

Yellappa Vs. the State of Karnataka

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Court : Karnataka

Decided On : Aug-04-1995

Reported in : 1996CriLJ1071; ILR1996KAR28; 1995(6)KarLJ167

Judge : M.B. Vishwanath and ;M.M. Mirdhe, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 324; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 391

Appeal No. : Criminal Appeal No. 329 of 1993

Appellant : Yellappa

Respondent : The State of Karnataka

Advocate for Def. : Sri A.B. Patil, Additional State Public Prosecutor

Advocate for Pet/Ap. : Hashmath Pasha, Adv.

Judgement :

1. This appeal is preferred by the appellant against the judgment dated 30-6-1993 passed by the Principal Sessions Judge, Kolar, in S.C. No. 3 of 1989 convicting the appellant who was accused No. 1 in the trial Court for the offence punishable under S. 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and also to pay a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for an other two months.

2. We have heard the learned counsel for the appellant Shri Hashmath Pasha and the learned Additional State Public Prosecutor Shri A. B. Patil fully and perused the records of the case.

3. The case of the prosecution is as follows :-

P.W. 1, T. S. Bhagyamma, is the wife of deceased Shivachary. The appellant who was accused No. 1 is the husband of accused No. 2 and father of accused No. 3. All the three accused were living in Watchman Lane, Marikuppam, K. G. F. Deceased Shivachary was a Havaladar at Mysore Mines, K.G.F. He was living with the members of his family in the house adjoining to that of the accused. The houses of the deceased and of the accused were separated by a common wall. Both the families were on good terms in the beginning. But, the trouble started when P.W. 1 suspected accused No. 3 of stealing from her house and informed the same to deceased Shivachary who, in turn, informed, Kuppaswamy, another Lineman. He did not do anything. P.W. 1 asked accused No. 2 to advise her daughter not to steal things from the houses of others. Further, the hens of the accused were straying into the house of the accused P.W. 1 and they were making the house of P.W. 1 unclean and causing nuisance to them. On account of all these, there were quarrels between the accused and the deceased. On 16-9-1988 there was a quarrel between P.W. 1 and accused No. 2 Yellamma over the straying of hens and making the house of P.W. 1 dirty by the hens. Then Kumpaswamy intervened and pacified them. On 17-9-1988, the next day, deceased Shivachary was standing outside the house. He saw accused No. 1 moving in front of his house with a knife abusing P.W. 1 and the deceased in filthy language. P.W. 1 called her husband (the deceased) inside the house and told him to be very careful. The deceased went inside the house and told P.W. 1. not to worry. While P.W. 1 was making the tiffin ready for the deceased, she heard the cries of her children Sathish Babu, Madhu Sudhan and Swarnalakshmi saying 'Daddy'. Then P.W. 1 came out of the house and saw her husband Shivachary being held on either side by accused Nos. 2 and 3 in front of their house and accused Nos. 1 stabbing him on the abdomen with a knife. When P.W. 1 came out, accused No. 1 was pulling out the knife from the abdomen of her husband. She wanted to go and hold her husband. But accused Nos. 2 and 3 prevented her.

At that time accused No. 1 assaulted deceased Shivachari with knife on his head. The deceased fell down. Thereafter an ambulance was secured and deceased Shivachari who was alive then was shifted to Civil Hospital, K.G.F., from where he was referred to B. G. M. L. Hospital, K. G. F. The deceased gave a statement at 8.00 a.m. on 17-9-1988 at B. G. M. L. Hospital. Subsequently, he was operated. He succumbed to his injuries on 20-9-1988 at about 6.30 a.m. On the basis of the statement of the deceased recorded by the Police, a case came to be registered and the Police started investigation and, after completion of the investigation, Charge Sheet has been filed by the Police against the accused. Though 3 persons were assigned as accused in the case, viz., the appellant herein and his wife Yellamma (accused No. 3) and his daughter Prema (accused No. 2), the trial Court acquitted accused Nos. 2 and 3. There is no appeal preferred by the State challenging the judgment of the trial Court acquitting accused Nos. 2 and 3. The trial Court convicted the appellant (accused No. 1) on the basis of the evidence of P. Ws. 1 and 2 and the dying declaration of the deceased recorded by the Police as per exhibit p. 5.

4. The learned counsel for the appellant contended that the possibility of the injuries being caused by the appellant in the course of his self-defense and defence of his wife and daughter cannot be ruled out in this case and this fact was suppressed by the prosecution and the real genesis of the case has not been brought out before the Court.

5. From the evidence of the Doctor who conducted post mortem examination, it is apparent that the deceased died a homicidal death.

