

Nagaraja Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-03-1997

Reported in : ILR1998KAR36; 1997(3)KarLJ441

Judge : M.F. Saldanha and ;M.B. Viswanath, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 27 and 45; Indian Penal Code (IPC), 1864 - Sections 300

Appeal No. : C.A. No. 114/1994

Appellant : Nagaraja

Respondent : State of Karnataka

Advocate for Def. : S.R. Bannurmath, SPP

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

Judgement :

M.F. Saldanha, J.

1. This appeal is directed against a conviction recorded against the appellant under Section 302 I.P.C by the learned II Additional Sessions Judge, Bangalore in Sessions Case No. 140/92. It is alleged that the appellant who is technically the nephew-in-law of the deceased Pavithra, had stabbed her to death at about 4 p.m.

on 12.2.1992 at Nehru Cross Road. The background of the incident emanates from an altercation which took place between the two some time before the incident on the same afternoon. The deceased Pavithra who was accompanied by P.W.3 is alleged to have uttered extremely abusive and offensive words inter alia to the effect that the accused was imputing immoral conduct to her and that he would not like it if similar allegations were made against his wife styling her as prostitute and the deceased is also alleged to have even imputed impotency to the accused. The two ladies thereafter went to the house of P.W.4 and while they were returning, the accused is alleged to have asked the deceased Pavithra as to whether she would abuse him any more and he also uttered the words 'I will finish your story' and attacked her savagely inflicting knife injuries on different parts of her person. P.W.3. is alleged to have shouted at him in an attempt to stop the attack, but he continued to stab Pavithra even after she had fallen down on the ground after which, the accused ran away towards the pipeline side. P.W.3 shouted out in order to attract the attention of other people as the incident had taken place on a public road and a Police Constable who is P.W.10 who had arrived on the scene, put the injured lady in an auto rickshaw and took her to the Victoria Hospital. The record indicates however, that Pavithra was dead by the time they reached the hospital. Since this was a medico-legal case, the police thereafter came into the picture, the F.I.R. was recorded and the inquest panchanama was made after which, the investigations continued. The accused was arrested on the morning of 14.2.1992 and it is alleged that there were some blood stains on his clothes which was why the clothes were taken charge of under a Panchanama. It is also alleged that on the same day, the accused made a certain statement pursuant to which he lead the police and the Panchas to a dust-bin from where he picked out a blood stained knife which was recovered by the police. On conclusion of the investigation, the accused was charge-sheeted, committed to Sessions and the trial proceeded. The learned Trial Judge held that the charge of murder was conclusively established and consequently, convicted the accused and sentenced him to suffer R.I. for life. It is against this conviction and sentence that the present appeal is directed.

2. Mr. Pasha, learned Advocate who represents the appellant, has taken us virtually thread-bare through the record. He has assailed the conviction principally on the ground that the learned Trial Judge ought not to have accepted the

evidence of P.Ws 2 and 3 who claim to be eye witnesses. Dealing first with the evidence of P.W.2 the learned Advocate has submitted that admittedly, he is a shop keeper from the area where the incident took place, but, he states that a very careful scrutiny of the evidence will indicate that there was no plausible reason why this witness's attention would have been directed towards the incident even if he was running a shop somewhere in the vicinity. The main plank of criticism is that P.W.2 admittedly did not know the accused except for his admission that he had seen him in the area a few times and furthermore that the narration given by him, though he claims to be an eye witness, would in fact boil down to a situation whereby he, like several others, must have been attracted to the scene of offence when the commotion started namely, after the incident had taken place. On the other hand, the learned S.P.P. has vehemently contended that the evidence has remained unshaken despite very protracted and voluminous cross-examination and he submits that there is no valid ground in law on which a Court can discard that evidence which has stood the test of scrutiny. The learned S.P.P. points out and perhaps with considerable justification, that where the evidence has virtually come through the test of fire, that it is not permissible to seek to discredit it merely on the basis of generalised reasons. He has emphasised the fact that this witness is totally independent in so far as he has nothing to do with either of the parties, that his presence in the area is most natural because the shop is located there and that the narration given by him fully fits in with all the other circumstances of the case including the most crucial aspect namely, the injuries that have been sustained by the deceased. We have very carefully reviewed the situation and in our considered view, the learned Trial Judge was fully justified in having accepted the evidence of P.W.2.

