

Rame Gowda and Another Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-22-1999

Reported in : ILR1999KAR1120; 1999(3)KarLJ5

Judge : Kumar Rajaratnam and; B.K. Sangalad, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 143, 147, 148, 149, 299, 300, 302, 304, 324 and 326; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal Nos. 220, 542 and 512 of 1995

Appellant : Rame Gowda and Another

Respondent : State of Karnataka

Advocate for Pet/Ap. : Sri M.V. Devaraju, ;Sri M. Nagaraj, Advs. and ;Sri B.R. Nanjundaiah, State Public Prosecutor

Judgement :

1. In all there were seventeen accused. They were charged on various counts under Sections 143, 147, 148, 149, 324, 326 and 302 read with Section 149 of the IPC. Out of the seventeen accused all were acquitted except A-2 and A-3. A-2 and A-3 each of them were found guilty for an offence punishable under Section 302 of the IPC and sentenced to imprisonment for life and also sentenced to pay a fine of Rs. 2,000/- in default to undergo R.I. for six months.

2. The appellants-accused 2 and 3 have preferred Criminal Appeal No. 220 of 1995 against their conviction and sentence. The State has preferred Criminal Appeal No. 542 of 1995 against A-2 and A-3 for acquitting them for the offence under Sections 143, 147, 148, 149, 324 read with Section 149 of the IPC. The State has also preferred Criminal Appeal No. 512 of 1995 against those accused who were acquitted. All the appeals were heard together and a common order is passed since all the appeals arise out of the same occurrence that is alleged to have been taken place on 16-6-1989.

3. The prosecution case, in brief, is as follows:

On 16-6-1989 P.W. 1 H.R. Shivamadegowda was coming towards his house from his lands at about 8.00 a.m. A-1 Shivanna was coming in the opposite direction. A-1 dashed against P.W. 1, P.W. 1 questioned A-1 about his conduct. There was an altercation. Hearing about the altercation, P.W. 1's uncle Channaveeregowda and his son Erannaiah came and pacified both the parties. Even at that stage A-1 and A-5 who were also present challenged P.W. 1 by saying that they will give a befitting reply. After that A-1 and A-5 went towards their house. On the same day i.e., on 16-6-1989 P.W. 1, was present in his house. At about 4 p.m. A-1 to A-11 came armed with reprieve patties and clubs and threatened P.W. 1. P.W. 1's father Ramegowda (deceased No. 1) and P.W. 1's uncle Channaveeregowda (deceased No. 2) came out of the house and questioned the accused. Both the deceased also stated that the matter can be sorted out through panchayat. Immediately thereafter Ramegowda (D-1) and Channaveeregowda (D-2) went towards Basaveshwara Temple. They went to a distance of 200' from the house of P.W. 1.

4. It is the further case of the prosecution that all the accused followed both the deceased. Realising that there was going to be some altercation, P.W. 1, P.W. 2, P.W. 6, P.W. 4, P.W. 5, P.W. 7 also followed the deceased. At about that time, A-2 and A-3 assaulted Ramegowda on the head with reprieve patti. The deceased Ramegowda fell down as soon as he was assaulted. After Ramegowda fell down, A-4 and A-5 kicked the deceased Ramegowda and also assaulted with a club. A-6 also kicked Ramegowda. After that A-2 and A-3 assaulted Channaveeragowda (D-

2). The said Channaveeragowda fell down. A-12, A-15, A-13 also kicked both the deceased. All the accused threw the reprieve patties and clubs and ran away.

5. P.W. 1, P.W. 6, P.W. 3, P.W. 7, P.W. 4, P.W. 5 and P.W. 9 were also assaulted by the accused. After assaulting the witnesses the accused fled. Both the deceased were shifted to a car and taken to Halagur Hospital. P.W. 1 went to Halagur Police Station and lodged a complaint. P.W. 9 registered the complaint. P.W. 20 the CPI took up investigation and after completing the investigation filed the charge-sheet against the accused. As stated earlier the Trial Court convicted A-2 and A-3 under Section 302 of the IPC. All the other accused were acquitted.

6. The Hospital at Halagur was not equipped to treat both the deceased. P.W. 22- the doctor who treated both the deceased gave first-aid and referred both the deceased to a major Hospital for treatment.

