till about 8 p.m. She denies the suggestion that she was sleeping in the house at that time and had not seen the incident. P.W. 2 Kashinath Rao was cross-examined by the prosecution as he did not support the prosecution case. However, he stated that when he was taking his food by about the sun-set time, in his house, he heard some row and came out,

and the accused and the deceased were quarrelling in front of Ambedkar temple. Thereafter, he saw Shankarappa lying injured and many people had assembled. Having tied the injury on the person of the deceased, he was removed to the hospital and he was also present at the spot when the injury was tied. His evidence only supports the prosecution case to the extent that there was quarrel between the accused and the deceased in front of Ambedkar temple.

11. The argument that it was not possible for P.W. 1 and P.W. 3 to see who exactly assaulted the deceased cannot be countenanced for the reason that it was just sunset time being 6 or 6.30 p.m., as given by P.W. 5. It is not in evidence that the faces were not at all visible at that time. Another argument advanced by the learned counsel for the appellant is, that the injured was lying behind the house of Bhimappa but there was no blood at the spot where he is alleged to have been assaulted. The reasons have been assigned by P.W. 1 and P.W. 3 in this behalf and they have unequivocally stated that when the accused assaulted the deceased, P.W. 1 grappled the accused and that is how the deceased left the place running holding his hand on the injury. Therefore the absence of blood at the spot finds clear explanation and reason in the evidence of these two witnesses and the distance between the spot where deceased fell down and where he was assaulted also was not considerable. Therefore the evidence given by these two witnesses is quite consistent and natural and the mere fact that they are brother and brother's wife of the deceased is no ground to reject the testimony. Simply because there happens to be some dispute as suggested to P.W. 3, but not admitted by him, with regard to the inam land these witnesses cannot go to the extent of falsely implicating the accused in a murder charge. On the other hand, P.W. 1 has clearly stated that the members of his family as well as the accused have been cultivating the inam land and the income is being apportioned among themselves. The medical evidence also supports the evidence of these two witnesses and added to this, the evidence of seizure of knife on the information furnished by the accused is a corroborative factor. The report of the Serologist states that the banian and dhoti seized from the person of the accused were stained with human blood of AB group and so also the mud and thorns taken from the spot together with dhoti and banian of the deceased. Though M.O. 1 - knife was stained with blood, the stains on it were not sufficient for Serological test.

However, these are only corroborative pieces of evidence. In our view, the Sessions Court was right in accepting the evidence of direct witnesses as well as circumstantial evidence and finding that it was the accused - appellant and none else who had inflicted injury on the deceased of which he died in a short while.

12. The alternate argument advanced by the appellant's counsel is that at any rate the offence does not fall under Section 302, I.P.C. Looking to the circumstances under which the injury was inflicted and also looking to the fact that the accused was waiting for the deceased by the road side and soon after he came, he argued with him and shouted that he had illicit connection with his wife and then, inflicted the injury on a vital part of the body, the intention could be nothing else than to cause his death. We find it difficult to accept the argument of the learned counsel for the appellant that there was no intention on the part of the accused to cause the death of the deceased or intention to cause such injury as was likely to cause his death.

In our view, the conviction under section 302, I.P.C. is proper and needs no disturbance. The appeal therefore fails and is dismissed.

13. Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com