3. As far as the evidence of P.W.3 is concerned, the appellant's learned advocate has attacked this evidence even more strongly. One of the principal heads of attack stems from the fact that P.W.2 claims to have spent the whole of that afternoon in the company of the deceased and it is her case that she even shouted at the accused and tried to stop him from attacking the deceased Pavithra. She also states that she had accompanied Pavithra in the auto when she was taken to the hospital and that it was in the course of these incidents that her sari got blood stained. The appellants' learned Advocate submits that if in fact this

was the sequence of events, that nobody would have been better equipped to disclose the name of the assailant than P.W.3 and that despite this fact, the entry in the Casualty Register at the hospital which has been made at the earliest point of time, states that Pavithra was assaulted by an unknown person. The learned advocate submits that this one circumstance alone is sufficient to totally discredit the claim of P.W.3 that she was present when the stabling took place and he submits that even if P.W.3 arrived at the scene very shortly thereafter or even if she accompanied the deceased to the hospital which explains the blood stains on her sari, that this would still not put her in the position of an eye witness. As far as this aspect of the matter is concerned, the learned S.P.P. has sought to point out that the F.I.R. about which there is some controversy, as also the information that finds place in the Casualty Register are essentially on the basis of what the Doctor gathered from the persons who had accompanied Pavithra. It is very clear that she was taken to the hospital by P.W.10 who was not present when the incident took place. It is not very clear as to where precisely P.W.3 was at this point of time and it was in these circumstances that the Casualty Register mentions the assailant as an unknown person. We need to take cognizance of the fact that the appellant's learned advocate has linked this argument of his with another aspect of the matter, namely that there is a reference to an unknown person even when the F.I.R. was taken down which was as late as at about 8 or 9 p.m. In the first instance, he submitted that all those who had congregated on the spot had plenty of opportunity to discuss among themselves and having regard to the incident that had taken place between the accused and the deceased, namely the verbal altercations, that the accused was the most likely target of their suspicion. Learned advocate submits that if P.W.3 was an eye witness and if P.W.4 who also claims to be an eye witness and who claims to have run and informed the husband of the deceased immediately, was also present, that it is inconceivable that the assailant would be described as an unknown person. The accused was virtually a family member and in this background, it cannot even be argued that the persons who may have seen him, did not know his name.

4. We do concede that these are aspects of the case which do raise some serious questions, but the real issue is as to whether they are sufficient to totally discredit the evidence of P.Ws3 and 4. P.W.4 who admittedly does not reside in the area

also claims to have arrived on the scene in time to see the incident and she states that it was she who ran and called the husband of the deceased. As far as this fast aspect of the matter is concerned, it is clear that P.W.4 was somewhere on the scene at that time because, the husband of the deceased who was sleeping in the house, has immediately responded to her call and it is therefore, clear that she was very much in the picture. For a variety of reasons, the learned Trial Judge has preferred not to rely on the evidence of P.W.4, but we find that those grounds are rather weak and that the learned S.P.P. is perhaps justified when he submitted that where the evidence has once again stood very searching, very elaborate and very meticulous cross-examination, that merely on the basis of some surmises, it was not proper on the part of the learned Trial Judge to have brushed aside the evidence of this witness. As regards the aspect of non-mention of the name of the assailant, we need to carefully retrace the sequence of events which shows that the injured Pavithra was rushed to the hospital by the Police Constable and it does appear that P.W.3 who was with her all through the afternoon, accompanied him to the hospital, which also explains how her sari came to be blood stained. The fact of the matter was that the Constable P.W.10 was in charge of the situation and P.W.3 has nowhere indicated in her evidence that he either asked her for the name of the assailant or any details of the incident or for that matter, that she volunteered any information to him. The behaviour of P.W.10 is characteristic of the total lack of concern which is often displayed by the law enforcement machinery even in the face of serious situations and we are therefore, not surprised if the Doctor was informed that some unknown assailant had committed the offence. That circumstance, in our considered view, would not really be sufficient to discard the evidence of P.Ws.3 and 4 which appears to be intrinsically acceptable.

