

State of Karnataka Vs. Thimmappa and ors.

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Court : Karnataka

Decided On : Feb-06-2004

Reported in : 2004CriLJ1968

Judge : M.F. Saldanha and ;K. Ramanna, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149, 300, 302, 304 and 324

Appeal No. : Criminal Appeal No. 1436 of 1998

Appellant : State of Karnataka

Respondent : Thimmappa and ors.

Advocate for Def. : D.R. Anandeeshwar and ;Nagabhushana Reddy, Advs.

Advocate for Pet/Ap. : P.M. Nawaz, Govt. Pleader

Judgement :

K. Ramanna, J.

1. This appeal is directed against the judgment and order of acquittal dated 29-8-1998 passed by the learned II Addl. Sessions Judge, Kolar, in S. C. No. 8/1992 mainly on the ground that though the prosecution has placed cogent and consistent evidence with regard to the manner in which the incident took place about 50 meters away from the land survey No. 34/4 of Hampanasandra village

within the limits of Gowribidanur police station, on account of that incident late Yellappa was severely injured and on the very same day he died while undergoing treatment in the Nimhans hospital but the learned Sessions Judge has acquitted all the respondents-accused without appreciating the medical evidence which corroborated the ocular evidence, both injured witnesses and other eyewitnesses. Hence this appeal.

2. The case of the prosecution is that on 25-11-1990 at about 8 a.m. respondents-1 to 4, 6 to 12 and deceased accused-5 and 13 with a common object to commit rioting, formed themselves into an unlawful assembly armed with deadly weapons like clubs, chopper, whip, etc. and assaulted P. W. 1 Aswathappa and P. Ws. 2 to 5. Therefore they were charged with having committed the offence punishable under Sections 143, 147, 148, 149, 447, 302, 307, 324 and 326 IPC. The trial Judge after considering the evidence on record acquitted all the respondents,

3. We heard the learned counsel for both sides on merits,

4. The learned High Court Govt. Pleader has taken us through the evidence of P.Ws. 1 to 5 and P.Ws, 8 and 11 as also the evidence of the other eye-witnesses and circumstantial witnesses. He submitted that despite the cogent evidence placed on record through the reliable witnesses, the trial Court discarded the same and acquitted all the respondents on flimsy and untenable grounds. Further he submitted that the medical evidence placed on record through P.W. 13 Dr. N. Rama Reddy, clearly indicates that P.Ws. 2, 3, 8 and 11 sustained injuries and their evidence fully corroborates the evidence of P.W. 13. The evidence of P.W. 17 Dr. P. Rama Murthy supports the case of the prosecution that Yellappa died on account of grievous injuries caused to his head and other parts of the body, therefore the finding recorded by the trial Court is perverse and illegal and the same requires to be interfered with and substituted by an order of conviction.

5. Per contra the learned counsel for the respondents submitted that the trial Court, which is the best judge of the evidence, has, acquitted the respondents-accused and there are several inconsistencies and contradictions in the evidence of the prosecution witnesses. Further he points out that there were some hostilities between P.W. 1 and accused 1 and that P.Ws. 1, 2, 3 and 8 are related witnesses

and the other witnesses are highly interested and the trial Court has rightly not accepted the evidence of the interested and related witnesses. Therefore, it is unsafe to believe or rather rely upon the evidence of such witnesses. In fact, the trial Court has rightly recorded its finding and the same does not call for interference.

6. We have carefully reviewed the evidence of the prosecution witnesses as also the whole of the record. According to P.W. 1 accused 1 Thimmappa is the cousin brother i.e., his father and father of accused 1 are brothers, whereas, accused 2 and 3 are the sons of accused 1. Deceased accused 5 Venkataramappa, is the father-in-law of accused 2. Accused 6 is the brother of younger brother of accused 5, so also accused 7. 8 and 9, whereas, accused 10 Srinivasa is the nephew of accused 7. Accused 11 and, 12 are sons of accused 6, whereas deceased accused 13 is related to all the other accused persons. Accused 5 and 13 died during the pendency of the sessions case. Therefore, the case against them has abated.

7. According to P.W. 1 he is the owner of the land measuring 8 acres 30 guntas in survey No. 123/4 and 2 acres 34 guntas in survey No. 34/4 and he was cultivating the said lands during the life time of his father; but accused 1 was claiming the right over the land in survey No. 34/4 stating that the said lands were purchased by his father only. Civil litigation is going on between accused 1 and his father and temporary injunction was obtained by his father restraining accused 1 from interfering with the peaceful possession and enjoyment of the land in survey No. 34/4. In spite of that accused 1 and other accused persons formed themselves into an unlawful assembly by holding deadly weapons und trespassed into the said land while his sister P.W. 8 Gangamma and P.W. 7 Rathnaiah were harrowing the land. According to him on that day he saw accused 1 and others were going to his land for ploughing therefore they informed the village elders including the deceased Yellappa to advise the accused 1 and others not to interfere with his peaceful possession and enjoyment of the said land. Accordingly, P.W. 1 and other prosecution witnesses went to that land around 8 a.m. on 25-11-1990 and saw accused 1 was ploughing the land. At that time the panchayatdars namely deceased Yellappa, P.W. 11 Nagaraja, P.W. 7 Laxmiah, and others informed