6. The case of the prosecution is that there were frequent quarrels between the three accused on the one side and the deceased and P.W. 1 on the other on account of the straying of hens and the hens coming to the house of deceased Shivachari and P.W. 1 and committing nuisance in the house and also on account of the daughter, viz., accused No. 2, committing theft from the house of deceased Shivachari and P.W. 1. It is also alleged by the prosecution that prior to the incident deceased Shivachari was promoted as Havaladar overlooking the seniority of the appellant and this had caused heart-burning to the appellant and the

members of his family. It is not disputed in this case that the houses of the appellant and the deceased were side by side separated by a common wall and that the appellant and the deceased were working in B.G.M.L. at Kolar. We do not find anything unnatural or artificial in the evidence of P. Ws. 1 and 2 that there were frequent quarrels between the appellant and his family members on the one side and the deceased and his family members on the other and such a quarrel appears to be the reason for the incident.

7. The deceased died a homicidal death. The evidence of P.Ws. 1 and 2 and the dying declaration, Exhibit P. 5, are to the effect that it is appellant who assaulted the deceased on his abdomen with the knife, M.O. 1. Other materials also corroborate the same. From their evidence it cannot be disputed that the appellant stabbed the deceased and caused the injuries on the head and the abdomen and those injuries subsequently led to the death of the deceased. But the question is whether the deceased had told the entire truth

8. This Court heard the appeal on previous occasions and it passed an order on 12-1-1995 directing the Principle Sessions Judge, Kolar, to take additional evidence in respect of the 3 wound certificates relating to the appellant, Yellappa, accused No.2 Yellamma and accused No.3 Prema and the certified copy of the F.I.R. relating to the complaint filed by accused No. 1, as the prosecution had not got them proved in its evidence. These materials were not before the trial Court for its consideration. Even the learned counsel for the accused did not bother to bring these materials to the notice of the trial Court. Naturally, the trial Court which had no occasion to notice the said 3 wound certificates and the copy of the F.I.R. convicted the appellant without considering the said documents. Hence, this Court exercised its power under Section 391 of the Code of Criminal Procedure and directed the Principle Sessions Judge, Kolar, to record further evidence in respect of these documents. In obedience to the order of this Court the Principal Sessions Judge, Kolar, has recorded the evidence of P.W. 14 and C.W. 1. The evidence of C.W. 1 is to the effect that on 17-9-1988 at 7.00 p.m. P.C. 381 of Markkuppam Police Station brought one Yellappa S/o Muniswamappa (which is the name of accused No. 1) to him and he examined him and found the following injuries :

- '1. Incised wound on the left eye brow, measuring 2 1/2' x 1/2' x 1/2' with ecchymosed of the left lower lid present.
2. Lacerated wound on the right portion of the frontal region 23/4 above the right eye brow measuring 1' x 5 x 8m.
3. Lacerated wound on the occipital region of the scalp 2' below the lambar, measuring 1' x 3m x 5m.
4. Haemotome of the forehead on the right side 2' above the right eye brow, round shaped, tenderness 2' diameter.'

He opined that the age of the above injuries was more than six hours and they were simple in nature. He has also stated that the injured gave the history to the effect that he was assaulted by one Shivachari with chopper and club. The certificate issued by him was Exhibit P. 1. He has also deposed that on the same day he examined one Yellamma w/o Yellappa (which is the name of accused No. 2) and found the following injuries :

- '1. Haemotome with fresh bleeding seen on the occipital region, round tender measuring 1' diameter.
- '2. Lacerated wound on the occipital region on the scalp 1' below the lambar measuring 1/2 x 5m x 5m.'

He opined that the above injuries were simple in nature. He issued wound certificate as per Exhibit C-2. He further deposed that he examined one Prema (which is the name of accused No. 3) on the same day and found fresh bleeding on the frontal region of the scalp with lacerated wound measuring 1' x 5m x 3m at the Brogme region of the scalp. The Wound Certificate pertaining to Prema is Exhibit C-3.

9. In his cross-examination C.W. 1 admitted that he had not been examined by the police in the case and no opinion was also sought from him by them. He has further stated that Injuries 2, 3 and 4 found on Yellappa could be caused by a club and Injury 1 could be caused by an iron rod. His further evidence is to the effect

that the injuries found on accused Nos. 2 and 3 could be caused by an iron pipe.

10. His evidence proves beyond reasonable doubt that all the three accused also sustained injuries and those injuries could be caused by an iron pipe or a club.

