

State of Karnataka Vs. Krishnappa

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Court : Karnataka

Decided On : Nov-23-1993

Reported in : ILR1994KAR89; 1993(4)KarLJ680

Judge : D.P. Hiremath and ;M.M. Mirdhe, JJ.

Acts : [Evidence Act, 1872](#) - Sections 155

Appeal No. : Crl. Appeal No. 278 of 1989

Appellant : State of Karnataka

Respondent : Krishnappa

Advocate for Def. : J.G. Chandramohan, Adv.

Advocate for Pet/Ap. : C.H. Jadav, H.C.G.P.

Judgement :

Hiremath, J

1. This is a State Appeal challenging the acquittal of the accused-respondent for offences under Sections 326 and 307 IPC who was charged with attempting to commit murder of his wife PW.1 on 4.5.1986 at about 6.30 A.M. in his house at Benganuru village, Bangarpet Taluk, by assaulting her with a matchu on her head and hands. PW.2 is the father of the accused. Till the first child was born he was living with his father PW.2, thereafter they were divided and the accused started

living in a room of the same house separately with his wife and two children, they were about 6 and 4 years of age being a daughter and a son respectively. The room was independent, whereas the parent of the accused and the brother continued to live in the family house. The accused was suspecting fidelity of his wife PW.1 imputing illegitimate connection with his younger brother Sampangi. He used to ill-treat her and assault her frequently for this reason.

2. According to the prosecution on 4.5.1986 in the early morning PW.1 had gone to fetch water. The accused and the two children were in the house. When she returned with water the accused and the children were in the room' and on her entering into the house the accused assaulted her with the chopper or matchu on her head and hands. While so doing he closed the door and kept a bag containing ragi against the door and then assaulted her, as a result of which three of her right hand fingers were cut, two were severed and fell down whereas the left hand middle finger was cut and hanging. When she shouted, again she was assaulted on her head. There were bleeding injuries and her parents-in-law as well as husband's brother came there, shouted from outside, the accused opened the door and went away. Other family members removed her to the hospital at Bangarpet. PW 13 the Medical Officer, Combined Hospital, Bangarpet examined her at 7.55 A.M. and found as many as eight injuries. She was referred for further treatment to S.N.R. Hospital, Kolar where she was treated by PW 12. Before that PW 13 sent intimation to the police station about PW.1 having been admitted in the Hospital as per Exhibit P;18. PW 15 the Sub-Inspector in charge of Bangarpet Police Station received it at 8.45 AM. and then proceeded to the Hospital. There he recorded the statement of PW.1 as per Exhibit P.21 and then registered a case in Crime No. 88/86 and forwarded FIR to the jurisdictional Magistrate. At about 10 A.M. the accused surrendered before him with matchu and he found his clothes stained with blood. The same were seized under a mahazar. He arrested the accused and kept him in custody. He thereafter proceeded to the spot of the incident.

3. From the spot, that is, in the house of the accused he seized two cut fingers lying on the floor and kept them in a bottle. He also seized broken bangles from the spot. Material witnesses were examined and after completion of due investigation,

charge sheet came to be filed.

4. Though both the charges under Sections 326 and 307 IPC were framed it was wholly unnecessary to frame both the charges. PW.1 partly supported the prosecution story but did not specifically state that it was the accused who assaulted her. She was cross-examined by the prosecution. The evidence given by the father of the accused, PW.2 is circumstantial in nature inasmuch as he saw the accused going out of the house immediately he came out. Mother and brother of the accused did not speak even on they seeing the accused. The trial Court acquitted the accused on the ground that there was no clinching evidence and only from preponderance of probability he could not be convicted. The lapses on the part of the Investigating Officer were, not sending the blood stained articles like clothes and matchu for Chemical Analysis and not examining the two children aged 6 and 4 years said to be present at the time of the incident. Thus the trial Court found that the prosecution did not prove the guilt beyond doubt. The learned Government Pleader urged that this approach of the trial Court is wholly unsupportable inasmuch as even the evidence of a hostile witness could be relied upon partly and cannot be thrown out in toto. There is strong circumstantial evidence to show that it was the accused and the accused alone who caused these injuries to the complainant PW.1. The lapses on the part of the Investigating Officer should not defeat justice. The learned Counsel for the accused-respondent however supported the Judgment of the trial Court and highlighted the lapses referred to above on the part of the Investigating Officer. According to him non-examination of the two children in the house goes against the prosecution and the evidence of PW-1 is not to the effect that it was the accused and accused alone who caused injuries to her. Rest of the evidences does not directly connect the accused with the injuries sustained by her. Therefore according to him the trial Court was justified in acquitting the accused.

