

State of Karnataka Vs. S.P. Devaraju

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Court : Karnataka

Decided On : Jun-12-2001

Reported in : 2002(1)ALT(Cri)27; 2001CriLJ3598; ILR2001KAR3983; 2001(4)KarLJ140

Judge : M.F. Saldanha and;K.R. Prasad Rao, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Evidence Act, 1872](#) - Sections 3 and 32

Appeal No. : Criminal Appeal No. 165 of 1996

Appellant : State of Karnataka

Respondent : S.P. Devaraju

Advocate for Def. : Sri B.L. Sanjeev, Amicus Curiae

Advocate for Pet/Ap. : Sri Mohan Shanthangoudar, State Public Prosecutor

Judgement :

M.F. Saldanha, J.

1. The State of Karnataka has, through this appeal assailed the order of acquittal recorded by the learned Additional Sessions Judge, Hassan, in Sessions Case No. 54 of 1988. By judgment and order dated 29th of November, 1995, the Trial

Court before which the respondent-accused 1 was tried for an offence under Section 302 read with 109 of the IPC had been acquitted. The prosecution alleged that on the night of 1-2-1988 at about 10.00 p.m., the accused had inflicted two stab injuries on deceased Puttaraju, who was immediately rushed to the S.C. Hospital, Hassan, and was then transferred the same day to Victoria Hospital, Bangalore. Despite medical treatment, Puttaraju succumbed to the injuries on 5-2-1988. Shortly, after his admission in the Hospital at Hassan, the Police had recorded his statement which was in the form of dying declaration which statement was also treated as the F.I.R. in this case. The learned Trial Judge had recorded several inconsistencies in the evidence and held that in view of the infirmities it would not be permissible to record an adverse verdict and accordingly acquitted the accused. It is against this order that the present appeal has been directed.

2. We have heard the learned Additional State Public Prosecutor in support of the appeal as also the learned Advocate Sri B.L. Sanjeev, who has been appointed as 'Amicus Curiae' by the Court as the respondent has not engaged any private Advocate. The learned Advocates have taken us through the entire record of the case and we have heard them on facts and on points of law. The appellant's learned Counsel has very vehemently submitted that the infirmities which have been highlighted by the Trial Court are both minor and insignificant and that they do not in any way impeach upon the credibility of the prosecution evidence. He has, in the first instance, relied heavily on the oral evidence of P.W. 1-Nagendra. He has pointed out to us that Nagendra on his own admission was a friend of both accused 1 and the deceased, that he had accompanied them on that night to a bar where they had consumed a few rounds of drinks and he states that thereafter they had gone to the room of the accused. The deceased and accused 1 had gone out of the room for a short time as the deceased had expressed the desire of wanting to relieve himself. Shortly, thereafter deceased Puttaraju came back holding his chest and abdomen. He was bleeding and he stated that accused 1 had stabbed him with a knife and that he had given the reason that he had done so at the instance of accused 2, who was aggrieved because of a land dispute. It was in this background that P.W. 1 took the injured person to the Hospital at Hassan. He was admitted and given necessary treatment and the Doctor sent an intimation to the Police at about 10.50 p.m., and the Police came to the Hospital

and recorded the statement of Puttaraju at 11.30 p.m. Subsequently on medical advice, the injured was shifted to the Victoria Hospital at Bangalore where he underwent treatment and finally passed away on 5-2-1988. The learned Counsel has drawn the Court's special attention to certain features of this evidence. His first contention is that even though P.W. 1 was an eye-witness that he was present at the closest spot to where the incident took place and that he was the first person to whom the deceased indicated that it was accused 1 who had stabbed him. Secondly, it is pointed out that despite rigorous cross-examination that the evidence has not been diluted nor are there any material omissions or contradictions and more importantly that the defence has not succeeded in establishing any reason why P.W. 1 should falsely implicate the accused.

3. The learned Counsel has then straightaway taken us to the dying declaration which was recorded without any delay. We have checked the original documents and the learned Counsel very rightly points out to us that Puttaraju has clearly mentioned at the earliest point of time in the dying declaration that it was accused 1, who had stabbed him with a knife. This document has been duly attested by the Doctor who has certified that it was recorded in his presence. The learned Counsel submits that there is no conceivable ground on which this evidence can be called into question because the Doctor has been examined and he has certified that the deceased was conscious and in a position to make the statement at that point of time and furthermore that the Investigating Officer, who is the scribe of the dying declaration which is Ex. P. 10, has himself deposed to the effect that Puttaraju was conscious and in a position to make a cogent statement at that point of time. The learned Counsel has thereafter pointed out that the medical evidence and the evidence of recovery such as the bloodstained clothes, weapon etc., fully corroborate the main heads of evidence and that accused 1 must be convicted for the offence punishable under Section 302 of the IPC.

