

Ramesha Vs. the State of Karnataka

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Court : Karnataka

Decided On : Jun-06-2011

Judge : B.V. Pinto

Appeal No. : CRL.A.NO.1151 OF 2004 (SJ) (C)

Appellant : Ramesha

Respondent : The State of Karnataka

Advocate for Pet/Ap. : For the Petitioner: Dineshkumar .K.Rao, R.B. Deshpande, Advocates. For the Respondent: P.M. Nawaz, Addl. Spp.

Judgement :

(Prayer: This Crl.A. is filed under Section 374(2) CR.P.C. by the Advocate for the Appellant against the Judgment dt.30.06.04 passed by the P.O., fast Track Court-I, Shimoga, in S.C.No.157/97 - convicting the appellant/accused No.1 for the offence P/U/S.304 R/W Sec.34 of IPC and etc.)

1. This appeal is filed by the accused challenging the judgment dated 30.06.2004 in S.C.No.157/1997, passed by the Fast Track Court -1, Shimoga convicting the appellant for the offence under Section 304 Part II r/w. Section 34 IPC and sentencing him to undergo R.I. for a period of 3 years and to pay fine of Rs.500/- in default of payment of fine, to undergo S.I. for a period of 10 days.

2. The case of the prosecution is that accused Nos.1 to 3 on 06.09.1997 at about 3 p.m., in the land which is situated in survey No.36 of Keregadde Village, Thirthahalli Taluk, while grazing the Oxen in their land, took up a quarrel with CW.2 Shantha when she tried to tether the Oxen away from her land and at that time, the deceased came to the spot and accused Nos.1 and 2 quarreled with the deceased and dragged him with an intention to assault him. At that time Prakash - the deceased assaulted accused No.1 with the sickle on the forehead, accused No.3 came to the spot and abetted accused no.1 to finish deceased Prakash with the same sickle and accused No.1 dealt a blow on the hind portion of the left knee of the deceased which caused grievous injuries on the deceased and ultimately resulted in his death thereby, accused Nos.1 to 3 are alleged to have committed an offence punishable under Section 304 r/w. Section 34 IPC.

3. In order to prove the case, the prosecution examined in all 17 witnesses and got marked Exs.P.1 to P.18 and produced MOs.1 to 15.

4. The defence of the accused was one of total denial. They have got marked Exs.D.1 to D.3 in their defence. However, after hearing the prosecution and the defence, the learned Sessions Judge found the accused guilty of the offence punishable under Section 304 Part II, while acquitting accused No.2 of the said offence. Accused No.3 died during the pendency of the trial and case against accused No.3 has abated. It is the convicted accused No.1 who has preferred this appeal.

5. Heard Sri Dinesh Kumar K.Rao, learned Counsel for the appellant and Sri P.M.Nawaz, learned Additional SPP for the respondent State.

6. Learned Counsel for the appellant submits that the accused is claiming right of self-defence of his own life in this case and has submitted that it is only when the deceased came with a weapon and assaulted on his head that he had decided to assault on the deceased by snatching the same weapon held by the deceased and has assaulted him. He has apprehended danger to his life in view of arrival and presence of PWs.2 to 4 against him. Accused No.2 has filed a case for assault by means of weapon. He submits that due to this bonafide apprehension of danger to his life, he has caused injury on the deceased on his not vital part of

his body, which has resulted in his death. He further submits that in respect of the injuries caused to him, the complaint filed by the accused has resulted in sessions case No.81/1998 which was registered and it was tried before the Sessions Court. He also relies on judgments reported in AIR 1973 Supreme Court 473 - between Deo Narain Vs. State of Uttar Pradesh - where it is held that:

“For exercising the right of private defence it is not necessary that the party exercising it must have actually received some injury at the hands of the aggressor. It is a preventive and not punitive right”.

and 1993 AIR SCW 2668 - between Smt.Vidya Saran Sharma Vs. Sudarshan Lal @ Sudarshan Kumar - it is held that:

“Appeal against acquittal - Grapple between accused and deceased - Accused receiving injuries - Accused apprehending danger to his life inflicting only one injury on neck of deceased which proved fatal - Acquittal on ground that accused acted in right of private defence - Proper - No interference by Supreme Court”.

Hence, he submits that the act of accused is no offence at all and submits that appellant / accused may be acquitted.

7. Learned Additional SPP on the other hand submits that the prosecution case is very clear and witnesses have stated that while the deceased raised his hand, the weapon which was in his hand touched the head of the accused and at that time accused has snatched the sickle and assaulted the deceased. He submits that agricultural weapon like MO.1 which is a sickle is found in the hands of every agriculturist in the villages and that the deceased had not come with an intention to assault him but with an intention to carry on agricultural operations. He further submits that while raising his hand, the tip of the weapon MO.1 touched the head of the accused No.1 and even if this fact is admitted, the moment accused NO.1 snatched the sickle from the hand of the deceased, the apprehension of his life goes away and he does not have any right to cause injuries on the deceased since, the deceased would not have any other avenue to cause danger to the life of the accused. Hence, he submits that the order of conviction by the learned Sessions Judge for having caused the death of the deceased not amounting to

murder but amounting to culpable homicide does not call for interference and submits that appeal may be dismissed.

