

State of Karnataka Vs. Rangappa

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Court : Karnataka

Decided On : Nov-10-2003

Reported in : 2004CriLJ3720

Judge : M.F. Saldanha and ;K. Ramanna, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 378 and 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 326

Appeal No. : Criminal Appeal No. 477 of 2003

Appellant : State of Karnataka

Respondent : Rangappa

Advocate for Def. : N.A. Soubhagya, Amicus Curiae

Advocate for Pet/Ap. : G. Bhawanisingh, Addl. SPP

Disposition : Appeal allowed

Judgement :

M.F. Saldanha, J.

1. The State has assailed the order of acquittal recorded by the trial Court in favour of the respondent-Rangappa. The main allegation against him was that on 26-3-1999 at about 10.45 a.m. the accused is alleged to have shot at complainant

-Dattu with a country pistol causing injuries to P.W. 1-Dattu. The injured person was first taken to his house then to a private hospital and then to the Government hospital where minor surgery was required to be done where 35 small pellets were removed from his back. According to the evidence of the Doctor P. W. 8 there was also a fracture of the shoulder bone. The complainant has indicated the background to the incident which indicates that there was some kind of unpleasantness between the mother of the accused and the complainant and it appears that the accused had attacked P. W. 1 because of the background of hostility. P.W.2 who is the cousin of P. W. 1 has stated that she witnessed the incident and she saw the accused firing at the P. W. 1 and thereafter running away from that place. P. W. 3 Siddappa who is a hotel owner has also deposed to the effect that both the P. W. 1 and the accused had come to his hotel for tea and that they left one after the other. The evidence of P. W. 4 Basawaraju is of some importance because he is the brother of P. W. 1 and he states that when his brother was brought in a bleeding condition to the house, both P. Ws. 2 and 3 informed him that it was the accused who had fired at P. W. 1. The two Doctors P. Ws. 6 and 8 have deposed to the effect that P. W. 1 was brought to the hospital in an injured condition and that he had sustained gun-shot injuries and that 35 pellets were removed from his back. They have also established that P. W. 1 had sustained a fracture injury.

2. The learned Addl. S. P. P. is right when he pointed out that in the face of the material that the flimsy grounds on which the accused has been acquitted by the trial Court are totally unsustainable in law. The oral evidence is fully corroborated by the medical and circumstantial evidence and the prosecution has established that it was at the instance of the accused that P. W. 1 sustained the injuries.

3. The accused had remained absent though served and consequently, we appointed learned advocate Smt. N. Soubhagya as Amicus Curiae. We have heard her both on facts and on law. It is pointed out that the fire-arm has not been recovered and that consequently, the charges under the Arms Act cannot be sustained. While we uphold the submission, we need to point out that on a perusal of the record we find that in a case of some seriousness such as the present one, where a gun had been used, injuries had been caused and the injured person was

in hospital, that the accused has secured anticipatory bail and that too, from the High Court. While we are not in a position to examine the circumstances under which that order was passed, what we need to observe is that even when this provision was engrafted in the Criminal Procedure Code that the object and reasons for incorporation of Section 438 Cr PC was clearly in order to enable the Court of Sessions or the High Court to come to the assistance of the accused persons who have been wrongly targeted against whom there is absolutely no case and in which situations the arrest and detention in custody have been for a short period of time would be thoroughly unjustified and the damage done can never be either undone or compensated. The Supreme Court and the High Courts have repeatedly laid down that anticipatory bail is not to be granted lightly, indiscriminately and in any event, that it should never be granted in situations where it would seriously affect an investigation.

4. The present case is a classic instance where, applying those principles the Court ought not to have granted anticipatory bail as the charge was one under Section 307 IPC. P. W. 1 had sustained gun-shot injuries and was admitted to the hospital where he has undergone surgery. More importantly the accused has not been in custody for a single minute and we proceed to demonstrate how seriously it has affected the investigation and the prosecution because the Investigating Officer has stated that taking advantage of the anticipatory bail order the accused has arrogantly refused to co-operate with the investigation, that he has refused to make any statement and that consequently, even the weapon that was used could not be recovered. We can only reiterate in the strongest terms that the powers under Section 438 Cr PC are to be used very sparingly and only in the most appropriate and desirable cases and that the Courts hearing such applications will have to very carefully assess the point of time at which the application has been made and more importantly as to whether the investigation would be not only be affected but ruined by the grant of untimely bail. What is important is that the Court must do a very careful assessment of the timing and of the relevant facts before exercising the powers under Section 438 Cr PC. It is well-settled law that the prosecution has to be given a fair and reasonable time and opportunity to gather the evidence and to complete the vital aspects of the investigation and there is one other angle that the Courts have to take cognizance of namely, the fall-out in the

public mind through the grant of hurried and untimely bail. If in a serious instance where a shooting has taken place, the accused is not even arrested and taken into custody and the accused gets anticipatory bail at the earliest point of time, shock waves would permeate in the public mind resulting in a total undermining of law and order situation. The Courts ought to and are required to take cognizance of all these relevant factors.

5. After carefully assessing the evidence on record, we hold that having regard to the fact that the injuries are not life threatening that the acquittal of the accused under Section 307 IPC will have to be confirmed. We however convict the accused of the offences punishable under Section 326 IPC. Taking into account all relevant circumstances including the status of the accused, we direct that he shall undergo a sentence of one year R. I. and pay a fine quantified at Rs. 5,000/- (Rupees five thousand only), no in default sentence is awarded. The trial Court to ensure that the fine amount is recovered and after recovery, to pay over the same to the complainant -Dattu.

6. The appeal accordingly succeeds to this extent and stands disposed of. The office is directed to pay a sum of Rs. 1,000/-as professional charges to the learned advocate Smt. N. A. Soubhagya for having assisted the Court.

7. For the reasons set out in I. A. I., the delay is condoned and I. A. I is allowed.

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