7. P.W. 22 noticed the following injuries on Ramegowda (D-1):

(1) Lacerated wound seen on left parietal region measuring 5'x1/2' scalp deep.

(2) Bleeding from mouth seen.

He gave wound certificate Ex. P. 38.

8. P.W. 22 also examined Channaveeregowda (D-2) and noticed the following injuries:

1. Lacerated wound on top of the head measuring 1'x1/2' scalp deep;

2. Lacerated wound above left parietal region measuring 2'x1' scalp deep;

3. Contusion on lateral aspect of right eye measuring 3' x1/4';

4. In the same eye, conjunctiva injected and pink coloration of the skin around the left eye;

5. Abrasion anterior and lower 1/3rd of right leg. P.W. 22 gave wound certificate Ex. P. 37.

9. Both the deceased were shifted to Bangalore and they were taken to Sanjay Gandhi Hospital. Since there were head injuries, P.W. 1 was advised to take both the deceased to NIMHANS Hospital. Accordingly, both the deceased were taken to NIMHANS Hospital. On 17-6-1989 at about 2-30 p.m. the deceased Ramegowda passed away. At about 8-30 p.m. the deceased Channaveeregowda passed away in the Hospital. Wilson Garden Police came to NIMHANS Hospital and conducted inquest on the deceased. During inquest, the statement of P.W. 1 was recorded. After inquest both the bodies were sent for post-mortem examination.

10. P.W. 21 is the doctor, who conducted the post-mortem examination on D-1 Ramegowda and on D-2 Channaveeragowda.

11. Post-mortem report of D-1 Ramegowda indicates the following injuries:

- (i) Left black eye with bleeding from nose;
- (ii) A sutured wound measuring 4' in the left parietal region.

The doctor opined that the death was due to extensive contusion of brain with subdural haematoma. Ex. P. 35 is the post-mortem report.

12. P.W. 21 the doctor also conducted post-mortem examination on D-2 Channaveeregowda and found the following injuries:

- (i) A sutured wound measuring 8' on the left frontal parietal region;
- (ii) A sutured wound measuring 1' on the left parietal region;
- (iii) A sutured wound measuring 1' over mid-frontal region;
- (iv) A sutured wound above the left eyebrow measuring 2';
- (v) Abrasion below the left eye measuring 2'x3 1/2' and abrasion measuring 1/4'X1/4' on right parietal eminence.

The doctor opined that the death was due to extensive contusion of brain. The post-mortem report is marked as Ex. P. 34.

The doctor opined that the injuries on both the deceased could be caused by club and reprieve patti.

13. One curious aspect of this case which was not brought to the notice of the Court by the prosecution was the serious injury that was caused on A-1 Shivanna. In cross-examination P.W. 22 has stated that A-1 had sustained the following injuries:

- (i) One cut injury on the middle of occipital region measuring 2 1/2'x1/4' scalp deep;
- (ii) Cut injury seen on the occipital region above the injury No. 1 size 2' x1/4' scalp deep;
- (iii) Cut wound above the middle of the forehead 3'x1/4' scalp deep;
- (iv) Contusion seen on the dorsal aspect of right elbow size 3'x1/2';
- (v) Linear abrasion on the right shoulder joint size 2'x1/4';
- (vi) Contusion over the back of the neck size 3'x1';
- (vii) Abrasion on anterior aspect of left ankle.

14. A-1 gave the history of assault by Ramegowda (D-1), Channaveeregowda (D-2), P.W. 4-Nataraju, P.W. 5-C. Madegowda and others on 16-6-1989 at about 5-30 p.m. by use of wooden reapers. P.W. 22 also refers to certain injuries caused on A-2 Ramegowda.

15. According to the doctor P.W. 22, A-2 suffered a contusion over back of the left shoulder. The injuries on the accused 1 and 2 are marked as Ex. D. 6. P.W. 1-Shivamadegowda also sustained certain abrasions during the occurrence. P.W. 4 Nataraju also suffered simple injuries. P.W. 3-Veeranna also suffered a lacerated wound on the skull. P.Ws. 1 and 3 speak about the assault by accused 2 and 3 on both the deceased. All other injured witnesses speak about the injuries sustained by them in the altercation.

