

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 01ST DAY OF APRIL 2013

:PRESENT:

THE HON'BLE MR.JUSTICE B.V.PINTO

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRLA NO 2819 OF 2011

BETWEEN

THE STATE OF KARNATAKA
THROUGH POLICE CIRCLE INSPECTOR,
GANGAVATHI

...

APPELLANT

(By SRI.V.M.BANAKAR - SPP)

AND

KRISHNA @ KEMPA
S/O VEERAPPA KURI
AGE: 38 YEARS, OCC: COOLIE,
R/O SOMANAL, TQ. GANGAVATHI,
DIST.KOPPAL

...

RESPONDENT

(By Sri. CHANDRASHEKAR A CHAKALABBI - AMICUS CURIAE)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) & (3) OF CR.P.C. SEEKING TO GRANT SPECIAL LEAVE TO APPEAL AND SET ASIDE THE JUDGEMENT AND ORDER PASSED BY THE SESSIONS JUDGE, KOPPAL, IN S.C.NO.36/2010, DATED 12.04.2011, AND FURTHER TO CONVICT THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND SENTENCE HIM IN ACCORDANCE WITH LAW.

THIS CRIMINAL APPEAL COMING ON FOR HEARING THIS DAY, **B.V.PINTO J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the State challenging the judgment dated 12.4.2011 passed by the Sessions Judge, Koppal in S.C.No.36/2010 acquitting the accused/respondent of the offence u/s.302 of IPC while convicting him for the offence u/s.304(I) of IPC and sentencing him to undergo S.I. for four years and to pay fine of Rs.5,000/- in default to undergo S.I. for 3 months for the said offence.

2. It is the case of the prosecution that the accused on 17.3.2010 at about 11.00 P.M., at Somanal Village within the limits of Karatagi police station suspecting that the deceased-Shivanappa was having illicit connection with his wife, abused the deceased with vulgar words, assaulted him with an axe on his head and caused grievous injuries and committed his murder thereby he is alleged to have committed an offence u/s.302 of IPC. In order to prove the

case, the prosecution had examined in all 16 witnesses and got marked documents vide exhibits P1 to P20 and also produced marked MOs 1 to 9. The defence of the accused was one of total denial. However, by the impugned judgment the learned Sessions Judge was pleased to hold that the prosecution has proved the case against the accused for an offence u/s.304(I) of IPC, thus acquitting the accused/respondent of the offence u/s.302 of IPC. Being aggrieved by the order of acquittal of the accused for the offence u/s.302 of IPC, the State has preferred this appeal.

3. It is submitted by the counsels for the appellant/State and the respondent that the accused is undergoing the sentence imposed on him and he is in custody. He has not preferred any appeal challenging the conviction for the offence u/s.304(I) of IPC.

4. The prosecution had commenced its case with the filing of the complaint-Ex.P1 by PW1-Vayuputra, son of the deceased on 18.3.2010 at about 1.00 a.m. in Karatagi police

station. It is stated in the complaint that he is studying in I PUC in Koppal and he is residing in the village. His father is one among the six male children and one sister of his grandfather. Their names are: 1. Shivanappa (the deceased), father of the complainant, 2. Hanumappa, 3. Yamanurappa, 4. Bheemappa, 5. Krishnappa (accused), 6. Eashappa and 7. Gangamma. All these persons are staying in Ambedkar Nagar of Somanal village, carrying on the profession of agriculture and are residing in the sheds put up in their land situated outside the village. It is stated by the complainant that himself and his parents are residing separately in a house and likewise each of his uncles are residing separately with their respective families in the same village. His uncle, Krishnappa (accused in the case), is also staying near their house. He is having three male children. It is alleged that the father of the complainant was having illicit relationship with the wife of the accused-Krishnappa and in this connection the accused was having frequent quarrels with his father. In view of the same the wife of accused had left the house and had

gone to her maternal home and was residing in the said place viz. Hirakeda village along with her children. His uncle Krishnappa was residing in Somnai village alone. In this connection father of the complainant viz. the deceased was asking the accused to bring his wife and children and lead a cordial family life in the village. However, the accused was retorting to the deceased that he should not interfere with his family affairs and was angry with his father. This matter was known to all the brothers of his father and also his mother-Bogamma. It is stated in the complaint that on 17.3.2010 at about 9.00 p.m. when the complainant, his father-Shivanappa, mother-Bogamma, sister-Hampamma and others had finished their dinner and were sitting in front of their house, the accused came near his father and suddenly started abusing his father saying that his father had spoiled his good family and also abused in filthy language. Being scared of the accused, his father Shivanappa went towards the old village saying that he would go and sleep. Thereafter the accused declared that he would kill his brother, the