5. We have reappraised the evidence in the light of the arguments advanced. That PW.1 sustained grievous injuries is evident and proved from the medical evidence of PWs. 13 and 12 who examined her immediately after the incident at Bangarpet and thereafter at Kolar respectively. The incident is said to have occurred at about 6 A.M. or so. The accused did not take the injured to the hospital. PWs.2 and 4

have deposed about it. According to PW.2, the father of the accused, having seen PW.1 lying on the floor of the house with her fingers cut and seeing blood on the floor removed her in a cart to Bangarpet Hospital and on the advice of the Doctor thereafter in a car to the Hospital at Kolar. Having so admitted he went back to his village. P.W. 4 younger brother of the accused also swears about he taking the injured in a cart to Bangarpet Hospital and asserts that the accused never came to the Hospital. As advised by PW. 13 he removed her to Kolar Hospital. Then he returned to the village at about 3 P.M. There is no dispute over this fact of she having been removed to the Hospital by these two witnesses. PW. 13 noticed the following injuries on her:-

- '1. One cut injury 'K' shaped measuring about 4' x 3' x 2' in deep, present over the left partial bone.
2. Cut injury measuring about 2' x 1 1/4' present just medial to the injury No. 1.
3. Cut injury 2' x 1' detached from the root of the left ear present.
4. Circular cut injury measuring about 3' x 1' with partially detached from the wrist present over the dorsal aspect of the right wrist joint.
5. Cut injuries with detachment from the root present over the terminal phalanges of the right index middle and ring finger.
6. Cut injury with detachment from the root of the 3/4 terminal phalanges of right middle finger.
7. Cut injury measuring about 2' x 1/2' present over the dorsal aspect of the metacarpal bone of the left ring finger.
8. Abrasion measuring about 1 1/4' x 1 1/4' present over the dorsal aspect of the left palm.'

Thus all were cut injures noted in the Accident Register Exhibit P.17 and he also swore that they were all fresh and could have been caused by sharp weapon like M.O.3 matchu. He noted down the history given by PW.1 in Exhibit P.17(a). PW.12 the Assistant Surgeon, SNR Hospital, Kolar, examined her at 9.20 A.M. the

same morning and found five injuries as below;

- '1. Incised wound 4' x 1/2' 4 in number on scalp on right side.
2. Lacerated injury 3' x 4' below left ear.
3. Tips of middle index and ring fingers of right hand are missing. Auto Amputated at distal interphalangeal joints.
4. Incised wound 4' x 1/2' on the lower aspect of right fore arm exposing lower end of ulna. Bone being transacted.
5. Lacerated injury 2' x 1' on left hand index finger and the same is missing. Auto Amputated.'