accused 1 that if there is any dispute with regard to the said land in survey No. 34/4 to sit together and settle the matter in a panchayat. Accordingly accused 1 and others started following the panchayatdars to go to the village. After moving about 50 metres with the village panchayatdars, the accused persons who were ahead all of them, near the nala, as per eye-witnesses, accused 4 instigated the other accused persons to finish them. Therefore, all the accused persons started assaulting the injured persons as well as the deceased Yellappa some of the eye-witnesses snatched the weapons which were used for assaulting the injured and the deceased Yellappa and they were taken to the hospital at Gowribidanur. The deceased Yellappa succumbed to the injuries.

8. The version of the injured witnesses and eye-witnesses clearly indicates that on 25-11-1990 the incident took place 50 metres away from the land in survey No. 34/4 in a nala. P.W. 2 Venkatesh sustained four injuries i.e., one lacerated, two abrasions and one contusion. Whereas P.W. 3 Govindappa sustained multiple lacerated injury on the left side of the front occipital region. According to P.W. 13 he sustained simple injuries. Whereas P.W. 11 Nagaraj sustained three injuries, out of them one was grievous in nature. Whereas P.W. 8 sustained one contusion to her back on right side. According to P.W. 1 he also sustained injury on the hand but the prosecution has not produced the wound certificate, if any, issued by the medical officer. But P.W. 13 Dr. Rama Reddy has not deposed before the Court whether the injury sustained by P.W. 1 was in that incident. Apart from the evidence placed on record P.W. 4 Kolmi Ramappa, P.W. 5 Thammanna and P.W. 6 Hanamappa support the case of the prosecution whereas P.W. 7 Rathnaiah, a coolie working under P.W. 1, has half heartedly deposed before the Court to the effect that on that day he and P.W. 8 had been to the land in survey No, 34/4 for harrowing purpose and accused 1 came around 7 a.m. and started ploughing. It is well settled law that no criminal case is free from omissions and contradictions. In the instant case also there are some minor omissions and contradictions but they will not take away the case of the prosecution. Even P.W. 17 Dr. P. Rama Murthy, Senior Specialist, deposed before the Court that the death of Yellappa was due to head injury causing lacerations and diffused contusion of cerebrum, subdual haematoma leading to death. It is not proper and perhaps unreasonable to expect from the witnesses, either independent or injured, to count the number of blows

dealt by the assailants. The evidence placed on record clearly indicates that deceased Yellappa accompanied other villagers to advice and settle the dispute between accused 1 and P.W. 1 Ashwathappa. But unfortunately he sustained severe head injury at the hands of the respondents and died in the Nimhans hospital.

9. It is clear from the evidence that the material objects, namely M.Os. 1 to 5, seized in this case are produced by P.W. 1 Ashwathappa. The evidence placed on record does indicate that there was no intention or common object to commit the murder of Yellappa. by the respondents-accused. P.W. 2, P.W. 3 and P.W. 8 have sustained simple injuries whereas P.W. 11 Nagaraj sustained both simple and grievous injuries; but deceased Yallappa sustained fatal injuries. Considering the evidence of the prosecution witnesses that the respondent had no motive whatsoever to commit the murder of Yellappa, accused 1 assaulted deceased with a whip whereas accused 5 assaulted Yellappa with a chopper on the head, accused 8 assaulted on the head of deceased Yellappa with a chopper, all of which attracts the provisions of Section 304, Part II of I.P.C. but it does not constitute the offence of murder. It is evidence, in the instant case, there was no intention to commit the murder of Yellappa and consequently it is clear that the trial Court has not properly evaluated the evidence placed on record while acquitting the accused. Therefore, the finding recorded by the trial Court is to be set aside.

10. This appeal highlights a familiar error that is often committed by the trial Courts which requires rectification. In the first instance, there are situations in which several accused participate in an assault and there is often the tendency to spread the liability to all of them whenever a conviction is recorded and vice-versa where an acquittal results, regardless of the very fundamental proposition of criminal law that even in such instances where there may be a charge of common intention, unlawful assembly or rioting, that the Court is still required to sift the evidence and decide as to whether there is evidence of commonality of intent on the part of all the accused or whether a distinction will have to be made between some of them and the rest. Criminal law undoubtedly admits to the proposition that commonality of intent may develop on the spot but on the other hand, citing the present case

the intention of the group may have been to assault the victim whereas one or more of the persons may have acted otherwise and would possibly qualify individually for a heavier conviction and sentence. Undoubtedly, the Court will go by the weapons used, the overt acts attributed, the degree of force that was exerted and such other finer features of the incident while recording its findings. This is very important because it is equally essential that no accused person should end up with a heavier liability than what is strictly contemplated by the law and conversely, that there should not be a failure of justice through too light a consequence or wrongful exoneration. These are all very fundamental principles of evaluation of evidence and of criminal jurisprudence which appear to have been overlooked with consistency.