deceased, and also his own wife by means of an axe and so saying he went inside his house and brought an axe in his hand and followed his father. Complainant and his uncles Hanamantha, Yellappa and another person went behind Krishnappa. When they were on the Naveli road near the shop of one Shekarappa Gonal, the accused prevented the deceased Shivanappa from going further, felled him down and assaulted him by means of an axe forcibly on his head. The deceased Shivanappa sustained grievous injuries on his head, fell down and died. It was about 11.30 p.m. It is stated in the complaint that the said incident has been seen by him (the complainant) and his relatives by name Hanumantha and Yallappa with the help of the street light. The accused after murdering his father again threatened the complainant by showing the axe in his hand and stating that after murdering his own wife, he would bring her head he went away by taking the axe in his hand. It is stated in the complaint that due to misunderstanding that his father is having illicit intimacy with the wife of the accused, the

accused has assaulted his father and killed him. Hence, he requested that necessary action be taken against the accused.

5. Sri.Mangalappa PSI Karatagi police station on receipt of the above complaint at about 1.00 a.m. on 18.3.2001 registered the same in Crime No.37/2010 for the offences u/ss.504 and 302 of IPC, transmitted the FIR to court and thereafter he commenced the investigation. PW16 CPI Gangavathi took over the investigation at about 2.15 a.m on 18.3.2001 and thereafter he visited the scene of occurrence and on observing the dead body conducted the inquest proceedings as per Ex.P2. He recorded the statement of the wife of the deceased Smt.Bogamma PW3 and also recorded the statements of PW4-Hanamappa and PW5-Yallappa. The dead body was sent to the post mortem examination to the Government hospital, Karatagi and thereafter spot panchanama was recorded and PW16 collected the blood stained mud as well as the ordinary mud from the scene of occurrence. A rough sketch as per Ex.P3 was drawn. After

recording the statements of other witnesses, PW16 arrested the accused who was produced by the constables before him. PW16 thereafter recorded the statement of the accused as per Ex.P10 and clothes worn by the accused which were blood stained were seized by PW16 as per Ex.P8. The said clothes were marked as MOs 6 and 7. On the basis of the above statement the accused led the CPI and other witnesses near the field of one Rudragouda Dalapathi situated on Navale road and picked up the axe which is marked as MO1. The same was seized as per Ex.P4. The dead body of the deceased was subjected to post mortem examination and thereafter handed over to the relatives. The clothes found on the dead body were seized as per Ex.P9. The said clothes were marked as MOs 2 to 5. PW16 thereafter visited the Somanal village and recorded the statements of other witnesses. Accused was produced before the court and was remanded to judicial custody. On receipt of the post mortem report as per Ex.P6, he secured the letter from the electricity department regarding the supply of electricity on the scene of occurrence

at the date and time of occurrence as per Ex.P11 and subjected the axe seized for procuring opinion of the doctor who had conducted post mortem examination on the dead body and after securing the opinion, charge sheet was filed awaiting FSL report.

6. After the charge sheet was filed, case was committed to the court of Sessions and on appearance of the accused before the said court, the charge was read over to the accused who pleaded not guilty to the accusation.

7. PW1-Vayuputra is the complainant. He has reiterated the version found in the complaint and has stated that the accused is none other than his uncle and the brother of his father Shivanappa who is the deceased. PW1 has categorically stated before the Court that though his father and the wife of the accused did not have any physical relationship, the accused was imagining that they had relationship and hence, the accused was aggrieved against his father. It is further stated by PW1 before the court that

on 17.3.2010 at about 9.00 or 9.30 p.m. himself, his father-Shivanappa, mother-Bogamma CW6-Yallappa and sister-Ampamma were in the house and they were preparing to sleep after taking food. At that time the accused came near their house and started quarrelling with his father and also started abusing him. They had put their father in one room and thereafter, the accused left the place. Thinking that there would be more quarrel between himself and the accused, his father left towards the village. A little later again the accused came near their house and on knowing that his father is not inside the house, accused went to his house and picked up an axe and entered the village. Suspecting that the accused would do some harm to his father. PW1, PW4 and PW5 went inside the village following the accused. When the accused and the complainant reached near the pan shop of one Basavaraja on Navali road, they saw accused and deceased quarrelling with each other. The deceased by saying that he has been assaulted, fell down on the road and at that point of time, the accused assaulted on the neck of the