11. P.W. 14 has deposed that on 17-9-1988 at 5.00 p.m. one Yellappa who is accused No. 1 in the case came to the police station and lodged a complaint. Yellappa was accompanied by accused Nos. 2 and 3. The complaint was registered as Crime No. 101/88 under Section 324, I.P.C. and issued F.I.R. as per Exhibit P. 15. His further evidence is that he referred all the three accused to the Government Hospital, K.G.F. It is significant to note here that the Crime number given to the complaint filed by the appellant, i.e., Crime No. 101/88, clearly shows that his complaint was earlier to the complaint filed by the deceased which was registered as Crime No. 102/88. The complaint filed by the appellant was not brought on record by the prosecution. In view of the complaint filed by the appellant and the wound certificates pertaining to accused Nos. 1, 2 and 3 and the age of the wounds, it can be inferred that accused Nos. 1, 2 and 3 also sustained injuries in the same incident occurred on 17-9-1988. The injuries found on the persons of three accused cannot be brushed aside as minor injuries so as to make the prosecution not liable to explain them. In our view, though these injuries were simple in nature, they cannot be said to be minor. The facts relating to the injuries sustained by the accused persons and the complaint given by the appellant were suppressed by the prosecution.

12. None of the accused had taken up the defence of private defence. But, it is well settled principle in law that accused need not take specifically the defence that he acted in the manner causing injury to others in order to protect himself. He can exercise his right of self-defense. He can take such plea subsequently and, even if he has not taken any such plea of self-defense subsequently, he is not handicapped in his defence if he is able to prove and establish prima facie from the material available or from the circumstances appearing in the prosecution case that what he has done was in the exercise of his right of self-defense. In this case the Wound Certificates pertaining to the three accused (including the appellant) and the complaint of the appellant clearly prove that they had sustained injuries in

the incident. These facts were suppressed by the Investigating agency and they were not placed before the trial Court. In *Lakshmi Singh v. State of Bihar*, : 1976 CriLJ1736 , the Supreme Court held as follows :-

'In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

'(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

There may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

Held, on facts and circumstances that the High Court was in error in brushing aside the serious infirmity in the prosecution case regarding non-explanation of injuries sustained by the accused on unconvincing premises.

The question whether the Investigation Officer was informed about the injuries was wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses was the person who examined the accused also.

In view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical nature of the evidence and other circumstances, it was clear that the prosecution had miserably failed to prove the case against the appellants beyond reasonable doubt.'

After going through the evidence of the prosecution and the further evidence recorded by the learned Sessions Judge in pursuance of the direction issued by this Court, it becomes apparent that the prosecution has suppressed the genesis and the origin of the occurrence. Neither the deceased in his dying declaration nor P.Ws. 1 and 2 in their evidence before the Court have spoken of the real incident. They have suppressed the material aspects of the incident, viz., sustaining injuries by accused Nos. 1, 2 and 3 at the hands of the deceased. Therefore, it is not safe to rely upon their evidence as they gave a biased version of the incident suppressing the real facts relating to the incident. In view of these, the entire case of the prosecution becomes suspicious.

13. It becomes probable in view of the injuries found on all the three accused and the complaint filed by the appellant that the appellant caused the injuries on the deceased in the exercise of his self-defense and to defend his wife and daughter and such a probability cannot be ruled out in this case. Position of law is that an accused need not prove his right of self-defense beyond reasonable doubt. It is enough if the exercise of the right of private defence by an accused is proved to be probable. So, the conclusion that can be reached in this case is that the prosecution has suppressed the real genesis of the case and it did not present the true version of the occurrence before the Court and P.Ws. 1 and 2 and the deceased have suppressed the truth regarding as to how the incident happened and that the injuries sustained by the three accused and the complaint filed by the appellant lead to the inference that the accused were injured at the hands of the deceased and only on account of the deceased causing injuries the accused

exercised his right of private defence by causing injury to him. Further, it cannot be said that the appellant acted in excess of private defence in any manner as he caused only 2 injuries - one on the head and the other on the abdomen of the deceased. Therefore, we are of the opinion that the judgment of the trial Court rendered without having any opportunity to look into the Wound Certificates and the complaint filed by the appellant, as they were not placed before the Court by the prosecution in the form of evidence, is liable to be set aside. Added to this, the case does fall squarely within the law laid down by the Supreme Court in Lakshmi Singh's case cited supra. Hence, we proceed to pass the following order :

14. This appeal is allowed and the judgment dated 30-6-1993 passed by the Principal Sessions Judge, Kolar, in S.C. No. 3 of 89 convicting the appellant/accused No. 1 for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for another two months is set aside. The appellant is acquitted of the offence punishable under Section 302, I.P.C. and he is set at liberty forthwith in this case.

15. Appeal allowed.