11. Next we need to address ourselves to the again common place error that is manifesting itself by over pitching the findings in all cases where a homicidal death has taken place and the accused are convicted; it does not ipso facto mean that Section 302 alone will apply. This Court has just dealt with a situation in which an accused inflicted a minor injury which was categorised under Section 323, I.P.C. The victim was wrongfully admitted to a Government hospital. Due to the poor conditions there, he developed septicemia and died after 42 days and because of the death the police invoked Section 302, I.P.C. and the trial Court without due application of mind convicted the accused under this section where the record could only justify a conviction under ' Section 323, I.P.C. because the accused was in no way responsible for the death. Coming to the next category of cases, it was similarly demonstrated in a recent appeal that the accused had inflicted a grievous injury on the deceased which was not on the vital part of the body and the deceased died thereafter. The police and the trial Court invoked Section 302, I.P.C. and on a fine analysis of the medical evidence this Court found that the injury was not life threatening, it did not cause the death, that the blood sample indicated abnormally high presence of alcohol and it was due to this that the deceased had died. The conviction was required to be confined to Section 326, I.P.C. Again, even where injuries have resulted in death if the weapons used and the nature of the injuries, the intention and the circumstances could all bring the offence under Section 304, I.P.C, and not Section 302, I.P.C., it is the sacred duty of the Court to ensure that the ultimate criminal liability is never higher than what

the law permits.

12. In this context, there is another rule of caution that we need to sound. While in many instances once the presence is established, a conviction may be justified along with the others if that presence is sufficiently incriminating but the converse is important insofar as if the presence is totally innocuous the Court will have to make a distinction while recording a conviction. Also, as we have indicated earlier in that the same case where there is no commonality of intent, different accused may be liable for convictions of different gravity depending on what acts the evidence establishes. We do find that this last part of what we would define as the finer considerations are invariably lacking towards the end of a judgment which is something that has disastrous consequences the Courts invariably hurry to a conclusion and it is for this reason that we desire that a copy of this judgment be circulated to all the Judges handling criminal cases in this state so that they could bear these principles in mind.

13. Of crucial importance is the fact that in recent times the doctrine relating to the Rights of the Victim has assumed paramount significance and it is this principle that must be invoked as far as possible while following the principles of sentencing. By sending an accused person to jail, the damage cannot be undone to the injured or the legal heirs of the deceased, it results in a burden on the state, it is harsh to the accused and the family and invariably, a decent citizen comes out of the jail transformed into a criminal for life, thanks to the unhealthy associations while in custody. The majority of offences make provision for imposition of fine and even if the accused has to be given time to collect and pay the fine, that money can be used to off-set and assuage the damage that has occurred though the relief awarded as compensation to the aggrieved party. The concept of social justice would mandate that whenever possible criminal Courts must adopt this formula. We do concede that there may be a few specific instances where a jail sentence is eminently necessary or where there is no option. The Supreme Court has also laid down that in many such instances a lesser sentence and a heavy fine would serve the ends of justice. While assessing the fine, a very clear and correct enquiry should be done as it should not be over oppressive such as the situation in which a poor farmer has to sell his lands and his wife's jewellery to pay it up and at

the same time, it should not be disproportionate such as in a case where the accused is a rich businessman or a white collared offender in whose case, a very heavy fine is the only meaningful punishment as otherwise, the accused will look at it as a huge joke. Finally, we direct that in the last category of cases, the Courts should not be shy or hesitant in imposing very heavy fines where the circumstances warrant but in those instances while directing the payment of compensation the general principles relating to investment etc., for the long term welfare shall be borne in mind.

14. Accordingly the appeal partly succeeds. Respondents 1 to 4, 6 to 12 are convicted for the offence punishable under Section 304, Part II and 324, I.P.C. and considering the fact that the respondents were in judicial custody for more than ten months it is directed that they shall pay a fine of Rs. 3,000/- each and they are given 12 weeks time to deposit the fine amount in the trial Court, failing which the trial Court to recover the amount from the respondents-accused. On recovery of the fine amount Rs. 30,000/- shall be paid to the wife/legal heirs of the deceased Yellappa, and Rs. 3,000/- shall be paid to P.W. 11 Nagaraj, whereas, Rs. 1,000/- each shall be paid to P.W. 2 Venkatesh, P.W. 3 Govindappa and P.W. 8 Gangamma by way of compensation.

Accordingly, the appeal succeeds to this extent and stands disposed of on merits. The bail bonds and surety bonds executed by the accused to stand cancelled.

(Registrar General to circulate a copy of this judgment to all the Criminal Courts in the State.)

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