4. On behalf of the accused, it is submitted that there is nothing on record to indicate that P.W. 1 had either accompanied these persons on that evening or that he was in the room when the incident took place and it is submitted that he is nothing more than a chance witness. The learned Advocate has vehemently submitted that the room was in a very crowded locality and it was hardly 9.00 p.m.,

and that if a stabbing incident had taken place in a residential area of Hassan there would have been no problem in securing any of the residents as witnesses. His submission is that the omission on the part of the prosecution to lead the evidence of any independent witness casts very serious doubt. He also assails the evidence of P.W. 1 on the ground of his admission that he was a friend of the deceased and he points out that P.W. 1 is very hostile to the accused because he has admitted that some time later accused 2 was stabbed to death and that P.W. 1 has been arrested and charged with his murder. His submission was that his last ground is sufficient to totally discard his evidence.

5. As regards the dying declaration, the learned respondent's Advocate has submitted that the Doctor has not certified on the document itself that Puttaraju was conscious and in a position to make a cogent statement. It is pointed out to us that he had received two serious stab injuries that he has lost a lot of blood that his condition was quite serious which necessitated the Doctor's advising that he should be moved to Bangalore and that in this background there is no guarantee that he could have at all made any statement to the Police. Also, what is pointed out is that the injured person was in the hospital in Bangalore for three days thereafter and if the Police wanted a dying declaration that they could have got one recorded before the Competent Authority on any of the subsequent dates which was not done. In totality, therefore, his submission that neither of the heads of evidence inspires the levels of confidence which could safely permit a Court to record a conviction for an offence under Section 302 of the IPC.

6. A very careful analysis of the entire record clearly indicates that the learned Trial Judge has definitely recorded an unsustainable verdict in this case. The evidence of P.W. 1 is absolutely trustworthy and almost without blemish. There is no doubt about the fact that he had accompanied accused 1 and the deceased to the bar and that he was present in the room when the incident took place. His evidence has been consistent and is fully corroborated by the evidence of the Doctor and the other circumstantial evidence on record. Again, the dying declaration has wrongly been rejected by the Trial Court, we find that it was recorded by the Police Officer at the earliest point of time when the deceased was in a position to speak and the contents of the dying declaration fully supports the

version of P.W. 1 and in turn implicates accused 1. This evidence which is coupled with other supportive evidence, particularly the medical evidence leaves absolutely no doubt in our mind that the prosecution has proved the charge beyond reasonable doubt as against accused 1. The last aspect of the case, is the question as to whether the evidence supports a conviction under Section 302 of the IPC. The learned Additional State Public Prosecutor has vehemently argued that since accused 1 was carrying a knife and since he has categorically stated that he had stabbed Puttaraju because of the land dispute, it is very clear that the offence was premeditated and that there was intent to cause death. His submission is that conviction ought to be under Section 302 of the IPC. The respondent's learned Advocate submitted, on the other hand, that admittedly accused 1 has no hostility or quarrel with Puttaraju and if at all he has attacked him it is obvious that something happened very suddenly. Also he points out that the injuries were not immediately fatal and that due to the fact that Puttaraju did not get medical attention quick enough and of the requisite quality that he lost his life. His submission therefore was that at the highest the conviction should be under Section 304 of the IPC.

7. On a consideration of these submissions and of the law on the point we find what is pointed out on behalf of the respondent-accused is perfectly valid. This is a case in which the accused could only be convicted of the offence punishable under Section 304, Part II of the IPC.

8. For the reasons indicated above, we allow the appeal filed by the State. The order of acquittal recorded in favour of accused 1 is set aside. Accused 1 is convicted of the offence punishable under Section 304, Part II of the IPC and it is directed that he shall undergo R.I. for a period of five years. We have taken into account everything that has been pointed out by the learned Advocates on the quantum of sentence. The bail bond of the respondent-accused 1 has been cancelled. He is directed to surrender before the Trial Court, which in turn is directed to give effect to the order of this Court.

9. We also direct the office to pay to the learned Advocate, who has appeared as 'Amicus Curiae', the professional charges which are quantified at Rs. 1,000/-. The

appeal accordingly succeeds and stands disposed of.

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