5. The appellant's learned advocate has hoped very strongly on one other aspect of the matter, namely that while describing the sequence of events on that day, P.W.3 has clearly indicated that the two ladies had taken their mid-day meal some time before the incident. In cross-examination. P.W.3 has categorically put the time down as 3.30 p.m. and appellant's learned advocate submits that the incident has taken place at 4 p.m. and pavithra was declared dead at the hospital at 4.40 p.m. He points out that the post-mortem notes very clearly indicate that the

stomach was empty and learned advocate submits that this is a significant or rather a tell-tale circumstance because, it is physically impossible if the deceased had taken the mid-day meal as late as at 3.30 p.m., for the food in a semi digested form to have not been found in the stomach. Learned advocate submits that the medical evidence being conclusive, that the Court will have to reject the evidence of P.W.3 with regard to her claim that she was in the company of Pavithra and that they had eaten together shortly before the incident. He submits that the only logical inference which follows is that P.W.3 was not in the company of Pavithra, that she is making a false claim and furthermore, that it would be abundantly clear that she was not an eye witness or anywhere near the scene of the incident when the stabbing took place.

6. As far as this aspect of the matter is concerned, the appellant's learned advocate has drawn our attention to a few decisions which we shall refer to briefly. He has relied on the decision of the Supreme Court reported in : 1993 CriLJ41 wherein the Supreme Court held that the medical evidence indicating an empty stomach virtually falsified the prosecution case. A similar view has been expressed in two other decisions reported in 1976 SCC (CRIMINAL) 483 and 1993 SCC (CRIMINAL) 1053.

7. As against this position, the learned S.P.P. very strongly contended that the time factor with regard to the mid-day meal is a comparatively insignificant aspect of the case. Secondly, he contended that P.W.3 is virtually in the category of an illiterate or semi-literate person whose notions of time are comparatively vague and lastly, he pointed out that P.W.3 was giving evidence years after the incident and that therefore, there is every possibility for error. He placed reliance on a decision of the Supreme Court reported in AIR 1993 SCW 409 wherein the Supreme Court had occasion to observe that having regard to the various biological factors involved, that the medical evidence regarding the presence of food in the stomach in whatever form, is hardly conclusive and to further lay down the proposition that where references are made to previous in-take of food by ignorant or illiterate witnesses, that the Court should not lay much stock on the time factor. The learned advocate also drew our attention to another decision of the Supreme Court reported in : 1993 CriLJ2530 wherein the Supreme Court once

again reiterated the proposition that the medical evidence is ultimately opinion evidence and that it is based on several variable factors which change virtually from person to person. More importantly, the learned S.P.P. placed very strong reliance on the well-known decision of the Supreme Court reported in : 1983 CriLJ822 wherein the Court very clearly reiterated the well-settled position in law that trustworthy eye witness's evidence was not to be discarded only on the ground that it appeared to be inconsistent with the medical evidence. He also referred to another decision of the Supreme Court reported in : 1988 CriLJ848 wherein the Court had occasion to point out another crucial aspect of the law in relation to such situations, namely that the medical evidence is not to be destructive of the prosecution case unless it conclusively demolishes the entire substratum. In this context, in his reply, the appellant's learned advocate drew our attention to an earlier Division Bench decision of this Court reported in ILR 1995 KARNATAKA 221 wherein, on the basis of the medical evidence, the Division Bench held that it was impossible to accept the version of the eye witnesses.

8. The well-defined position in law is very clear in so far as if the other evidence adduced by the prosecution is carefully scrutinised and found to be absolutely trustworthy and otherwise acceptable, a Court would normally not demolish that evidence merely because of the medical evidence which appeared to suggest something liability to the contrary. The situation that emerges is that where the medical evidence is totally and completely irreconcilable with the rest of the evidence adduced or where as pointed out by the Supreme Court, it is totally destructive of the rest of the evidence, then the benefit of such a situation would undoubtedly go to the accused. If on the other hand, it is perfectly permissible to reconcile the medical evidence with the rest of the evidence which is otherwise trustworthy, then merely because of some minor areas of inconsistency, a Court would not conceive of a situation where the medical evidence could come in the way of the acceptability of the remaining evidence. In the present case, we have carefully scrutinised the record and the learned S.P.P. has brought it to our notice that where the sequence of events was first recounted i.e., in the F.I.R., that it has very clearly been pointed out that the deceased had her afternoon meal at the normal time i.e., at about 1.30 p.m. It is true that P.W.3 has thereafter, in cross-examination, given the time as 3.30 p.m., but we have no hesitation in holding that