She was admitted as an inpatient in the Orthopaedic Ward and the injuries were noted in the Accident Register as per Exhibit P.14. Even according to him these injuries could be caused by matchu - M.O.3 and the fingers could have been severed when she attempted to ward off the blow on the head. It was elicited in his cross-examination that injury No. 1 could not have been caused by the fall of a wooden plank if its edge comes in contact with that portion of the head, injury No. 2 could be caused by the fall of an axe from a height of 10 ft., injury No. 3 could be caused by the fall of a matchu from a height of 10 ft., and injury No. 4 could be caused by a broken piece of plank falling from a height of 10 ft. It is as though all these things like an axe, a matchu, a broken piece of a plank fell simultaneously to cause these injuries if the suggestion means anything. However opinion evidence could be as to the possibility of a particular injury being caused for one reason or the other and it is for the Court to examine which probability fits into the circumstances of the case. We have now to see if these injuries could have been caused by the accused assaulting PW 1 with matchu or the articles like matchu or axe or a wooden plank falling from a height of 10 ft., to cause the injuries.

6. Though PW 12 does not state about the date of discharge of PW.1 from his Hospital, it is in PW.1's evidence and unchallenged that she took treatment there for nearly a month. To connect the accused with these injuries the prosecution has relied mainly on the evidence of PW.1 though it has turned out to be circumstantial

evidence and not direct evidence. Though Exhibit P.21 makes mention of some motive for the accused to harbour ill-will against her namely her illicit connection with his younger brother PW.4 none of the witnesses have spoken about it. Even suggestion by the prosecution to PW.1 during her cross-examination with permission of the Court that the accused had suspected her character was denied by her. Therefore there is no evidence of motive.

7. It is also not disputed that PW.1 has stated that her husband-the accused and her two small children were living separately in a room just by the side of the main house in which his parents and brother were living. Thus the only occupants of the residential room of the accused and PW.1 were they and their two children and none else. That being so, she deposed that on the morning of this incident at about 6 A.M. she brought water collecting it from a nearby tap and when she entered into the room she saw her husband smoking beedi and then she was assaulted with a matchu on her head and she became unconscious and when she regained consciousness she was in S.N.R. Hospital, Kolar. She found that her fingers were cut, her right hand was also cut near wrist, she also sustained injuries behind her left ear and on her head also there were severe injuries. All of them were caused by matchu but could not state how many were there. She then asserted that when the incident took place on her entering into the room there were present in the room only her husband-the accused and her two children and none else, her clothes were also stained with blood. Very significantly what she states in the end of her examination-in-chief is as follows:-

'I see a green coloured banian and light green colour knicker they belong to my husband the accused, they are also stained with blood and they are marked as M.O. 4 and 5. The M.Os. 4 and 5 were worn by my husband, the accused at the time of the incident, of assault on me. I do not remember who assaulted with M.O.3., the matchu causing those injuries'.

At this stage she was cross-examined by the prosecution with the permission of the Court. She then admitted that all the injuries were caused to her in the same incident, and that they were caused in her room and when she received the first blow on her head to protect herself from further assault she kept her hands on her

head, then again she was assaulted on her head and at that time her fingers were cut and severed. At the place of the incident itself her severed fingers were found fallen. No one came to rescue her at that time. She then shouted to her father-in-law 'thatha' as she used to address him and on hearing the same PW.2 came there. She then admitted that when she entered the room carrying water the door was immediately closed and then she was assaulted like that. When she was so assaulted the pot in which she was carrying water fell from her hands. She however admitted that when she entered into the room carrying water she still found her husband smoking beedi. When the door of the room was closed before assaulting her, herself, her husband-accused, her children were only present in the room. She further admitted that the police came and enquired with her as to how she sustained the injuries and she herself produced her clothes M.Os. 1 and 2. She then admitted that before this incident in question the 'accused used to quarrel with her and had often assaulted her. She however does not know if the accused was abusing her alleging that her character was not good. When specifically questioned that it was the accused who caused injuries to her by assaulting with matchu-M.O.3, her reply was that she did not remember. It was again suggested that only to save her husband she was deposing falsely. The case of the accused was put in a nut shell and the same could be understood well by reproducing the suggestion made and answer given by this witness as below:

'In the room, there is a 'Atta' In that 'Atta' we used to keep 'machu' and 'kodali'.