deceased by means of the axe which he was holding. His father died. They saw the incident from a distance of about 40 ft. from the place where the assault took place. They got scared of the incident. The accused was threatening to assault them and by holding the weapon he went towards Navali road. When they reached near the deceased, the deceased was already dead. Thereafter, they informed their mother who also came and saw the dead body. They telephoned to the Karatagi and Kanakagiri police stations. Thereafter, complaint was lodged before the Karatagi police station which is identified by PW1 as Ex.P1. PW1 has also identified the clothes worn by the deceased at the time of his death. The defence has cross examined PW1. It is suggested that the accused was not at all there at the time of incident and that a false case has been filed in order the cause harm to the accused.

8. PW2- Melagiriyappa is a witness to Ex.P2 which is the inquest proceedings. However he has been treated hostile by the prosecution.

9. PW3-Bogamma is the wife of the deceased. She has also stated that on the date of her husband's death, there was verbal altercation between her husband and the accused, who are brothers inter-se. She has also stated that her husband subsequently left the place and went towards the village and at that time the accused followed him by holding the axe in his hand. Thereafter her son followed along with PWs 4 and 5 and she came to know that the accused has assaulted her husband.

10. PW4 Hanamappa is an eye witness. However, he has not supported the case of the prosecution insofar as the actual incident is concerned and he has been treated hostile by the prosecution.

11. PW5-Yallappa is also an eye witness who has stated before the Court that on the date of death of deceased, both

the accused and the deceased were quarrelling with each other and thereafter, PW1 requested him to follow the accused and the deceased and he accompanied PW1 and followed the accused and the deceased in the direction in which they had entered the village. When they reached the cycle shop inside the village, he saw the accused assaulting the deceased on his head by holding an axe in his right hand. The axe held by the accused was blood stained. When they reached the spot, the face of the deceased had been broken, neck was cut. However, PW5 could not identify the axe MO1 produced before the Court. It was suggested to PW5 that he is not an eye witness and that he is deposing falsely at the instance of PWs 1 and 3.

12. PW6-Basavaraja is the witness to the inquest proceedings on the dead body of the deceased. PW7 is a witness to Ex.P4 whereunder the axe was seized at the instance of the accused. However, he has been treated hostile

by the prosecution in so far as the recovery is concerned. PW8 is the PSI who had registered the case in Crime No.37/2010.

13. PW9 Dr.Ravindranath M.Meti is the medical officer of Community Health Centre, Karatagi who has conducted post mortem examination on the dead body of the deceased. He has stated that the deceased has sustained a cut injury of 10 cms. X 4 cms. X 6 cms. near his right ear. He has stated that death is due to profuse bleeding as a result of injuries sustained by the deceased. He has issued Ex.P6-post mortem examination report. PW9 has further opined as per Ex.P7 that the axe MO1 would have caused injury on the deceased as found in the post mortem examination report.

14. PW10 Nageshwarao is the witness to the seizure of clothes of the accused while he was arrested. However, he has turned hostile to the case of the prosecution. PW11 Rama Babu has not supported the case of the prosecution in respect of Ex.P8 under which the clothes of the accused were seized by the police at the time of his arrest. PW12 is the

witness to Ex.P9 in which the clothes of the deceased were seized by the police. However, he has not supported the case of the prosecution. PW13 is another witness to Ex.P9 who has not supported the case of the prosecution regarding the seizure of the clothes found on the body of the deceased. PW14 Ajeejasab is the police constable who had carried the FIR to the court of the Magistrate at Gangavathi on 18.3.2010. PW15 was deputed by the investigating officer for tracing the accused and accordingly, on 18.3.2010 the accused was arrested and produced before the investigating officer. PW16-Shanthakumar is the investigating officer particulars of whose investigation has been discussed at the earlier part of the judgment.