she was either confused or in error while indicating this time. There is no reason for us to hold that the deceased would have skipped her afternoon meal and if she had consumed her afternoon meal at the time when she would normally have done so, having regard to the fact that the incident took place more than 2 1/2 hours thereafter, it is perfectly understandable that the stomach contents had passed down into the gastro-intestinal system which explains why the stomach was empty. We do not find any real conflict between the medical evidence and the rest of the prosecution evidence in this background and are therefore, unable to uphold the objection canvassed on behalf of the appellant.

6.1.1997 (Contd.)

9. The appellant's learned advocate sought to attack the evidence regarding the recovery of the weapon at the instance of the accused on more than one ground. He submitted that the prosecution contends that pursuant to a certain statement having been made, that the accused is alleged to have led the Panchas and the police to an open place where he is supposed to have picked out a knife from a dust-bin, which weapon was attached by the police under a Panchanama. The learned advocate submitted that in the majority of cases where the recovery seriously incriminates the accused, principally because the weapon or the blood stained clothes happen to be conceived and their existence that is not to the knowledge of third parties that when the same is recovered at the instance of the accused, it is recorded as a guilty circumstance as against him. The learned advocate points out on the other hand that in this instance, the recovery is supposed to have been made from a dust-bin in a public place and he therefore, submits that apart from the evidence itself being rather unreliable, that it would at the very highest mean that the accused pointed out to the police that some knife was lying in that dustbin. He submitted that this situation would at the highest lead to an inference which is innocuous in so far as it could at the highest indicate that the accused was aware of the existence of the knife at that place which knowledge could have come to him in his capacity as a resident of the area or even if he had seen it when passing by. As against this position, the learned S.P.P. relied on the principle enunciated by the Supreme Court in the decision reported in : 1983 CriLJ686 wherein the Supreme Court laid down that the discovery indicates the

authorship of concealment and that in these circumstances, it establishes not only a nexus with the weapon, but more importantly, with the offence itself. We have examined the evidence in relation to the discovery in question and we need to record here that the prosecution has succeeded in establishing all the necessary ingredients namely, the fact that the accused did make a statement when he was in custody and that pursuant to this statement, the weapon in question was recovered. This weapon was found to be blood stained and this crucial fact is not a mere coincidence. While we do accept the basic proposition as canvassed by the appellant's learned advocate that where two versions are possible, the one in favour of the accused must be accepted, we also take note of the fact that where the evidence leads to a straight and direct conclusion, this position cannot be rejected in favour of a very hypothetical or remote and far-fetched possibility. On the facts of the present case, what needs to be taken note of is that the knife in question was a small one, that one has to look at this evidence in conjunction with the rest of the material on record which indicates that this was the weapon which was used in the assault and furthermore, the fact that it was blood stained and that it was at the instance of the accused that it was recovered. It would be extremely far-fetched to even visualise a possibility that some other assailant could have deposited the knife there, that the accused merely came to know of its existence in that dust-bin and that he only assisted the police in recovering the weapon without having anything to do with it. The fact that a small knife of that size was in that dust-bin was a fact to the special knowledge of the accused and to no other person and this is an aspect of the case which the law takes cognizance of and that recovery under these circumstances, which has otherwise been established, provides a strong nexus between the accused and the offence.