Question: When you brought water, the planks of the 'Atta' gave way then the machu and and kodali fell on you, Is it not?

Answer: Witness does not answer the question and she has taken so far two minutes and yet she has not answered'

She then admitted that before this incident, the accused being ill was staying in the house for three days.

8. Though PWs. 2 and 4 are not direct witnesses PW.2 the father of the accused testified that at about 6 A.M. that morning having heard the cries of PW.1 saying 'Ayyo Ayyo' he went there and saw that PW.1 had sustained injuries and the

accused went away from inside the room. He however asserted that he went away in front of him when he came near the room. When specifically questioned whether the accused went carrying anything with him, he answered that due to feeble eye sight he could not see the accused carrying anything. Having entered into the room he saw PW.1 with injuries on her head, on fingers and her hands. Fingers were found cut and fallen at the place of the incident. There had also fallen blood on the floor. It was then that he removed her to Bangarpet Hospital. PW.3 mother of the accused got up in the morning and went into the house of the accused and found PW.1 lying with injuries on her head and fingers. Even according to her PW.1 was an inpatient in the Kolar Hospital for a month. Very significantly she states that she came to know that the accused had caused injuries on PW.1 when she went and enquired with PW.1 in her room. She admitted that there are wooden planks kept in the 'atta' and the wooden planks, matchu and kodali had fallen and then stated in the re-examination that she has not seen the 'atta' falling down. According to PW.4 the younger brother of the accused, there used to be frequent quarrels between the accused and PW.1 and therefore on that early morning when he heard crying voice of PW.1 he thought it might be one such quarrel. However when he came out and entered into the room of PW.1 he found her lying in the veranda with injuries on her hands and head. He did not enquire as to how she sustained those injuries. He was cross-examined by the prosecution with the permission of the Court. He then admitted that when he went to the room of the accused he found the door closed, he tried to forcibly open it and then the accused came out with the matchu and went away.

9. The next circumstance relied upon by the prosecution is one of the accused surrendering before PW. 15 almost immediately after this incident at 10 A.M. in Bangarpet Police Station, the distance between this village Benganur and Bangarpet being about 3 Kms. According to PW 15 when the accused surrendered before him at 10 A.M. he had matchu stained with blood and he produced it, the same is at M.O.3. He also found on his person blood stains on his banian and knicker. He secured panchas and seized them under mahazar Exhibit P.8. PW.6-Dasappa testified that when he was going in front of the police station, that morning he was called by the police. He saw the accused person there wearing knicker and banian stained with blood and there was also matchu on the

table in the Police Station it had also blood on it. All of them were seized under mahazar Exhibit P.8 and he identifies them. It was elicited in the cross-examination by the Counsel for the accused that by the time he went to the Police Station Exhibit P.8 had already been written, he did not read the contents nor he enquired with the police about the contents thereof. He also did not see the police also getting M.Os.4 and 5 from the person of the accused. He however denied the suggestion that M.O.3 was not there in the Police Station at all.

10. The accused in his statement under Section 313 Cr.P.C. admitted that he was living separately with his wife and children for about 10 years before this incident. He also admitted that PW.1 got himself released by getting sureties when he was in custody. He had dented the incident and because there is some dispute between him and his father regarding property he is stating falsehood. With this evidence on record while the learned High Court Government Pleader urged that these circumstances are strong enough to find the accused guilty, the learned Counsel for the respondent however urged that they are wholly inadequate to find the accused guilty. He also contended that the hypothesis of the innocence of the accused cannot be ruled out and the fact that the two children are not examined and the blood stained articles were not sent to Chemical Analysis is a circumstance that goes to the root of the prosecution case. In PW.1 we have found an extremely vacillating lady, her mind swinging between truth and regard for her husband even after she had sustained such grave injuries and perhaps she had escaped from the clutches of death very narrowly. This we find the virtue of an Indian woman and even in the midst of such grave acts she does not want to send her husband behind the bars or get any other punishment permissible under law. It should be remembered that there is nothing like an adversary system in a criminal case and the offence is against the State and the complainant is only an informant. Thus the State prosecutes the culprit in the interest of the society to maintain the law and order and to punish the guilty. If that basic aspect of Criminal Law is borne in mind whether PW.1 completely supports the prosecution story will not be of a great consequence if truth can emerge from the totality of the prosecution evidence. By extracting relevant material from her evidence we have found certain tell tale circumstances which rule out the possibility of anyone else causing the injuries found on PW.1. She is quite assertive that there was none else in the

