**Putta Chamaiah Vs. the State**

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**SooperKanoon Citation** : sooperkanoon.com/387103

**Court** : Karnataka

**Decided On :** Jun-10-1999

**Reported in** : 1999CriLJ4356

**Judge** : M.F. Saldanha and ;N.S. Veerabhadraiah, JJ.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 421

**Appeal No.** : Criminal Appeal No. 56 of 1996

**Appellant** : Putta Chamaiah

**Respondent** : The State

**Advocate for Def.** : B.V. Pinto, Addl. Spl. Public Prosecutor

**Advocate for Pet/Ap.** : Y.S. Shivaprasad, Amicus Curiae

**Judgement** :

**M.F. Saldanha, J.**

1. This is a Jail appeal.

2. The facts of this case are both distressing and gruesome. They are most distressing because the prosecution contends that the accused assaulted the deceased Chamaiah with a knife- M.O. 1 and that he virtually sat on the chest of

the deceased and cut his throat, the reason for all this being a petty loan of Rs. 100/-. The wife of the deceased P.W. 1 Mahadevamma had contended that half the loan amount had earlier been repaid and had even offered. to pay the balance amount despite which the incident took place. The prosecution alleges that it was a ruthless and brutal assault virtually because the poverty stricken Chamaiah was unable to repay that paltry amount. The incident took place on 9-4-1992 at about 1.15 p.m. at Honnur village. The incident is alleged to have been witnessed by the wife P.W. 1 Mahadevamma, the son P.W. 6 Ningaraju and a neighbour P.W. 2 Mahadevaiah all of whom claim to be eye-witnesses and who have been examined by the prosecution. The weapon M.O. 1 knife in question was recovered and on completion of the investigation, the accused was put on trial for an offence under Section 302, IPC. At the conclusion of the trial, the learned Sessions Judge convicted the accused for the offence under Section 302, IPC and sentenced him to undergo R.I. for life but this is one of the cases in which the trial Court has imposed a fine of Rs. 25,000/- which is a slightly unusual order, but in our considered view one that was most necessary and deserving in the special facts of this case. The trial Court has directed that in default of payment of fine, the accused to undergo R.I. for four years and we propose to make certain observations with regard to the last part of the order. The accused has been in custody and has preferred an appeal against the conviction and sentence. The accused has not been in, a position to make arrangements for a legal defence. This Court has appointed learned Advocate Mr. Y.S. Shivaprasad to appear as Amicus Curiae on behalf of the appellant. We have heard the appellant's learned Advocate and the learned Addl. S.P.P. Sri B.V. Pinto on merits.

3. The appellant's learned Advocate Mr. Shivaprasad has taken us through the record of the case and the evidence in particular. While dealing with the evidence of the three eye-witnesses to which we shall make reference, his principal challenge has been that if one were to carefully scrutinise from the record the exact spot where the incident has taken place, that it would not have been physically possible for the three eye-witnesses to have actually seen what had happened. In this regard, he has referred to certain stray admissions particularly in cross-examination to the effect that if a person were to stand on a particular spot such as inside the houses of these people, that the place of incident would not be

readily visible. We have carefully considered this argument and re-examined the record for purposes of ascertaining whether it requires to be upheld and we do find that the argument is basically a technical one in so far as the over all evidence of the three eye-witnesses is sufficient to indicate that they were in sufficient proximity and within visible distance of the incident and that they were not at any place from where it could not have been seen. The argument is more a hypothesis than a reality and therefore cannot be used for purposes of discrediting the evidence of these three witnesses.

4. The principal eye-witness is P.W. 1 - Mahadevamma who is the wife of the deceased. She has clearly narrated the incident and has also indicated the background to it. According to her, there was an altercation of some sort between the accused and the deceased with regard to the non-repayment of the balance of the loan amount and her statement is very clear about the fact that she had even volunteered to repay the balance amount of Rs. 50/-. Despite this, the accused assaulted the deceased with the weapon M.O.1 - knife that was in his hand and when the deceased fell down, he sat on his chest and cut his throat from side to side by almost beheading the deceased. From the version of the incident as set out by Mahadevamma, there can be little dispute about the fact that she was very much on the scene where the incident took place. She is a simple village woman and despite having been cross-examined, her evidence has remained unshaken. There has not been any material of consequence that has been elicited by the defence for purposes of indicating as to why she would falsely implicate the accused in a serious offence of this type and having regard to the general tenor of the evidence, the learned trial Judge has accepted it and placed reliance on this material. It was sought to be contended before us that the background of the loan transaction and the non-repayment of the money had obviously caused certain friction and hostility between the parties and that this was why Mahadevamma would be hostile to the accused and would have implicated him. We see no substance in this head of criticism because we propose to refer to one other piece of clinching evidence at this stage itself which would conclusively indicate that P.W. 1 Mahadevamma could not have falsely implicated the accused if some one else has committed the offence.

