

Manjunath and Another Vs. State of Karnataka by Lakshmeshwar Police Station

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Court : Karnataka

Decided On : Jan-11-2011

Judge : K. Sreedhar Rao & C.R. Kumara Swamy

Appeal No. : Criminal Appeal No. 2557 of 2008 connected with Criminal Appeal No. 2545 of 2008

Appellant : Manjunath and Another

Respondent : State of Karnataka by Lakshmeshwar Police Station

Advocate for Pet/Ap. : For the Appellants: Chandrashekar P. Patil, Advocate. For the Respondent: V.M. Banakar, Additional State Public Prosecutor.

Judgement :

C.R. Kumaraswamy, J.

1. CrI. A. No. 2545/2008 is filed under Section 378 (1) and (3) of Code of Criminal Procedure by the State praying to grant leave against the judgment and order dated 24.04.2008 passed by the learned Sessions Judge, Gadag in S.C.No. 27/2005 thereby acquitting the accused - respondents for the offence under Section 302 of Indian Penal Code and further prays to convict and sentence the accused - respondents for the punishable under Section 302 of Indian Penal Code.

2. CrI. A. No. 2557/2008 is filed under Section 374 Code of Criminal Procedure by the appellants - accused praying to set aside the judgment of conviction and sentence for the offences punishable under Sections 304 Part II, Sections 307 and 326 read with Section 34 of Indian Penal Code passed by the learned Sessions Judge in S.C.No. 27/2005 dated 24.04.2008.

3. We have heard learned Additional State Public Prosecutor appearing for the State and learned Counsel appearing for the accused and this common judgment is passed in these two appeals which arise out of the same crime number.

4. The case of the prosecution in brief is that accused No. 1 was spreading rumors about the conduct and character of Pakiramma wife of Manjunath - now deceased, who in turn told accused No. 1 that he will take the issue before the elders and accused No. 1 should also accompany him. When the deceased called accused No.1 to accompany him to go to the elders, the accused denied stating that he has not told him about the derogatory statement against his wife's character and conduct and refused to accompany him. On account of this there was ill-will between the accused and the deceased.

5. That on 13.06.2002 in the early morning at 2.30 a.m. while the deceased, his wife, minor children and parents were sleeping in the front yard of their house, accused 1 and 2 who are the brothers came to the spot with the common intention to commit murder of the deceased. Accused No.1 assaulted the deceased on his neck by means of an axe. When the deceased screamed, his wife woke up and saw accused No.1 assaulting the deceased on his neck and accused No.2 assaulting the deceased by means of an iron rod on the private parts of the deceased. On hearing the screams, the parents woke up and when they intervened, the accused also assaulted them on account of which they also sustained grievous injuries. On hearing the hue and cry Basappa, Ramanna and Mahadevappa came to the spot. On seeing them the accused fled away from the scene of occurrence saying that they have finished everyone. On the basis of the complaint lodged by the wife of the deceased, a case was registered by the Lakshmeshwar Police against the accused for the offence under Sections 302 and 307 read with Section 34 of Indian Penal Code.

6. In the Trial Court the prosecution has examined 10 witnesses as P.W.1 to P.W. 10 and Ex.P.1 to Ex.P.16A and M.O.1 to M.O.8 were marked. The defence has examined one witnesses as D.W. 1 but not got marked any documents in support of their case.

7. The Trial Court at paragraph 27 of the judgment has observed as under:

“In the passing I need to observe that matter has been conducted by the Legal Aid Advocate Sri K.M. Koppal, who appears to have no experience on criminal side. To a Court question, he has submitted that he did not have practice on criminal side. It is seen that Sri. K.M. Koppa has put in nearly 25 years of practice on the civil side. In the opinion of this Court, if the matter had been handled by a Senior Advocate of Sessions Court the things would have been slightly different and many damaging admissions would not have been elicited.”

8. The learned Counsel for the appellant submits that the matter may be remitted back to the Trial Court and a fresh opportunity may be given to put forth their defence. In Support of his contention he relies on the judgment of the Division Bench of this Court, in the case of Somappa Hanumanthappa Vs. State of Karnataka reported in ILR 1986 (2) Karnataka 1766, wherein this Court has observed at paragraphs 3 and 4 as under:-

“3. There is sufficient force in these contentions of Mr. H.F.M. Reddy that he accused had been denied the opportunity of making proper defence in the case for want of expert services of a Senior Counsel engaged by him. One of the components of fair procedure in the administration of criminal justice is that the accused should have the opportunity of making his defence by a legal practitioner of his choice. That is his Constitutional right, under Article 22 of the Constitution and in order to give effect to this Constitutional right, it has also now been embodied in the Directive Principles of State Policy, as provided under Article-39A of the Constitution, that the State shall secure equal justice and free legal aid by a suitable legislation or scheme or any other way to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, That right has also been statutorily accepted and incorporated in Section 303 of Cr.P.C., which provides that any person accused of an offence

before a Criminal Court or against whom the proceedings are initiated under this Code may have his right to defend by a Pleader of his choice. That right, therefore, should not be interfered with.

4. Here in the case on hand, when the accused had thought of making his defence by engaging a Senior Counsel of his choice, but services of the Senior Counsel, it appears, were not available to him for one or other reason. The records do not show if the accused was told of his rights and he had consented to conduct of the case in the absence of the Senior Counsel by his junior. That is a serious infirmity in the trial and, therefore, on this short ground, we hold that the conviction of the accused for want of opportunity to make proper defence, is bad. We, therefore, allow the appeal and set aside the order of conviction and sentence and remit the matter back to the trial Sessions Judge with a directions to take the case to its original number and dispose of the observations made above giving an opportunity to the accused to make his defence through the Counsel of his choice.

Criminal Revision petition does not survive and it is accordingly disposed of.”

9. We have carefully perused the impugned judgment and also the evidence of prosecution witnesses, wherein the trial has not been properly conducted and there is serious infirmity while conducting trial and the accused did not have sufficient opportunity to put forth their defence. The accused have constitutional right to secure fair and equitable justice also for free Legal Aid. But this has not been provided to the accused in criminal case that too when he is charged for the offence under Section 302 of Indian Penal Code, which attracts punishment of death or life imprisonment has to be defended in an effective manner. The State is also duty-bound to provide proper Legal Aid to the accused. In the instant case, the Counsel who appeared for the accused in the Court below and also due to the observation made in paragraph 27 of the impugned Judgment of the Trial Court, it appears to us that the accused has not been defended properly. The learned State Public Prosecutor fairly submitted that the accused have not been properly defended in the Trial Court. Because of the observation made at paragraph 27 of the impugned judgment of the Trial Court, we are of the view that there is absence of justice and violation of the right of the accused, to defend his case in an

effective manner. Applying, the principles laid down in the above ruling, we are of the opinion that the impugned judgment of conviction has to be set aside and matter has to be remitted back to the learned Sessions Judge with a direction to take up the case in its original number and dispose of the same afresh in accordance with law and also in the light of the observation made in above, proper opportunity should be given to the accused to make defence through the Counsel of their choice or Advocate, who has got sufficient experience in dealing with the criminal matters.

10. In view of the above discussion, we pass the following:-

ORDER

In the light of observation made above, both appeals are disposed of by setting aside the judgment of conviction and the matter is remitted back to the Trial Court with a direction to take up the case, in its original number and also to provide an opportunity to the accused for further cross-examining the prosecution witnesses afresh and thereafter dispose of the Sessions Case No. 27/2005 in accordance with law.

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