house when she brought water and the accused alone was sitting smoking beedi, the two children were too young to come to her rescue being of the age of 6 and 4 respectively. As we have pointed out from her evidence she clearly came out with a version that M.Os.4 and 5 were worn by her husband the accused at the time of the incident of assault on her. That removes all doubt from her earlier statement that she did not see who had assaulted her when she got the first blow on her head and she became unconscious, this theory of she losing consciousness appears to be an after thought in a zeal to save her husband. PW.3 came to know from no other source than from PW.1 herself that it was the accused who had assaulted her. None of the other witnesses like PWs. 2 to 4 swear about she having lost her consciousness when they went into the room found her lying with these injuries and lifted her in a cart. Therefore it is quite clear that she was fully aware as to who assaulted her and she also stated that even before the incident she was being assaulted by the accused frequently by picking quarrel with her. She then admitted in the cross-examination for the State that when she entered into the room carrying water the door was immediately closed and then she was assaulted, it is well established now that the evidence of a hostile witness in the real sense of the term cannot be discarded or rejected as unworthy of acceptance. Part of it could be believed. It becomes the function of the Court to see from the answers elicited in the cross-examination if the witness was resiling from her earlier statement only with a motive. If the answers elicited in the cross-examination are closely scrutinised it becomes apparent that she did state before police-about the door having been closed when she entered into the house and then, she being assaulted with matchu. This is how even unconsciously the truth came to light when she asserted at the end of the evidence-in-chief that the clothes produced in Court were worn by her husband when she assaulted her. Circumstantial evidence could be relied upon if the same is conclusive and all the links in the chain of circumstances are established satisfactorily. Coupled with these circumstances the subsequent conduct of the accused also rules out any hypothesis of innocence. He does not bother to give any complaint if at all he was not himself guilty of the assault. He does not come forward with any version of his. The theory of 'atta' falling down and the weapons causing the injuries is put-forward only like a dying man attempting to catch a straw in water. Added to this

the circumstance of the accused himself going and surrendering before the police also adds as a link in the chain of circumstances, At this place itself reference may be made to Exhibit P.18 memo signed by the Medical Officer-PW.13 in which it has been written that as per the statement of PW.1 she had been assaulted by her husband on 4.5.1986 at 6 A.M. It further states that she was referred to SNR Hospital, Kolar. PW. 13 has stated that the history given by PW.1 was noted in the Accident Register Exhibit P.17 at Exhibit P.17(a). Therefore at all points of time the case has been that it was the accused and the accused alone who had caused these injuries, The Supreme Court in the case of VIJAYEE SINGH AND ORS. v. STATE OF U.P. 1990 SC (Crl) 378, clearly pointed out what a doubt in a criminal case means. It is not of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It is that of an alert mind arrived at after due application of mind. The trial Court appears to have become over conscious of burden of proof, thus in that process forgetting for a moment that the circumstances are strong enough to find that it was the accused and the accused alone who was guilty of this diabolical act. Unjust acquittal is as bad as unjust conviction as held by the Supreme Court in the case of SATHI PRASAD v. THE STATE OF U.P 1973 Crl .L.J. 344. It has been strongly urged that because the two children were not examined and the blood stained articles were not sent for Chemical Analysis that benefit should go to the accused. It cannot be so, the truth of a case should not depend on the whims and fancies of an Investigating Officer. If he has failed in his duty to subject the blood stained articles after examining some material witnesses, his way of handling the investigation may come for severe criticism but not at the cost of truth, if the evidence of PW.1 and other circumstances could be held sufficient to bring home the guilt to the accused then mere non-examination of the two small children present in the house will not be of much consequence. We have now seen how PW.1 herself became so much wavering to stick up to the earliest version given by her both to PW.13 and in her earliest statement treated as the first information by the police. It is well settled that if the police records become suspect and investigation perfunctory it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. In our considered view there is absolutely no other reason or cause by which PW.1 had sustained these injuries unless it was by the assault by the accused. In our view