5. The undisputed facts on which we propose to place reliance is the C.A. Report that is on record which is Exhibit P. 17 and the Serologist Report Exhibit P. 18. The clothes of the accused, namely the two items, were seized by the police and they were sent for Chemical Analysis because there appeared to be blood stains on them. The analysis reveals that the clothes M.O. 11 and M.O. 12 of the accused were stained with human blood and further more that the group of the blood was 'O' group. The blood group of the deceased has also been analysed and it has been found to be of the 'O' group. It is therefore conclusively established that the clothes of the accused had on them blood-stain of the 'O' group. The accused is a villager and it is not usual for anybody' s clothes to be stained with human blood and it is well settled law that if there is any valid plausible explanation as to how human blood got on the clothes of the accused, that the accused is duty bound to place before the Court such an explanation. The record of the case indicates that the accused has not been able to satisfy the Court that there was any other reason or possibility whereby human blood of the 'O' group could have got on to his clothes. Under these circumstances, we find that this evidence very strongly corroborates the evidence of P.W. 1 Mahadevamma as also the evidence of P.W. 2 Mahadevaiah and P.W. 6 Ningaraju to which we shall presently refer.

6. At this stage, we need to also record that the weapon in question (which is M.O. 1-knife) was forwarded by the Police for analysis. This weapon was recovered at the instance of the accused and it has been found stained with human blood. The appellant's learned Advocate did point out to us that the knife in question which is normally used for cutting mulberry leaves, is an instrument that would probably be found with any of the farmers in that area. We do not dispute this-position but what is incriminating is the fact that the weapon was stained with human blood and it is this last aspect of the matter which establishes a nexus with the offence. The fact that it was recovered at the instance of the accused, the fact that the injuries on the deceased could have been caused by a weapon of this type and the fact that even the witnesses have identified the weapon as the one used in the offence are all clinching circumstances which establish the nexus between the accused and the offence in question. The learned Sessions Judge has analysed each of the heads of evidence relating to this material and has held that the evidence is

acceptable. Though we have heard the appellant's learned Advocate in respect of each of these heads and the submissions canvassed by him, we are of the considered view that the evidence is not only acceptable but that it is absolutely conclusive.

7. The prosecution has examined the son of the deceased who is P.W. 6-Ningaraju who is an eye witness to the incident. As is the case with the wife P.W. 1, the presence of Ningaraju is perfectly natural and Ningaraju has deposed to the effect that he had witnessed the incident and that he had seen the accused attacking and. assaulting his father. Ningaraju has been cross-examined and the evidence has virtually remained unshaken. The same head of criticisms have been levelled vis-a-vis this witness namely the fact that he could not have witnessed the incident but for the reasons that have been indicated by us, that challenge is unsustainable. The evidence of P.W. 6 corroborates the evidence of P.W. 1. It was sought to be contended that P.W. 1 and P.W. 6 all belong to the immediate family of the deceased and that consequently, they are interested and that therefore, they are hostile towards the accused. Before attacking the credibility of this evidence on this grotifeid, it has to be established that there would be sufficient justification for false implication. If an incident of this type takes place in or around the residence of a person, it is inevitable that the immediate family members would be the eyewitnesses to the incident and merely because they are the family members, there is no reason why a Court would view their evidence with suspicion unless something further is demonstrated. Nothing of that sort is forthcoming as far as the present case is concerned. We have no hesitation after having carefully evaluated and assessed the quality of the evidence of P.Ws. 1 and 6 in upholding that they are witnesses of truth. A Court does always bear in mind the fact that if the offence that has been committed is murder, that there must be a strong reason why a witness will falsely implicate the accused before the Court and shield the real offender. No material in support of any such false implication is forthcoming in this case and as indicated by us earlier, the forensic evidence conclusively establishes the nexus between the accused and the crime, de hors the evidence of the eye-witnesses. We also have on record that evidence of P.W. 2 Mahadevaiah who is a neighbour. This person is not a family member and again the learned defence Advocate submitted that it was impossible for him to have

