

State of Karnataka Vs. Basavegowda Alias Chandra

State of Karnataka Vs. Basavegowda Alias Chandra

SooperKanoon Citation : sooperkanoon.com/376737

Court : Karnataka

Decided On : Dec-04-1996

Reported in : 1997CriLJ4386

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 323, 325, 326, 384, 386 and 392

Appeal No. : Criminal Appeal No. 572 of 1994 (Against the judgment passed by the Addl. Sessions Judges, Hassan, D

Appellant : State of Karnataka

Respondent : Basavegowda Alias Chandra

Advocate for Def. : B. Anand, Amicus Curiae

Advocate for Pet/Ap. : B.H. Satish, HCGP

Judgement :

1. The respondent-accused to this appeal was the husband of the complainant Bhagyamma and it was alleged that about 10 days after their marriage, on 30-4-1987, he took her to the Burudala Bore forest under the pretext of going for the wedding of a friend and that he threatened to kill her unless she parted with all her ornaments. Bhagyamma, finding no other option, removed all her jewellery valued

at around Rs. 11,000/- and handed the same over to the accused who wrapped the same in a handkerchief and put it in his pocket. Thereafter, the accused is alleged to have assaulted her with a big stone whereupon, Bhagyamma screamed. The accused continued to assault her with his fists and seeing two other persons coming there, he ran away. Bhagyamma was thereafter taken to the town and ultimately to the hospital. The hospital sent a memo to the police and in the meanwhile, her own relations were informed and they came to the hospital. The police took down the complaint of Bhagyamma after which, they placed the accused under arrest and it is alleged that the ornaments were recovered from his possession under a Panchanama. On completing the investigation, the accused was put up for trial was charge-sheeted and the case was committed to the Court of Session because, he stood charged with offences punishable under Section 307, IPC in so far as he had attempted to cause murder and secondly, he was also charged with an offence punishable under Section 392, IPC in respect of the robbery of the jewellery in question. The learned trial Judge, after assessing the evidence before him, held that the sole testimony of Bhagyamma was insufficient to prove the prosecution case beyond reasonable doubt principally because, the majority of witnesses had turned hostile. In this background, the accused was acquitted and the State of Karnataka has preferred the present appeal assailing the correctness of that order.

2. The learned S.P.P. has taken us through the evidence of PW 2 Bhagyamma. He has pointed out that the statement of Bhagyamma was recorded in the hospital shortly after the incident took place and that there is no departure from the FIR and the subsequent evidence before the Court. The learned advocate has also pointed out that Bhagyamma has very clearly deposed to the fact that the accused was not treating her well and that he had told her on the day in question that he was taking her to attend the marriage of his friend at Yarehally. On one pretext or the other, he finally took her to the forest, whereupon he picked up a stone and threatened to kill her if she did not give him all the golden ornaments. She has thereafter described the manner in which the accused assaulted her despite the fact that she had parted with her jewellery and she points out that the accused had used the stone in the assault and had caused serious injuries to her chest. Even after she raised an alarm, he continued to assault her and it is only after two

persons came running there, that the accused ran away. She has also described as to how her relations ultimately came to the hospital and the police also came there. She was retained in the hospital for 7 days as an inpatient. Bhagyamma had also taken the police to the scene of offence and pointed out the stone M.O. 1 which was attached by the police. The broken glass bangles were found at the scene of offence. She has given the value of the ornaments at about Rs. 10,500/-. Bhagyamma has been cross-examined at considerable length, but nothing of any consequence has emerged in the cross-examination and at the same time, we need to record that her basic evidence remains unshaken.

3. The learned S.P.P. then relied on only two other pieces of evidence, the first of them being the scene of offence Panchanama on which he relies for purposes of pointing out that the broken glass bangles that were found at that spot in the forest fully support the version of Bhagyamma as also the recovery of the stone. In addition to this, the learned S.P.P. relies on the medical evidence because, he points out that the six injuries on the person of Bhagyamma fully and completely support her evidence as the injuries correspond to the areas where she was assaulted. The most serious of the injuries was injury No. 4 which had caused a fracture of the rib. The submission canvassed is that the medical evidence completely corroborates the oral evidence of Bhagyamma. Apart from these two pieces of evidence, the learned S.P.P. has also sought to place reliance on the evidence of recovery of the ornaments because, the prosecution has established that after his arrest, the entire set of ornaments were recovered from the pant pocket of the accused and that when he produced them, they were still wrapped in a handkerchief. Learned advocate submitted that these ornaments happen to be a necklace, earrings and items of personal jewellery which would normally be on the person of Bhagyamma and the fact that they were found from the pocket of the accused would fully establish that her version regarding the manner in which the accused took them from her is substantiated.