16. P.W. 1 in his evidence did not implicate A-12 to A-17 with respect to any overt act. P.W. 1 stated that A-16 and A-17 did not assault any of the deceased but they were supplying reprieve patties to the other accused. Similarly P.W. 1 did not implicate A-12, A-13 and A-15 but stated that they were only instigating the accused to assault. The name of accused 12, 13 and 15 did not find a place in the first information report. In these circumstances the Trial Court acquitted accused 12 to 17.

17. P.W. 1 had not stated that A-1 assaulted him. P.W. 3 stated that he was attacked by A-9 and later by A-8 with reprieve patti. P.W. 3 also stated that he was attacked by A-11. In the history of assault given by P.W. 3 to P.W. 22 the name of A-9 does not find a place. Only the names of A-2, A-8 and A-11 have been mentioned. However, the evidence of P.W. 22 does not corroborate the evidence of P.W. 3 with regard to the injuries caused by A-2, A-8 and A-11.

18. P.W. 4 has deposed that accused 8 assaulted him on the forehead. But the Trial Court held that the injuries do not tally with the wound certificate. It is also relevant to state that P.W. 4 did not know when his statement was recorded by the Investigating Officer-P.W. 7 stated that he was assaulted by accused 10. The Trial Court did not accept the evidence of P.W. 7 since he has not mentioned in the accident register that A-10 assaulted P.W. 7. Similarly, the Trial Court did not believe the evidence of P.W. 6 since the prosecution did not produce any evidence that P.W. 6 was treated at NIMHANS Hospital.

19. P.W. 9 has stated that he was attacked by A-7. However, there was no medical evidence. Therefore, the Trial Court did not believe the evidence of P.W. 9 with regard to the assault by A-7.

20. The Trial Court held that since the prosecution has not placed cogent and satisfactory evidence regarding the injuries sustained by the eye-witnesses and in view of the contradictions, it was not safe to hold that the accused guilty of any offence except accused 2 and 3. The Trial Court was not inclined to accept the evidence even in regard to the recoveries at the instance of accused 7, 8, 10 and 11.

21. We have carefully perused the judgment of the Trial Court. After reading of the evidence of the witnesses, we are not inclined to differ with the reasoning of the learned Sessions Judge in acquitting all the accused except accused 2 and 3. All the eye-witnesses P.Ws. 1 to 3 have consistently deposed that A-2 and A-3 assaulted D-1 Ramegowda and D-2 Channaveeregowda with reprieve patti. We have no reason to disbelieve the evidence of witnesses who speak about the presence of A-2 and A-3 and the assault by A-2 and A-3 on both the deceased.

22. Mr. Devaraju, learned Counsel for the accused strenuously submitted that the Trial Court was in error in convicting the accused 2 and 3 for the offence under Section 302 of the IPC. It was submitted by the learned Counsel for the accused that there was no specific alternative charge against accused 2 and 3 for the offence under Section 302 of the IPC. Accused 2 and 3 along with the other accused were charged under Section 302 read with Section 149 of the IPC.

23. Charge No. 4 relates to all the accused being charged for the murder of Ramegowda (D-1) for an offence under Section 302 read with Section 149 of the IPC.

Charge No. 5 relates to all the accused being charged for an offence under Section 302 read with Section 149 of the IPC for causing the death of Channaveeregowda (D-2).

24. When charges 4 and 5 clearly indicate the overt acts of accused 2 and 3 on D-1 and D-2, we feel that the Trial Court ought to have framed an alternative charge against A-2 and A-3 directly under Section 302 of the IPC apart from a charge under Section 302 read with Section 149 of the IPC.

25. This is particularly so, if for any reason a charge under Section 302 read with Section 149 of the IPC could not be made out, then the accused 2 and 3 could have been convicted directly under Section 302 of the IPC.

25(a). If there is direct material against A-2 and A-3 with respect to the overt acts alleged to have been committed by them individually on D-1 and D-2 there was a duty cast on the part of the Trial Court to have framed a direct charge under

Section 302 of the IPC for causing the death of D-1 and D-2.

26. When a similar matter came up before the Supreme Court, the Supreme Court felt some difficulty in convicting the accused directly under Section 302 of the IPC.