seen the incident. P.W. 2 again is a simple villager. Nothing has been elicited from him to indicate that he is so hostile to the accused, that he would come forward before a Court of law and falsely implicate him under a charge of murder and in the absence of any such material, we have to take note of the fact that like family members, he was present on the spot and that the presence of the neighbour is most natural and likely. He having seen an incident of this type, it is only correct that the prosecution should have relied on his testimony in order to support the evidence of P.Ws. 1 and 6. We have however independently assessed his evidence. We have also tested it in the light of the versions set out by P.Ws. 1 and 6 and we find that there are inherent contradictions or inconsistencies found with regard to the versions. Had P.W. 2 not been present and been claiming that he was, it would certainly have come out in the cross-examination which has not happened. This factor alone is sufficient to inspire sufficient confidence in the mind of the Court as far as the evidence of P.W. 2 is concerned.

8. The appellant's learned Advocate did vehemently submit that if one were to scrutinise the evidence of P.W. 5-B. Mahesh Kumar who is the Photographer, that he has admitted having gone to the village for purposes of taking the photographs in the morning. The submission was that if this is the case, the incident has in fact taken place much earlier than the time which the prosecution witnesses have stated and that the entire version put-forward by them will have to be rejected. As far as this head of criticism is concerned, we need to take note of the fact that the photographer has taken the photographs of the dead body at the instance of the police and it is therefore very clear that he could have come to the scene only after the Police arrived there. We have checked up the time sequence from the material on record and it is very clear to us that P.W. 5 could have only come and taken the photographs some time in the afternoon and that his statement that he came in the morning is an obvious mistake. P.W. 5 is only a formal witnesses who has been examined for purposes of proving the photographs and we are of the view that he has only indicated the time with regard to the photographs in question and that therefore, even such an error in his evidence will not give a go-by to the acceptability of the main evidence because that material, which to our mind could have fully passed the test of scrutiny quite independently.

9. The Appellant's learned Advocate next submitted that this was an incident of some seriousness and that it has taken place almost at mid day in the village and that it would be natural to have attracted the attention of a large number of persons. He was critical of the fact that the prosecution has not produced any independent witnesses and his submission was that P.Ws. 1 and 6 are family members, that P.W. 2 is an immediate neighbour and that they can all be categorised as persons close to the deceased. His submission was that if independent persons were available and if they have not been examined, that this is a cause for serious suspicion. He also submitted that the evidence of P.W. 5 itself indicates that the deceased was assaulted by somebody and that this happened in the earlier part of the day and his submission is that it may be out of suspicion and hostility that P.Ws. 1,2 and 6 concluded that the accused was responsible because of the loan transaction. He contends that if independent evidence were to be asked for, that the evidence of P.Ws. 1, 2 and 6 would certainly have been discredited and the non-production of such independent evidence is fatal to the prosecution The learned Addl. S.P.P. has refuted this argument very strongly and in our considered view very rightly also, when he points out that the persons who were in the immediate proximity and who have seen the incident are the persons whom the prosecution has to examine and has examined and he points out that P.W. 2 is not a family member and is an independent person who has also fully supported the prosecution. The learned Addl. S.P.P. also points out to us that there is no reference to the fact that when the incident itself took place at about 1.15 p.m. that there happened to be any other persons who witnessed it. Under these circumstances, he submits that the entire contention that there must have been others around or that a crowd must have collected is wholly unjustified. On the state of the record, we accept this argument because there is nothing to indicate that anybody other than P.Ws. 1, 2 and 6 were present and witnessed the incident.