4. As against this position, the respondent's learned advocate has placed strong reliance on the admissions elicited from Bhagyamma that she has subsequently obtained a divorce from the accused and has also remarried. He submits that this is the clearest indication of the fact that Bhagyamma was not happy with the

marriage and desired to put an end to it which was why she has framed the accused. As far as this submission goes, we have carefully scrutinised the evidence and we find that nothing has been brought on record to indicate that Bhagyamma was not happy with the marriage at the time when it took place or that she had other intention or for that matter, that she desired to marry some other man. In the absence of any such material, merely because she has subsequently divorced the accused and remarried, would not necessarily indicate that she was hostile to the accused at the time of the incident and that she would go to the extent of fabricating serious charges against him if these were not true. Having regard to the seriousness of the matter and the fact that the accused not only threatened to kill Bhagyamma, but also took away all her ornaments, could have been a very valid and possible ground for her having wanted to thereafter put an end to that marriage. We are, therefore, unable to discredit Bhagyamma's evidence purely for this reason.

5. The respondent's learned advocate thereafter placed reliance on the medical evidence in support of his plea that the injury to the chest could not have been caused by the stone. It is true that the Doctor has initially opined that such an injury would have been unlikely having regard to the fact that the stone was of the dimension of 10' x 8', but subsequently, the Doctor himself has agreed that such an injury could be caused by the stone in question. This, in our opinion sets the matter at rest. The learned advocate has also submitted that if the accused was callous enough to threaten Bhagyamma with death and if he had taken her to a lonely place for this purpose, that there is no reason why the accused would have not carried out his intention and that this itself shows that the story is fabricated. His submission is that if the accused had got hold of a large stone and intended using it, that he would most certainly have done so and would not have given Bhagyamma an opportunity to escape. As far as this argument is concerned, we take note of the fact that Bhagyamma was a young adult woman and even if the accused was the stronger of the two, she would not have easily submitted to a fatal attack and she has in fact stated that on one first occasion when the stone was aimed at her, that she was able to avoid it and that she sustained only minor injuries. Cumulatively, therefore, we are of the view that merely because Bhagyamma escaped with some injuries, that it cannot lead to the conclusion that

the accused did not assault her at all on that day.

6. We however, do agree with the submission canvassed by the respondent's learned advocate that even if Bhagyamma's evidence were to be accepted, that the charge would still not come within the ambit of Section 307, IPC. Even though Bhagyamma states that the accused threatened to kill her, we would necessarily have to strictly go by what he actually did and it is clear to us from the manner in which he assaulted Bhagyamma, that the acts would not hold him liable for an offence of attempted murder. The learned advocate has submitted that the weapon used and the type of injuries cause are the two crucial factors while assessing the questions as to whether there was intention to cause death and he is right in the present instance when he submits that at the very highest, the accused could be held liable for the offence of causing grievous hurt since injury No. 4 indicates that there was a fracture of the rib though the other injuries are relatively minor.

7. The respondent's learned advocate then pointed out to us that the majority of witnesses in this case have turned hostile. He submits that this is not a mere coincidence, but that it very clearly reflects on the type of investigation that has taken place and the high degree of fabrication exaggeration. Why witnesses who have given a full and complete statement to the police should thereafter turn hostile is not a matter of conjecture and longer because, it is very clear that the only beneficiary of such a situation is the accused and it would, therefore, be impossible to rule out complicity on the part of the accused when witness after witness turns hostile. The fact that the majority of witnesses have not supported the prosecution case is therefore, not a factor in favour of the accused, but one which militates heavily against him.

8. The respondent's learned advocate then advanced the submission that the accused was the husband of Bhagyamma and that it is perfectly legitimate for him to keep the wife's ornaments in his custody and that he did so, that the custody does not become unlawful. Learned advocate's submission proceeds on the assumption that the husband has every right to be found in possession of a wife's ornaments and that the recovery of the ornaments from him cannot be treated as a

guilty circumstance. We do not dispute the fact that under normal situations, a wife may even entrust her ornaments to the husband for safe custody or a prudent or careful husband may, for reasons of safety, keep the ornaments with him or under his control and such an arrangement could never lead to the inference that the husband was disentitled to retain the wife's ornaments and that it is a guilty circumstance against him. Particularly in criminal cases, such facts are not to be considered in a vacuum, but must be looked at strictly in relation to the special situation that prevails in that particular case. We have taken note of the fact that Bhagyamma has very clearly stated in her evidence that these ornaments belong to her as they had been made by her father for her wedding. She also states that they were in her custody and on her person and that the accused under threat, took the ornaments away from her. If the custody of the ornaments has come to the accused under these circumstances, then his possession becomes clearly unlawful. We need to add here that ornaments and personal property belonging to a wife necessarily constitute her personal possessions and divesting a wife of these against her wishes or without her consent would clearly bring the case within the ambit of a criminal offence. It is a misnomer to argue that irrespective of such a situation, that the possession of the wife's personal ornaments by husband still continues to be lawful. In our considered view, the extortion of the ornaments from Bhagyamma under threat and the subsequent recovery of these ornaments from the custody of the accused would clearly make him liable for an offence of extortion. Though the learned S.P.P. submitted that even if the case did not qualify for a conviction under Section 392, I.P.C., that on these facts, it would clearly come within the ambit of Section 386, I.P.C. because, the ornaments were extorted under the threat of death, we would prefer not to accept the evidence of Bhagyamma without a little dilution because, the F.I.R. indicates a slightly less serious situation. It would be more appropriate, therefore, to record a conviction under Section 384, IPC.