8. The prosecution in this case commenced with filing of the complaint by Smt.Vinodha before the Malur Police Station, Malur on 06.09.1997. In the said complaint, it is stated that on 06.09.1997 at about 3 p.m., the accused No.1 and his wife accused No.2 allowed their Oxen to graze in front of their house and at that time her sister-in-law Smt.Shantha went near the place and tethered the Oxen towards the open space belonging to Seethamma. At that time both accused Nos.1 and 2 came to quarrel with Shantha as to why she tethered their Oxen. The deceased Prakash who is the brother and who was doing some agricultural operation in the field came to the spot and asked Ramesha accused No.1 as to why they had left the Oxen in his (deceased) open space and at that time accused No.1 abused the deceased saying that the land does not belong to his father and he is going to graze his Oxen in the said land only and that he could do whatever he can. At that time, deceased assaulted accused No.1 Ramesha by means of a sickle on his head. Accused No.3 Umesha came there and instigated Ramesha to snatch the sickle from the hand of the deceased and to assault the deceased. He held the deceased and accused No.1 Ramesh snatched the sickle from the hand of the deceased Prakash and assaulted on the backside of left leg of the deceased. Deceased collapsed and at that time one Seethamma, Prema, Devaraj and neighbours by name Manjunath and Ramesh came there and the accused ran away from the spot. Her brother was bleeding profusely and by covering the injury with a cloth they were removing him to the hospital and at that time her brother died, therefore, action is prayed for. The Malur Police who received the complainant at 19 hours on 06.09.1997 registered the same as Crime No.71/1997 for offence under Section 302 r/w. Section 34 IPC and commenced investigation. On completion of the investigation, charge sheet against the 3 accused was filed for offence under Section 304 r/w. Section 34 IPC.

9. PW.1 Vinodha is the complainant. She has stated as per the complaint. She has stated that when accused Nos.1 and 2 came for questioning the action of her sister-in-law Shantha for tethering the Oxen away from their land, deceased Prakash came there and he also started quarrelling with accused No.1 and 2

regarding the leaving of Oxen in the open space belonging to them. The first accused abused the deceased and told that he will allow his Oxen to graze in the same property and challenged the deceased to do whatever he wants. At that time, accused Nos.1 and 2 dragged the deceased from one side to other side and assaulted her brother. She asked the accused as to why they are assaulting her brother and at that time her brother fell down. When her brother fell down the sickle in his hand touched the head of accused No.1 while he raised his hand. Accused No.3 came running there and snatched the sickle from the hands of the deceased and handed it over to accused No.1. Accused No.3 further instigated accused No.1 to assault the deceased and accused No.1 after taking the sickle from the hands of accused No.3 assaulted the deceased on his left leg behind the ankle. The deceased collapsed. Thereafter, others came and deceased was lifted from the scene of occurrence. In the cross-examination, it is elicited that the land where the Oxen were grazing belongs to one Seethamma, who is cited as CW.13 in the charge sheet. It is further elicited that as against her and 3 others, police have filed a charge sheet alleging that they have assaulted accused No.1 on the same date, place and time of offence and that a case in SC.No.81/1998 is pending against her and 3 others before the same Court. It is suggested to PW.1 that on the date of incident the deceased, Devaraj, Shantha and herself had attempted to commit murder of accused No.1 and that in order to save his life he has caused one injury on the deceased, which suggestion has been denied by PW.1. PW.2 is the wife of the deceased Prakasha. She has stated in the manner as that of PW.1. In particular, she has stated that accused Nos.1 and 2 have pushed her husband and at that time when her husband lifted his hand, the sickle from his hand touched the forehead of the accused No.1 and at that time, accused No.3 came near by and snatched the sickle in the hand of the deceased and thereafter, accused No 1 snatched the said sickle from the hands of accused No.3 and assaulted on the hind side of the left leg of the deceased. She has also stated that land where Oxen were grazing belong to one Seethamma and she has categorically admitted that the weapon of offence MO.1 sickle was infact in the hands of her husband, deceased Prakasha. In the cross-examination, she further asserts that the first accused has waved the sickle by standing in front of her husband and assaulted on the backside of the leg of her husband and at that time