10. Having very carefully reviewed the entire record and the evidence before us, we are of the view that the findings and conclusions recorded by the trial Court are correct and are accepted. Those findings are accordingly confirmed. We confirm the findings of the trial Court to the effect that the prosecution has established the charge levelled against the accused namely that he is guilty of the offence

punishable under Section 302, IPC. Even though this is a case of a high degree of brutality, we endorse the observations of the learned trial Judge that this is not a case that comes in the category of rarest of the rare cases and that consequently, the accused has rightly been sentenced to undergo R.I. for life. With regard to the order of the trial Court imposing a fine of Rs. 25,000/- on the accused, the appellant's learned Advocate submitted that it is very unusual for the Courts to impose any fine under Section 302, IPC. They only answer to this submission is that each case is required to be dealt with strictly on the basis of individual facts. Also, what we need to record is that Courts are required to pass orders that are directed towards and are in consonance with meeting the ends of justice and that from time to time, Courts are also required to be forward looking and innovative. Taking cognisance of the present facts in which a poor villager has virtually been butchered to death for the sake of a paltry amount of Rs. 50/- and it is more than clear to us from the record that it was because of the poverty and pathetic social status alone that the amount had not been repaid, the gravity of the offence gets heightened when these aspects of the case are taken into consideration. Criminal jurisprudence points out that Courts often overlook while disposing of Criminal cases, the position of the victim. Undoubtedly, the victim in this case is dead but the Court has to take cognisance of the position in which the wife Mahadevamma is placed. Bad enough she has witnessed the horrifying incident and has had to contend with not only the intense trauma, but economically also she stands orphaned after the death of her husband. It is these circumstances that the learned trial Judge has very rightly taken into account while imposing the sentence of fine of Rs. 25,000/- on the accused.

11. The appellant's learned Advocate submitted before us that the accused is a poor person and that he is sufficiently punished by virtue of the sentence of R.I. for life and that consequently, the order directing him to pay a fine of Rs. 25,000/-must be set aside. The accused in this case may not be a rich man but that aspect of the matter is irrelevant. The fact remains that he has been held guilty of an act whereby he has committed the murder of the husband of P.W. 1. It is for this reason that the trial Court directed that out of the fine if recovered, an amount of Rs. 20,000/- be paid as compensation to P.W. 1. We see considerable justification in this direction because, in our considered view the decision of the Court must

also be sufficiently reformative. The fact that the accused is undergoing R.I. for life is the consequence of the offence committed by him but it is equally necessary for us to take cognisance of the fact that the fall out of this offence namely the consequences to the family of the deceased is something of equal importance in for the law provides that the accused must atone. It is in this background and having regard to the fact that it is not merely an injury but a death that has occurred, we are of the view that the quantum of fine of Rs. 25,000/- that has been fixed by the trial Court, is perfectly in order. The trial Court has directed that an amount of Rs. 20,000/- be paid to P.W. 1 if the fine is recovered. We see no reason why such a distinction has been made and we are of the view that the whole amount if recovered be paid over to P.W. 1.

12. The trial Court has directed that in the event of default of payment, that the accused is directed to undergo R.I. for a further period of four years. The learned Addl. S.P.P. has pointed out to us that there is a slight error and that mis period should be at the most three-and-half years. We have however carefully applied our mind to the facts of this case and we do share the view that the accused should not be permitted to avoid paying the fine by undergoing further imprisonment. Through such a process if the fine were recovered, it must go to P.W. 1 in its entirety as the fine has been imposed for a specific objective. Consequently, the Court must pass an order that is in consonance with ensuring that the fine imposed is recovered and that it goes to the party who has got to be compensated thereby. In this view of the matter, we set aside the default clause and in place of that we direct under the provisions of Section 421, Cr.P.C. that the trial Court shall issue notice to the accused calling upon him to pay up the fine imposed within the prescribed period of time which shall be reasonable and if he defaults in making the payment, that the fine shall be recovered as arrears of land revenue or through attachment of his property and that the amount once recovered shall be apportioned as indicated in this judgment.

13. The Appeal accordingly fails and stands dismissed. The conviction of the appellant under Section 302, IPC stands confirmed and it is directed that the accused should undergo R.I. for life. It is also directed that the accused shall pay a fine of Rs. 25,000/- which shall be recovered in the manner as indicated by us.

(sic) in default, sentence of four years R.I. as directed by the trial Court, is set aside. The appellant in this case has been represented by the learned Advocate Sri Y.S. Shivaprasad who has appeared as Amicus Curiae. We quantify the fees payable to the appellant's learned Advocate at Rs. 1,000/- and direct the Office to make the said payment to him.