9. As regards the rest of the evidence, we would prefer not to refer to it because, the majority of witnesses have turned hostile and their evidence is not of much consequence. It is true that most of them have been cross-examined and have come a full circle, but we are of the view that Bhagyamma's evidence alone which finds considerable support from the other material which we have discussed

above, is sufficient to establish the charge against the accused.

10. The learned S.P.P. submitted that the large stone used in this instance, if used as a weapon of assault, was capable of causing death and that it could, therefore, come within the ambit of a deadly weapon. He also submitted that injury No. 4 which has resulted in the fracture of a rib is sufficient to bring the case within the ambit of Section 326, I.P.C. The respondent's learned advocate points out to us that the stone in question was a relatively small one and secondly, that the other five injuries that have resulted are all very minor except for injury No. 4 which has resulted in the fracture of the rib. There again, he points out that Bhagyamma was not seriously injured and she was fit enough to travel on a bicycle and then go to the hospital and that she has completely recovered within a period of 7 days and he, therefore, submitted that the offence at the highest would come under Section 323, I.P.C. We need to point out here that the assault in this case cannot be brushed off as an insignificant one because, a stone was used in a forest against a young wife with the criminal intention of divesting her of her jewellery. Having regard to the fact that this incident did not take place in the home and that the accused had taken her to a forest under a false pretext, it is clear that he had a criminal intention of either killing her or seriously injuring her, but that he ultimately did not carry this out. Also, having regard to the medical evidence which lists the fracture of the rib as a serious injury, we are of the clear view that this is a case which would qualify for a conviction under Section 325, I.P.C.

11. On the question of sentence, the learned S.P.P. has submitted that this is one more of the heinous instances where an (avaricious) unscrupulous husband has attacked a newly married wife and that too with the sole purpose of gain. He submits that irrespective of what ultimately happened, the facts clearly disclose that the accused wanted to appropriate the jewellery and get rid of the wife and in this background, he submits that a deterrent sentence is called for. On the other hand, the respondent's learned advocate has prayed for utmost leniency because, he submits that the ultimate injuries were not of extreme seriousness and he puts forward the plea that there is no material to indicate hostility on the part of the accused due to any other reason and that the Court must, therefore, accept the position that Bhagyamma either had some other liaison or that she was not

interested in the accused as a husband as she had an intention to marrying some other person and that in this background, there was very strong provocation to the accused. We have discounted this submission, but we need to point out that even assuming that this was the situation, nothing could justify the act of the husband in taking her to a forest, extorting her ornaments and then attempting to do away with her. Also, we have taken note of the fact that in many instances, on all sorts of pleas for sympathy, abnormally lenient sentences are awarded by the Courts which have rightly been categorised as flea-bite punishments which not only reduce the justice dispensation system to a mockery of the law, but almost to a joke. It is very wrong on the part of Criminal Court, when offences of some seriousness are established, to award abnormally low sentences, though we do appreciate the fact that all relevant factors must be taken into consideration while computing the degree of sentences. In this case, the only extenuating factors in favour of the accused are that he was a young man, that he had no criminal background, and furthermore that he was a rustic person and would therefore, qualify for some degree of leniency as he did not have the benefit of either education or acquiring a high degree of enlightenment. It is for these reasons and also because nine years have passed since the incident took place, that we are inclined to award a relatively lenient sentence to the accused.

12. The order of acquittal is accordingly set aside. The accused is convicted in the first instance of the offence punishable under Section 325, I.P.C. and it is directed that he shall undergo R.I. for a period for two years. The accused is also convicted of the offence punishable under Section 384, I.P.C. and it is directed that he shall undergo R.I. for a period of two years. The substantive sentences to run concurrently. The respondent-accused shall be entitled to the set-off for the entire period that he has already undergone. The trial Court shall, if the accused has not undergone the requisite sentence and is on bail, take necessary steps to ensure that he is placed under arrest and consigned to prison. In that event, bail bond of the respondent-accused shall stand cancelled.

13. The appeal accordingly succeeds and stands disposed of. The fees payable to the learned advocate who has represented the respondent-accused are fixed at Rs. 1,000/-.

14. Appeal allowed.

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