

Babu Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-25-2011

Judge : B.V. Pinto

Appeal No. : Criminal Appeal No.1088 of 2004

Appellant : Babu

Respondent : State of Karnataka

Advocate for Pet/Ap. : For the Appellant: M/s. T. Subramanya and Associates, Advocates. For the Respondent: Vijayakumar Majage, HCGP.

Judgement :

This appeal has been filed challenging the judgment dated 18.6.2004 passed by the Fast Track Court-VI, Bangalore City in S.C.No.450/2003 convicting the appellant for the offence under Section 307, IPC and sentencing him to suffer R.I. for a period of 3 years and to pay a fine of Rs.2,000/-, in default to suffer S.I. for a period of 3 months.

2. It is the case of the prosecution that, on 3.4.2003 at about 7.15 p.m. within the jurisdiction of Madivala Police Station, Bangalore City, in front of the house of the accused in Siddhartha Colony, the accused is alleged to have assaulted the injured Soma by means of a knife with such intention as to cause his death, thereby accused is charged for having committed an offence under Section 307, IPC.

3. In order to prove the case, the prosecution has examined in all 11 witnesses and got marked Exs.P1 to P6 and produced MOs.1 to 5. The defence of the accused is one of total denial. However, after hearing the prosecution and the defence, the learned Sessions Judge was pleased to convict the accused and to sentence him as hereinbefore mentioned.

4. Herd Sri T. Subramanya, learned counsel for the appellant and Sri Vijayakumar Majage, learned HCGP.

5. Learned counsel for the appellant submits that in this case, the prosecution rests on evidence of PWs.4, 5 and 6. PW.4 is the complainant and brother of injured PW.5. PW.6 has been examined as an eye-witness. He submits that the evidence of PWs.4, 5 and 6 is not cogent and clear. There is vast discrepancy between the evidence of PWs.4, 5 and 6 regarding the incident. Therefore, he submits that the said evidence would not have been based for convicting the accused. He further submits that there was no previous enmity at all between the accused and PW.5 for causing injuries. It was only that PW.4 had told PW.5 not to continue friendship with the brother of the accused by name Abid and this has resulted in sudden assault on PW.5 by the accused. The nature of the weapon used does not indicate that there was any intention on the part of the accused to cause the murder of PW.5 and therefore, the learned Sessions Judge has wrongly convicted the appellant for the offence under Section 307, IPC.

6. Sri Vijayakumar Majage, learned HCGP submits that the evidence of PWs.1, 2 and 9 who are the medical officers in this case indicates that the injured has sustained grievous injury on his abdomen which was caused by the accused by means of a deadly weapon like the knife. He further submits that wound certificates marked in this case indicate the involvement of the accused and also the weapon used by him. He further submits that medical evidence of PWs.1, 2 and 9 corroborate with the eye-witnesses. PWs.4 and 6 also support the case of the injured PW.5. Under the circumstances he submits that the order of conviction does not suffer from any impropriety or illegality. He also submits that having regard to the seat of injury on the person of PW.5 and the gravity of the injury on the abdomen caused by the accused, the learned Sessions Judge has rightly

convicted the accused for offence under Section 307, IPC and further submits that the sentence imposed is adequate and does not call for interference. He therefore submits that the appeal may be dismissed.

7. The prosecution in this case commenced with the recording of the complaint by PW.3 on 3.4.2003 at about 7.45 p.m. In the complaint given by PW.4 Narayana, it is stated that he is residing along with his brother Soma in Siddartha Colony at Madivala and both of them are working as coolie with water department. His brother Soma was having friendship with Abid who is the brother of Babu, accused herein. Babu had advised Soma not to be friendly with Abid and in this connection, Babu-the accused was having nurtured grudge against Soma PW.5. On the date of incident, at about 7.15 p.m. the accused came near the house and quarreled with Soma and assaulted Soma with the knife on his left side of stomach and also back and has attempted to commit his murder. His brother Soma has been removed to Kaveri Nursing Home and is admitted there. Hence, action is requested against the accused Babu.

8. The police registered the case as Cr.No.368/2003 for offence under Section 307, IPC. During the trial, PW.1 has been examined who is a retired lady Medical Officer in Victoria hospital. She has stated that on 4.4.03 at about 6 a.m. she has examined PW.5 Soma who had suffered incised injury on the back and he was sent for surgery. PW.5 has also sustained another injury on the left shoulder. She has issued wound certificate as per Ex.P1. Since the patient was sent for further treatment, no opinion was given by her regarding the nature of injury.

9. PW.2 Dr. Krishna Rao is the Senior CMO at St. Johns Medical College hospital. He has stated that on 4.4.2003 he has examined one patient by name Soma with the history of assault on 3.4.2003 in Siddarthanagara. On examination, the said Soma was found to have sustained stab injury over the left side of abdomen and incised injury on the left shoulder. He is of the opinion that injury No.1 was grievous in nature and injury No.2 is simple in nature. The patient was referred to Victoria hospital.