10. On a careful review of the record, we are satisfied that there was perfectly valid ground for the learned Trial Judge to have accepted the evidence of P.Ws.2 and 3. It is true that the appellant's learned advocate has pointed out a few blemishes with regard to this evidence both individually and inter se, but it is not the fact that such small blemishes exist, but the question as to whether on material points the evidence inspires confidence of the Court. These, witnesses are unsophisticated, they come from different stations in life, their powers of observation and recall very and in this background, one has to make certain

allowances for minor variations and even some faults as far as their conduct is concerned. Brushing these aside however, we find a substratum of credibility and it is on this basis that we are in agreement with the findings recorded by the learned Trial Judge that P.Ws. 2 and 3 did in fact witness the incident and that their evidence establishes that it was the accused who inflicted the fatal injuries on the deceased. As far as P.W.4 is concerned, the learned Trial Judge has preferred, probably erring on the side of prudence, not to rely on this evidence because the evidence of P.w.s.2 and 3 along with the other supportive material is sufficient to establish the charge. We are however, not in agreement with the view recorded by the learned Trial Judge that there appears to be some doubt with regard to the presence of P.W.4 when the incident took place. A careful scrutiny of the evidence will indicate that even though she resides some distance away, that there is no reason whatsoever why she would fabricate evidence against the accused as she has no animus against him. On the other hand, this witness, like all the others, has been searchingly cross-examined and her evidence has stood the test of scrutiny. In our considered view, her evidence corroborates more than fully the evidence of P.Ws.2 and 3. We need to take note of the fact that the husband of the deceased has appeared on the scene almost immediately after the incident and this was because it was P.W.4 who ran to his house and called him there. Once that fact is established, there can be little doubt about the fact that P.W.4 has witnessed the incident. We also take note of another aspect of the case namely, that there were as many as 18 injuries on the deceased and having regard to the nature of the injuries and the parts of the body on which they were inflicted, it is clear that the assault took some time and that it did not conclude very rapidly. The short question is as to who precisely inflicted those injuries and even if P.Ws. 2 and 4 did not witness the incident in its entirety, as long as they saw the parties and they identified the assailant, that is really all that matters.

11. It is in this background that we find no valid ground to interfere with the findings recorded by the Trial Court that it was the accused who was the assailant in the present case. Apart from the direct evidence of the three eye witnesses, we also have on record the recovery of the weapon, the blood stained clothes of the accused which have been found to be stained with the blood which tallies with that of the deceased, the blood stained sari of P.W.3 which again was stained with the

same type of blood, and the evidence regarding motive. As far as this last aspect of the matter is concerned, the appellant's learned advocate advanced-a very strong submission that this is a case in which the prosecution has failed to establish any motive. To a large extent, the learned advocate is right in so far as there has not been any hostility or any other motive that could be attributed to the accused and it is very clear to us from a perusal of the record that the verbal altercations which took place between the parties on that day and that too shortly before the incident, were the basis for the unfortunate assault. This does not however, change the complexion of the case because once the assault is established, the fact that there was no premeditation or the fact that the prosecution is unable to bring on record any deep-seated planning or motive, would not make any difference to the complexion of the offence. On the other hand, this circumstances would come to the assistance of the accused particularly with regard to the aspect of punishment.

12. The last submission canvassed by the appellant's learned advocate was that the record would indicate that it was the deceased who not only abused the accused, but that she used the type of language and statements which would not only provoke, but infuriate almost any person beyond tolerable limits. In this regard, the appellant's learned advocate took us in some detail through the evidence wherein P.W.3 has very clearly admitted that the deceased had used very foul abuses against the accused and we need to reproduce here the substance of those accusations whereby deceased had gone to the extent of calling the wife of the accused a prostitute and had not stopped there, she had even gone further and characterised the accused as an impotent person. Looking to the age of the accused, the background to which he belongs, but more importantly, the fact that such absolutely filthy and provocative charges were made against his wife and against him, the appellant's learned advocate submitted that it was this provocation which infuriated the accused to such an extent that he was temporarily deprived of any control and if it was in these circumstances that he attacked the deceased, that he would be entitled to the benefit of the exception under Section 300 I.P.C. and that the offence would constitute culpable homicide not amounting to murder. The learned advocate submitted that this is a case of grave and sudden provocation and under these circumstances, it would at the