27. If common object is not established under Section 302 read with Section 149 of the IPC, then it would be difficult to invoke the substantive charge under Section 302 of the IPC in the absence of a direct charge under Section 302 of the IPC.

28. The Supreme Court in the case of Subran alias Subramanian v State of Kerala, has held as follows:

'11. Since, appellant 1-Subran had not been charged for the substantive offence of murder under Section 302, IPC even the Trial Court, which tried the six accused persons, was not justified in recording a conviction against him for the substantive offence of murder punishable under Section 302, IPC after framing a charge against him for the offence under Section 302 read with Section 149, IPC only. A person charged for an offence under Section 302 read with Section 149 cannot be convicted of the substantive offence under Section 302, IPC without a specific charge having been framed against him as envisaged by law. Conviction for the substantive offence in such a case is unjustified because an accused might be misled in his defence by the absence of the charge for the substantive offence under Section 302, IPC. Appellant 1, Subran, was never called upon to meet a charge under Section 302, IPC simplicities and, therefore in defending himself, he cannot be said to have been called upon to meet that charge and he could very well have considered it unnecessary to concentrate on that part of the prosecution case during the cross-examination of the prosecution witnesses. Therefore, the conviction of the first appellant for an offence under Section 302 was not permissible. That apart, according to the medical evidence, none of the injuries allegedly caused by this appellant was either individually or taken collectively with the other injuries caused by him sufficient in the ordinary course of nature to cause death of Suku, Medical evidence is clear on this aspect of the case and it is not possible to say that the injuries inflicted by the first appellant with the chopper were inflicted with the intention to cause the death of Suku. The High Court failed to draw the distinction between an offence under clauses (b) and (c) of Section

299, IPC and the one falling under clause (3) of Section 300, IPC. The intention to cause murder of Suku deceased, could not be attributed to him and the medical evidence also shows that the injuries attributed to him were not sufficient in the ordinary course or nature to cause death of the deceased. The conviction of appellant 1-Subran, for the substantive offence under Section 302, IPC is therefore unwarranted and cannot be sustained. That Suku deceased died as a result of injuries inflicted on him by all the four appellants is not a matter which is in doubt. From the ocular evidence read with the medical evidence, it stands established that the injuries on the deceased had been caused by all the four appellants and that the death of Suku had occurred due to receipt of multiple injuries. What offence can then be said to have been committed by the four appellants?'

(emphasis supplied)

29. The Supreme Court in the judgment referred to above on the basis of the evidence convicted each of the accused for the lesser offence other than the substantive offence of 302 of the IPC and confined it to their respective overt acts.

30. In this case also we have some difficulty in sustaining the conviction of the accused for the substantive offence under Section 302 of the IPC in the absence of a specific charge.

31. Another curious aspect in this case is the fact that A-1 and A-2 had sustained injuries during the course of the occurrence. P.W. 22-the doctor, who treated A-1 and A-2 has stated that on 16-6-1989 at 8 p.m. he treated A-1 and noticed the following injuries:

(1) One cut injury on the middle of occipital region measuring 2 1/2'x1/4' scalp deep;

(2) Cut injury seen on the occipital region above the injury No. 1 size 2'x1/4' scalp deep;

(3) Cut wound above the middle of the forehead 3'x1/4' scalp deep;

(4) Contusion seen on the coral aspect of right elbow size 3'x1/4';

(5) Linear abrasion on the right shoulder joint-size 2'x1/4';

(6) Contusion over the back of the neck size 3'x1';

(7) Abrasion on anterior aspect of left ankle.

32. Accused 1 and 2 gave history of assault before the doctor P.W. 22 at the earliest opportunity stating that both the deceased and the other prosecution witnesses assaulted them.

33. P.W. 19 the P.S.I. has also admitted in his deposition that on the night at about 10 p.m. he came to know that A-1 and A-2 were admitted at Halagur Hospital and were undergoing treatment. He also admitted that in his absence the S.H.O. of Halagur had registered a case against P.Ws. 1 to 9 and the deceased and others for having assaulted A-1 and A-2. A case of A-1 came to be registered in Crime No. 81 of 1989 on 16-6-1989 at 8.45 p.m. The case against the accused came to be registered in Crime No. 80 of 1989 at about 8 p.m. The injuries found on A-1 are cut injuries and it is possible as stated by the doctor that matchu could have been used during the occurrence. This may also probabilise the version of A-1 and A-2.

