

Narayan Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-17-1997

Reported in : 1998CriLJ1549

Judge : M.B. Vishwanath and ;M.F. Saldanha, JJ.

Appeal No. : Criminal Appeal No. 572 of 1995

Appellant : Narayan

Respondent : State of Karnataka

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

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Judgement :

Saldanha, J.

1. The short point of law that really falls for determination in this appeal centres around the question as to where serious charges of murder and attempt to murder were made, a conviction can be virtually founded on the evidence of a solitary eye-witnesses. Though there is no reason why in criminal trials Courts should insist on multiple witnesses, it has become the order of the day to list the various heads of evidence and to virtually recoil backwards in these of the situations where the evidence is minimal. Once again, it brings us back to the age old principle of

Judicial wisdom which prescribes that is the intrinsic quality of the evidence and not the quantity or mass that matters.

2. The incident in question took place at about 8.00 p.m. on 24-5-1993 at Hotegali village within the limits of Chittakula Police Station. The police station is at a distance of about 10 k.ms. from the village. PW 5 Smt. Bhagi was sitting in her house talking to her son Chandrahasa who was an army man and who had come home on leave. It is alleged that the accused came to the house and that he fired at deceased Chandrahasa who was in a sitting position and that two of the bullets hit him in the chest and on the right arm respectively as a result of which he virtually died on the spot. The mother, Smt. Bhagi, states that she narrowly missed a similar fate in so far as one of the bullets grazed her and she sustained some minor injuries. The matter was reported to the police at 10.00 p.m. on the next morning and the police commenced investigation in the course of which the accused was arrested. It is alleged that pursuant to certain information, the police seized a rifle along with a torch etc. The learned trial Judge accepted the prosecution evidence and convicted the accused both under Section 302 and Section 307, I.P.C. and sentenced him to various terms of imprisonment and fine and it is against these convictions that the present appeal has been preferred.

3. Mr. Deshpande, the learned Counsel who represents the appellant, has submitted that the conviction is unsustainable because the solitary witness on whom the conviction rests is PW 5 Smt. Bhagi, who happens to be none other than the mother of the deceased. He also points out in the basis of the record that there was in existence some dispute with regard to land and that this was the real genesis for the incident in question. He states that quite apart from the relationship between the deceased and PW 5 that it is equally necessary to point out that the accused was in possession of the disputed land and that therefore there is no reason for him to attack and kill either PW 5 Smt. Bhagi or her son who was admittedly working outside and who had come there only for a short period of time. The learned Counsel submitted that the evidence of this witness bristles with a series of information and he concentrated on some of the main ones in support of his contention that her evidence should be rejected. In the first instance, he relies on the evidence with regard to the question as to whether the premises had the

benefit of an electric light or not. In this regard, he submitted that there is evidence from the representative of the K.E.B. who has in no uncertain terms deposed to the effect that even though the writing etc. in the premises had been completed in January of that year, that it was only in August that the electric connection was made available. We need to point out here that the learned S.P.P. has seriously refuted this position and he has satisfied us from the documentary evidence that the writing and inspection of the meter etc., were in fact completed in January and that therefore, there can be little dispute about the fact that the electric connection must have become operational in that month itself. We do not need to dwell at great length with this evidence because we do find from the material on record that this is a case in which the witness has very clearly stated that the electric light was burning at the relevant time. From the evidence on record, we do not see any valid reason why we should accept the oral statement of the representative of the K.E.B. which goes against the documents on record. The other aspect of the matter and the more important one is that irrespective of whether there was an electric light or not, if the mother and the son were talking to each other at 8.00 p.m., it is quite obvious that they would not be sitting in the dark and that there was some other light source. Even in the cross-examination there has not been any serious challenge to the question with regard to the quantity of light that was present at the time of the incident. We do not therefore see much substance in this contention.

4. The more serious objection raised by Mr. Deshpande centres around the fact that the incident took place at 8.00 p.m. on 24-5-1993 and the complaint was lodged at the Police Station which is just 10 k.ms. away at 10.00 a.m. on 25-5-1993. This means that there was a time lag of about 14 hours and Mr. Deshpande submits that the prosecution ought to have explained this abnormal delay as otherwise an adverse inference would have to follow against the prosecution because it would be evident that all through this period of time, the complainant and others could have discussed and decided about whom to implicate. We do concede that there has been a very long delay, but we need to take note of one very important fact viz., that the incident has taken place after sun-set on 24-5-1993. It has not clearly been brought on record as to what is the nature of the transport facilities available between the village and the Police Station and we do

have an indication of the fact that a telephone call had been received by the police on the morning of 25-5-1993 before the formal complaint was lodged. What is of some consequence is the fact that the night had intervened and the complainant PW 5 is an elderly lady and it would be rather harsh to expect her to have gone to the police station at dead of night to report the incident. Though such a course of action would have been desirable, the fact that she did not do it cannot really be raised as circumstance against her veracity. As we shall presently illustrate, the material on record is sufficient to explain away the reason for the delay and in our considered view if the defence seriously contended that during this period of time, the mother consulted others and arrived at a decision to falsely implicate the accused, that this line of attack ought to have been projected in the cross-examination which has not really been done. As a result, there is absolutely nothing on record to sustain this charge and merely because some time has elapsed in lodging the complaint, it would be a little difficult to accept that consultation and fabrication has taken place. We have also noted one allied factor of considerable importance viz., that the deceased was the son of PW 5 and the incident was one of such seriousness that she would have undoubtedly gone into a state of shock and stress and in this background, in the absence of any material to justify false implication, it would not be proper to discard the evidence of PW 5 only because of some delay in lodging the F.I.R.