therefore the trial Court was not justified in ignoring the evidence to find the accused not guilty.

11. Considering the medical evidence and the other evidence we find the accused guilty under Section 326 IPC. Accordingly we allow this Appeal, set aside the Judgment of acquittal of the accused-respondent and convict him under Section 326 IPC. As we are convicting him for the first time in this Court we proceed to hear him on the point of sentence.

December 2, 1993

We have heard both sides on the point of sentence. The accused-respondent and his two children are also present in Court. In the statement filed, the respondent has pleaded that presently his daughter, 14 years of age and son, 12 years of age, are living with him. He is the only earning member and in another four years he has to arrange the marriage of his daughter. The son is studying in the fourth standard. It is also stated that he is a chronic patient suffering from ailments. His parents are old and aged. He is a permanent resident of Benganuru village in Kolar district. He hails from respectable but poor family with good antecedents. According to him, the alleged offence was committed more than 9 years ago and he was in judicial custody for 7 months. He is leading a life of remorse and he is a ghost of himself. Having regard to the circumstances and character of the Respondent, he pleads that he may be released after admonition or on probation of good conduct taking into consideration the period of detention in custody.

The learned High Court Government Pleader has urged that in view of the nature of the offence substantive sentence of imprisonment may be awarded. The Counsel for the respondent, however, pleads for mercy contending that if he is now sent behind bars, the life of two children, who are minors, will be ruined and they would be virtually on streets and nobody would look after them.

We have questioned both the children in Court. Both of them stated that they are now in the care and custody of their father. The girl, who is about 12 years of age or so does cooking and domestic work. The son, who may be about 8 or 9 years of age is in fourth standard and both of them say that they are with their father and

are being maintained by him. They also say that the parents of their father having nothing to do with their father and they did not even talk to him. That may be the truth in view of the undisputed fact that having separated from his parents, he was living with his wife and children in a room of the same house. We have also questioned the respondent, who is present. He says that his wife is not living with him and she is living elsewhere in the company of someone else. The children also say that their mother is living elsewhere but not with them. In view of the accusation made by the accused-respondent that before this offence she had had illicit connection with his younger brother, it is quite likely that both of them are not pulling on well and under the pressure of circumstances it is also likely that she might be living elsewhere without depending on the accused-respondent.

At this point of time wife is, also produced before the Court by the State and on being questioned she confirms the fact that she is not living with her husband, but she continues to live with her elder sister doing coolie work and earning Rs.15/- per day. She has also confirmed the fact that both the children are now living with the accused for the last 3 years. The offence was committed in the, year 1986 and the accused had the benefit of acquittal in the hands of the trial Court. We now found him guilty under Section 326 of the Indian Penal Code. Considering these aspects and also the fate of the children, we find it would be unreasonable and harsh to send him back to jail to undergo a substantial sentence of imprisonment. The children would be virtually on streets and it is doubtful if at this point of time they would reconcile themselves with their mother who does not appear to have substantive income to look after them as well. We are aware that the offence under Section 326 I.P.C., is a serious one and calls for adequate punishment, but, other facets cannot be ignored. While sentencing it would be virtually punishing the innocent children, who are still young and minors, and keeping their welfare in our view, we sentence him to the period of detention during trial and holding that he has undergone the sentence imposed, we direct his release.