highest qualify for a conviction under Section 304 Part-11 I.P.C. We need to record here that the learned S.P.P. has strongly opposed any variation of the conviction from Section 302 I.P.C. because, he submitted that irrespective of the gravity of the provocation which might have been grave, that the law does not confer the benefit of the lesser punishment unless it is shown that the provocation was not only grave, but was also sudden and that the incident was a direct and immediate result of such grave and sudden provocation. He has drawn our attention to the evidence which indicates that after this violent altercation, that the deceased and P.W.3 went away to the house of P.W.4 and that when they returned, the accused attacked them. The Learned S.P.P. submitted that once there is a time lag of some duration, that it can never be argued that the provocation, which resulted in a temporary loss of self-control, was still present and that therefore, the law must take cognizance of this. In this regard, he relied on the celebrated decision of the Supreme Court in Nanavati's case reported in : AIR 1962 SC605 and the learned S.P.P. submitted that once it is demonstrated that the assault has taken place at a point of time somewhat removed from the situation in which the provocation occurred, that the defence will no longer be available. The appellant's learned advocate, on the other hand, relied on the decision reported in 1978 Cr.L.J. 290 in support, of his plea that a Court has to carefully re-create the entire incident and ascertain as to whether on a totality of those facts, it can justifiably be said that the accused was still under the effect of the provocation or whether that stage had passed. He impressed upon us the fact that nothing could be more provocative or more infuriating than for a person's wife to be characterised as a whore and that too in loud language, in a public place in the presence of several other persons and he submitted that if this is followed by an even more painful, offensive and provocative allegation that the accused himself was impotent, the Court will have to take into account the totality of these abuses and then consider as to whether or not the circumstances in which the offence took place clearly indicate that the accused had certainly lost control over himself. We have applied our minds to the rival contentions and we have taken careful cognizance of the time factor because it is true as pointed out by the learned S.P.P. that howsoever grave and sudden the provocation is, but if the incident has not taken place at that point of time, but some time thereafter, that it

may be difficult to bring the case within the exception under Section 300. What however one cannot overlook is the fact that the time lag in this case was relatively short. P.W.4 admits that the ladies had been with her for hardly two minutes and secondly, P.W.3 admits that when they were returning immediately thereafter, the accused uttered the words to the effect that he would finish the deceased because of the manner in which she had abused him. This clearly demonstrates his mental make-up and the fact that the abuses had hurt him or provoked him so very intensely that he had not got over the effects of that provocation. We are supported in this view by the fact that the accused was attacking an unarmed woman and the number of injuries inflicted by him on the deceased on different parts of her body and even after she had fallen down on the ground and despite the entreaties from P.W.3, would more than fully establish that the accused was in a total state of frenzy. The assault was not the assault of a normal man, but almost resembled the assault of an infuriated animal. Furthermore, it is clear to us that even though the accused flew into a rage, that on the first occasion, the deceased escaped his fury because, they went away from that place, but it was unfortunate that they returned almost immediately and it is psychologically well accepted that in a background of this type, even if the provocation of fury had slightly subsided, that it would immediately get re-ignited and re-kindled by the very presence of the party who had given the provocation and it was in these circumstances that the uncontrollable acts of the accused got triggered off immediately on the re-appearance of the deceased. To this extent therefore, even though some little time had elapsed, we need to carve out a situation whereunder the defence of grave and sudden provocation would still be available to the accused. The appellant's learned advocate is therefore, justified in his plea that the conviction would have to be altered to one under Section 304 Part-II I.P.C.

13. The last question is with regard to the aspect of sentence. The law envisages that a comparatively lower sentence is required to be awarded in cases covered under Section 304 I.P.C., but, it is the discretion of the Court in awarding such sentence and we need to take cognizance of the fact that merely because an accused person has flown into a rage and attacked another human being, that the law cannot bend over backwards and virtually condone such misconduct by awarding abnormally low sentences. We have already referred to the fact that the

deceased was a woman and that she was unarmed. The assault on her was absolutely savage and brutal and has resulted in as many as 18 injuries and under these circumstances, in our considered view, the ends of justice will be adequately met if the accused appellant were to be convicted and sentenced to eight years R.I.

14. The appeal partially succeeds. The conviction and sentence under Section 302 I.P.C. is set aside. In its place, the accused is convicted of the offence punishable under Section 304 (II) I.P.C. and sentenced to suffer R.I. for eight years. The accused shall however, be entitled to be set-off for the entire period that he has undergone.

15. The appeal partially succeeds and stands disposed of.

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