10. PW.9 Dr. M.K. amesh is Prof. of Surgery at Victoria hospital. He has stated that he has examined PW.5 Soma on 4.4.003 and has found two injuries as

mentioned by PW.2 and that injury No.1 is grievous in nature. He has identified knife M.O.I produced before him by the police.

11. PW.3 was the ASI of Madivala police station and he has stated that on 3.4.2003 the complainant Narayana came to the police station at about 7.45 p.m. and gave an oral complaint which was recorded by him as per Ex.P3. PW.4 Narayan has affixed his left thumb impression to the said complaint. Thereafter, he registered the said complaint as Cr.No.368/2003 for the offence under Section 307, IPC and transmitted FIR as per Ex.P4.

12. PW.4 Narayan is the complainant. He has stated that about one year prior to the incident, there was fight between the accused and CW.2. When himself, Babu, Prakash and Narasimha were going in front of their house, his brother Soma was assaulted by accused on his left ribs. On seeing the said injury, the said Soma was removed to Kaveri Nursing hospital and himself went to the police station and gave a complaint to the police which the police recorded. He has signed the said complaint. He has further stated that after giving the complaint, the police came to Kaveri Nursing Home and since the Nursing Home people asked for money for treating the injured, injured was shifted to St. John's Medical College Hospital and thereafter he was removed to Victoria Hospital and he was treated in the said hospital as an inpatient. It is stated by him that, accused has told his brother not to be friendly with CW-2 and in this connection the accused assaulted CW-2. He has further stated that in order to commit murder of CW-2, accused had assaulted him and he has given a statement to that effect in Ex.P3. He has identified the blood stained clothes of his brother. In the cross-examination he has stated that, he does not know to read and write Kannada. He cannot say the time at which he has gone to police station. He does not know the name of the officer who was present in the police station. He has denied the suggestion that, police has recorded his statement on the next day. It is suggested that, he is having drinking habit and he is a rowdy of the locality which suggestion was denied by him. He has further identified MO-1 being the weapon used by the accused to stab his brother.

13. PW-5 is the injured Soma. He has stated that there was some enmity between himself and the accused since he was friendly with the brother of the accused. The name of the brother of the accused is Abid. He has stated that, one year prior to his giving evidence, accused has assaulted him by means of a knife on his left ribs. He has also caused injuries on his left shoulder which is a big injury. He has assaulted the accused and at that time accused brought a knife and stabbed him. He lost conscience and he regained conscience while in Victoria Hospital. When he was in Kaveri Nursing Home, he had little conscience. Accused has told him that he will commit murder and thereafter he has assaulted. However he has not identified the knife alleged to have been used by the accused for committing assault. In the cross-examination he has stated that he does not know as to which hospital he was taken from Kaveri Nursing Home. He has stated that, one Prakash has taken him to hospital and ultimately he was discharged from the Victoria Hospital. It is suggested to him that, he is rowdy in the area and he has indulged in teasing the girls in the locality and in rioting which suggestion has been denied by him. He has identified the clothes worn by him at the time of commission of offence.

14. PW-6 Prakash has turned hostile to the case of the prosecution.

15. PW-7 is the signatory to Ex.P6 which is mahazar seizing the weapon "chaku" and "clothes", PW-8 is the constable of Madivala Police Station who has been appointed to trace the accused and he has arrested the accused from Siddhartha Colony and produced him before the Court.

16. PW-10 has carried the material to FSL. PW-11 is the IO who has conducted the investigation and recovered knife from the scene of occurrence as per Ex.P6 and has recorded statement of witnesses and has filed a charge-sheet against the accused.

17. On a careful consideration of the material on record it is seen that the, accused has caused the assault on PW-5 on the allegation that PW-5 was defending the brother of accused by name Abid. The incident has happened on the spur of the moment. Though the learned counsel submits that there is discrepancy in the evidence of PWs.4 and 5, having regard to the wound certificate which contained

the name of the accused and the contents of the complaint Ex.P3, I am of the opinion that the prosecution has proved that the incident as alleged by PW-4 in the complaint has happened. However so far as the nature of offence is concerned, from the material on record it may not be gathered that the accused has intended to cause the death of the deceased or caused such injury as is likely to cause death. Under the circumstances, I am of the opinion the accused has committed an offence under Section 326, IPC.

18. So far as the sentence is concerned though the appellant is required to undergo severe sentence having regard to the fact that the incident has happened on a spur of the moment and that he was in custody for more than 6 months and that the incident has happened between the friends, I am of the opinion that interest of justice would be served if the appellant is sentenced to undergo imprisonment for the period already undergone for the offence committed by him. Therefore the following order is made.

Appeal is allowed in part. The order of conviction and sentence for offence under Section 307, IPC is hereby set aside. Accused is convicted for the offence under Section 326, IPC and directed to undergo the imprisonment for the period already undergone, and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of 6 months. Since the appellant has already undergone the sentence, he need not surrender for serving any sentence. His bail bonds are cancelled. The appellant is directed to deposit the fine amount if not deposited earlier within two months from today.

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