accused No.3 was holding her husband. PW.3 is the father of the deceased but not an eyewitness to the incident. PW.4 is the pancha to Ex.P.2, which is spot mahazar and Ex.P.3 is inquest mahazar. He is also the signatory to Ex.P.4 under which clothes of accused Nos.2 and 3, were seized by the police. PW.4 has reached the scene of occurrence almost immediately after the incident and has stated that the deceased sustained injuries on his leg so also the accused had suffered injuries. Both accused Nos.1 and 2 had clothes stained with blood. PW.6 Dr.Dhushyanth had examined accused No.1 on 06.09.1997 at about 8 p.m. and has issued wound certificate as per Ex.P.5. In the said certificate, it is stated that accused No.1 was assaulted by Prakasha, Devaraja, Vinodha and Shantha and one Gayathri. He has identified accused No.1 as the person who was injured on the date of incident as per Ex.P.5. PW.7 has prepared the sketch Ex.P.6 being the Junior Engineer of Zilla Panchayath. PW.8 has reached the scene of occurrence immediately after the occurrence. PW.9 also arrived at the scene of occurrence after the incident and comes to know that deceased has died. He has stated that he has informed the police through telephone regarding the death. PW.10 is the driver of the vehicle who has signed Ex.P.8 for seizure of MO.1 the lungi worn by accused No.1. PW.11 Rathnamma has stated that accused Nos.1 to 3 have come to hospital at about 4.30 p.m., on the date of the incident. She has given first aid to the accused who had suffered injury on the head. PW.12 is the village accountant who certified that land in survey No.36 is measuring about 6 acres 7 guntas and it is in the name of one Junnappa @ Krishnappa Gowda. PW.13 Head Constable has arrested accused No.1 at about 8.45 p.m., on the same day and has sent him to Mc.Gann Hospital, Shimoga for treatment. PW.14 is the ASI who has assisted in the investigation. PW.15 is the Inspector of Police, who has conducted the investigation in this case. PW.16 has registered the case on the basis of the complaint given by PW.1 Vinodha and registered the same as Crime No.71/1997. PW.17 Dr.Venkatesha Achar has conducted the post mortem examination on the dead body of the deceased Prakasha and has found that deceased has sustained injuries on the backside of his left ankle measuring 3" x 1 1/2" x 2". He has stated that blood vessels has been badly cut and bone was also broken. Blood had clotted in the injury. He has stated that the death is due to profuse bleeding, which has resulted in the shock. He has further stated that the injury on the deceased

could have been caused by means of MO.1 sickle.

10. The accused has denied his complicity in the offence and has stated that since he was apprehending danger to his life from the hands of the accused, he has caused injuries on the deceased. He has produced Exs.D.2 and D.3. Ex.D.2 is FIR prepared by the police for the offences punishable under Sections 324, 504 r/w. Section 34 IPC and Ex.D.3 is the charge sheet in respect of the said incident filed against Prakasha - the deceased and 3 others.

11. It is from the evidence of the above witnesses that the learned Sessions Judge has found the accused guilty and has convicted them. From the materials produced by the prosecution and the defence, it is seen that at the first instance it is the deceased who had carried the sickle and had come to the scene of occurrence. When the deceased and his wife Shantha started quarrelling with the accused for tethering their Oxen on the land of the deceased Prakasha, they started fighting with accused No.1 and at that time accused No.1 has spoken words of abusive nature. Thereafter, it is stated that a verbal grapple with each other and in that process according to the complainant Prakasha assaulted on the head of accused NO.1 by means of a sickle and caused injuries. When PW.1 came to the witness box she has stated that while falling her brother lifted her hand which had the sickle in his hand and while he was doing so, the injury is caused on the head of accused No.1. However, the original version given by the PW.1 in the complaint is that the deceased had assaulted on the head of accused No.1, thereafter, it is mentioned that accused No.3 asked to accused No.1 to assault back and accused No.3 snatched sickle from the hands of the deceased and accused No.1 snatched the same sickle from the hands of the accused No.3 and assaulted on the back side leg of the deceased. However, in the complaint it is mentioned that accused No.1 himself has snatched the sickle and caused injury on the deceased on his left portion. It is therefore seen that in view of the counter complaint filed against the deceased and 3 others and also in view of the fact that the deceased had already assaulted accused No.1 on his head and hand and that the doctor has found that there was also an injury on his hand, he would have prevented the danger to his life. In order to avoid danger to his life, he would have assaulted on the leg of the deceased. The act of the accused in my opinion is an

act done in order to save his life since, there were 4 people including the deceased charged on him and the act of accused comes within the Section 100 IPC which says that the right of private defence of the body extends to causing death. It is to be observed that one cannot apply definite rule as to the extent of force being used at the time of saving himself from the onslaught by others. However, Section 102 IPC says that the force to be used by the accused in order to waive of the danger to his life ceases as soon as the apprehension of injury to his life ceases. However, there cannot be a fool proof time gap when the apprehension of danger to one's life ceases and it all depends on the fact situation at that particular moment.

12. In view of the fact that there was also a counter case registered against the deceased, Prakasha and witnesses Shantha and Vinodha and also one Devaraja for the offence under Section 324 IPC which implies that they were also holding weapons, the act of the accused comes within the Section 100 IPC and therefore, it is no offence. In view of the above discussion, I hold that the accused is entitled for an order of acquittal and accordingly, this appeal is allowed. The order of conviction recorded against the accused is hereby set aside. He is acquitted of the offence under Section 304 IPC. Bail bonds if any executed by the accused is discharged and the fine amount if deposited shall be refunded to him.

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