5. Mr. Deshpande then concentrated on another aspect of the matter which he submitted has not been explained either adequately or for that matter at all by the prosecution. The door of the room in which the incident took place consists of wooden planks and admittedly the panchanama indicates that there were distinct holes which were found in two places. Mr. Deshpande submitted that from the size and type of the holes that were found on the planks, it is very clear that they were caused due to the use of fire arms and his contention is that in the absence of a satisfactory explanation from the prosecution, that this Court would have to accept the theory that the assailant had fired through the door of the house when it was closed. In this context, we need to observe that the mere presence of two holes in the planks, in the absence of specialised evidence indicating the direction of the bullets, that it would be incorrect to accept that the assailant fired through the door. In this regard, we have taken judicial notice of one other elementary fact viz., that

the photographs clearly indicate that the doors were made of solid wood with no glasses on them and if the doors were closed and the firing took place through the doors, the chances of the bullets meeting their target would be absolutely remote. It would lead to the position that the person would be firing blindly which could never have been the case and more importantly, if the fire arm has placed the door from the outer side, there would have been distinct blackening marks which were also absent. In totality, therefore, the only correct hypothesis could be that several shots were fired by the assailant from inside the room two of which hit the deceased and one of which grazed against his mother PW 5 whereas some of the others got embedded in the wall and to possibly even went through the door. This circumstance, therefore, is not of any real assistance to the defence.

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6. The evidence of the mother P.W. 4 is quite categorical with regard to two aspects, the first of them being that she has clearly identified the accused as being the assailant and secondly, she has stated that he came through the entrance of the premises and fired at her son who was hit twice and who died as a result thereof. As far as the injury to herself is concerned, she points out that one of the bullets grazed her and caused an injury which undoubtedly was of a minor nature. The appellant's learned Advocate submitted without prejudice to his contention that the accused cannot be held guilty of the offence in question, that at the very highest, having regard to the nature of the injury and the fact that it is not on a vital part of the body, that the same could not come under Section 307 IPC and that it could only be categorised as an offence under Section 323 IPC. The learned S.P.P. has submitted that this position is not correct in so far as where a fire arm is used and it is indiscriminately fired, merely because the bullets missed that target and caused only a minor injury on a vital part of the body, that it can never be argued that Section 307 IPC would not apply, because mere use of a lethal weapon is sufficient to invoke the provisions of this Section. The legal position is quite unambiguous in so far as it is very clear that even if a fire arm is to be used and the trigger were to jam and no bullet were to be extruded from the weapon, that Section 307 IPC would still apply. As far as this aspect of the law is concerned, therefore, the finding that the injury to P.W. 5 constitutes an offence

under Section 307 IPC is upheld.

7. With regards to the recoveries, the appellant's learned Counsel advanced his submission that the fire arms in question, one of which has been recovered by the police and the second one produced by the sister of the accused, are both licenced fire arms and that, therefore, merely because they have been seized, that no adverse inference is permissible. As far as this aspect of the matter is concerned, we wish to clarify the position that the case which virtually rests on the evidence of P.W. 5 in so far as most of the other material witness are hostile, and therefore the evidence regarding the recoveries is not of much consequence.

8. We do not find some support to the evidence of P.W. 5 from the evidence of P.Ws. 6 and 8. These persons are neighbours who had accompanied P.W. 5 first to her house and then to the police station. The appellant's learned Counsel did submit that having regard to the fact that there has been some delay in lodging the FIR, that the Court will have to, if not totally discard it, considerably water down the evidence of P.W. 5 in so far as there is no explanation for her behaviour, firstly that she has not reacted violently by raising alarms etc., and secondly that she has delayed approaching the law enforcement authorities despite the fact that there has been murder of her son in her own house. As regards the first aspect of the matter, the evidence itself is not very clear with regard to what precisely the reaction of P.W. 5 was, but as far as the second aspect goes the learned S.P.P. contended that in the light of the fact that the murder had taken place at night and that Chandrasaha has died on the spot, that there was hardly any scope to rush either for medical assistance or police attention and that this has been done virtually first thing in the morning. The learned S.P.P. discredits the defence theory that some unknown assailant might have fired at and killed Chandrasaha and that P.W. 5 could genuinely have been misled and involved the accused only because of the subsisting property dispute. We find it a little difficult to uphold this contention raised on behalf of the accused because P.W. 5 is a person of advanced years. She has been cross-examined in considerable detail and nothing has emerged to indicate that she is either the type of person who will falsely implicate somebody or that she was unsure of the identity of the assailant. Her presence in her own home is not natural. The fact that it was only 8.00 p.m. in the

evening would also indicate that her version that they were talking to each other at that time is fully plausible and it is also clear from the evidence relating to the scene of offence that several shots were fired and in such a situation P.W. 5 had ample scope to see who the assailant was. We, therefore, find no ground on which the reliance placed by the trial Court on the evidence of P.W. 5 can be called into question.

9. We need to add that his appeal was argued at considerable length and very competently by both the learned Counsel and that we have done a meticulous review of the evidence and have also carefully applied our minds to the points of law raised by the two learned Counsel. The sum total of this exercise however leaves us with the confirmed view that the findings of the trial Court that it was the present appellant who was the person responsible for the murder and furthermore that on the facts of the present case that the accused is guilty of the offence punishable under Section 302 read with Section 307 IPC are liable to be confirmed. In the light of the aforesaid situation, we hold that no interference is warranted with regard to the order passed by the trial Court.

The appeal fails and stands disposed of.

10. Appeal dismissed.

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