34. A-1 and A-2 in their statements under Section 313 of the Cr. P.C. have stated that P.Ws. 1 to 6, 8, 9 and 12, D-1 Ramegowda, D-2 Channaveeregowda came to assault A-1 and A-2 and D-1 Ramegowda assaulted A-1 with matchu on his head, D-2 Channaveeregowda assaulted with a matchu on the left leg of A-1 and P.W. 1 assaulted on the back of neck of A-1 with reprieve patti.

35. A-2 has stated in his statement under Section 313 of the Cr. P.C. that P.W. 2 assaulted him on his right shoulder with a club as a result of which he fell down.

36. None of the prosecution witnesses have explained the cut injuries on A-1.

37. The Supreme Court in the case of Lakskmi Singh and Others v State of Bihar, has pronounced that where the prosecution fails to explain the injuries which are not superficial on the accused, two results may follow:

(1) The evidence of prosecution witnesses may be untrue;

(2) The injuries probalilise the plea taken by the accused.

38. The Supreme Court in the case of Mohar Rai v State of Bihar, has pronounced that in a murder case the non-explanation of serious injuries sustained by the accused at about the tune of the occurrence or in the course of altercation is a very important fact from which the Court can draw the inference that the prosecution has suppressed the genesis and the origin of the occurrence. The Court also held that in case where there is a defence version which explains the injuries on the person of the accused it renders probable so as to throw doubt on the prosecution case.

39. Needless to say that if the injuries on the accused are superficial it would not be necessary to explain the injuries found on the accused. Ultimately, it depends on facts of each case. However, if the injuries found on the accused are serious in nature and the injuries are on a vital part of the body it would be the duty of the prosecution to explain the injuries.

40. In this case it is most unfortunate that serious injuries sustained by A-1 during the occurrence had to be brought out in evidence only during cross-examination.

41. The prosecution ought to have placed the entire evidence before Court including the evidence by the doctor who treated A-1 and A-2.

42. Suppose for a moment the defence was not able to lay hands on the wound certificate given by the doctor with respect to the injuries on the accused, it could have led to a travesty of justice. If the whole truth is placed before the Court, the Court would be in a better position to appreciate the evidence. This not having been done, the Court will have to determine what is the nature of the offence committed by A-2 and A-3.

43. It is the consistent version of all the prosecution witnesses that A-2 and A-3 were responsible for the assault on the deceased. They cannot escape liability.

44. From the testimony of P.W. 1 both D-1 and D-2 went out of the house of P.W. 1 accompanied C.Ws. 19, 20, 21 and 22. They were followed by the accused. It cannot be ruled out that the prosecution witnesses were also itching for a fight. In the fight A-1 received serious injuries which we have referred to in the earlier part of the judgment. No doubt P.W. 1 and other witnesses also received injuries.

45. From this it can be culled out that there was a sudden fight in the heat of passion leading to a sudden quarrel.

46. Exception 4 in Section 300 reads as follows:

'Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault'.

47. We cannot rule out that in the absence of explanation of the injuries sustained by A-1 and A-2 that there must have been a sudden fight upon a sudden quarrel without the accused having taken undue advantage since apart from a reeper and cutting weapon such as matchu has may have been used in the occurrence as manifested from the wound certificate Ex. D. 6.

48. We feel in the facts and circumstances of the case the accused 2 and 3 are liable to be convicted under Section 304, Part I, IPC for causing the death of D-1 Ramegowda and D-2 Channaveeregowda.

49. We have examined the record and we find that accused Nos. 2 and 3 have been in custody for more than 5 1/2 years. We feel that the ends of justice will be met if the accused Nos. 2 and 3 are sentenced for a period of imprisonment already undergone by the accused, and we also sentence each of the accused to pay a fine of Rs. 1,000/- in default to undergo S.I. for three months, each.

50. We accordingly dismiss the appeals preferred by the State in Criminal Appeal Nos. 542 of 1995 and 512 of 1995.

51. We allow the appeal in part preferred by the accused Nos. 2 and 3 in Criminal Appeal No. 220 of 1995.

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