15. Sri.V.M.Banakar, learned Addl. SPP submits that at the first instance though the accused has been convicted for the offence u/s.304(I) of IPC, he has not filed any appeal against the order of conviction and therefore, the finding of fact regarding the assault caused by the accused on the

deceased has not been challenged by the accused before this court. It is further submitted by him that the learned Sessions Judge has erroneously arrived at a conclusion that the act of the accused falls within the ambit of Section 304 (I) of IPC instead of Section 302 of IPC. It is submitted by him that the evidence of PW1 and also the evidence of PW5 Yallappa clearly establishes that after the initial fight at 9.00 p.m. in the house of the deceased, the deceased had gone away into the village and thereafter it is the accused who went back to his house, held an axe in his hand and by following the deceased, he had committed murder of the deceased at about 11.30 p.m. on the date of the incident. It is submitted by him that at no point of time the prosecution witnesses whispered about any provocation caused by the deceased or by any of the family members of the deceased to bring the guilt of the accused to one u/s.304(I) of IPC instead of Section 302 of IPC. He therefore, submits that the accused is liable to be convicted for the offence u/s.302 of IPC, more particularly having regard to the nature of the weapon used

by the accused and the manner in which it is used for assaulting on the head portion of the deceased which has caused the fatal injury. Under these circumstances, he prays that the appeal may be allowed, the order of conviction may be altered from one u/s.304(I) to one u/s.302 of IPC.

16. Sri.Chandrashekar A Chakalabbi, learned counsel appearing for the respondent/accused on the other hand, submits that it is the case of the witnesses particularly PW3- the wife of the deceased and PW5 that quarrel between the accused and the deceased was preceding the incident. It is the specific evidence of PW3 that both the accused and the deceased were drunk and both were quarrelling right from 9.00 p.m. on the date of the incident. It is later that the deceased went inside the village. By that time, the accused took MO1-axe and followed the deceased. It is his submission that PW5 has stated that when he reached the scene of occurrence, the deceased had already fallen and that there was no light. However they could identify the accused

assaulting the deceased. Under the circumstances it is submitted by him that the learned Sessions Judge has rightly convicted the accused for the offence u/s.304(I) of IPC not only in view of the earlier quarrel which took place between the deceased and the accused, but also due to the fact that the accused had entertained suspicion that the deceased was having illicit connection with his wife. Under the circumstances it is submitted by the learned counsel that the learned Sessions Judge has rightly convicted the accused for the offence u/s.304(I) and there are no compelling circumstances to hold that the accused is guilty of committing murder of the deceased.

17. We have carefully gone through the evidence on record, more particularly the averments in the complaint-Ex.P1 and also the evidence of PW1-complainant (son of the deceased), PW3-Bogamma (wife of deceased) and PW5-Yallappa (relative). It is seen that at no point of time the deceased has created any nuisance nor he is the cause of the

incident and nor there is any provocation on the part of the deceased. The houses of the accused and the deceased are situated almost side by side and it is the case of the prosecution that the accused had come to the house of the deceased at about 9.00 p.m. when the deceased and his family members were preparing to go to sleep after their meals. It is in the evidence of these three witnesses that the accused came near the house of the deceased and suddenly started abusing the deceased using filthy language. The family members of the deceased first took the deceased inside one room. However, later on, it was felt that in order to escape from the abuses and any untoward incident between the brothers, the deceased started walking towards the village. It is at that time that the deceased went to his house, took an axe and followed the deceased and later on caused his murder. In the entire process there is no iota of material to hold that the deceased had provoked the accused for commission of the offence of murder and therefore, the

accused in our considered opinion has committed the murder of the deceased.

18. So far as the nature of weapon used for commission of offence is concerned, it is seen that the length of the weapon is about 22” and the sharp edge of the weapon measures about 7” which has been used for assaulting on the backside of the head of the deceased. The witness as well as the complainant- PW1 say that the accused has assaulted with considerable force on the head of the deceased by means of the axe-MO1. In the circumstances, intention to cause death of deceased is clearly made out and therefore, we are of the opinion that the offence u/s.302 of IPC is clearly made out and the accused is liable for conviction for the said offence.

19. So far as the sentence is concerned, we have heard Sri.V.M.Banakar, learned Addl. SPP and Sri.Chandrashekar A Chakalabbi, learned counsel appearing for the accused.

20. Having regard to the facts and circumstances of the case, we are of the opinion that this is not a rarest of the rare case which deserves death sentence and in the alternative we hold that the accused shall suffer imprisonment for life. Accordingly, for the offence u/s.302 of IPC accused is liable to be sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- I.D. to undergo S.I. for one year.

21. In the result, the following order is passed :-

- i) The appeal is allowed;
- ii) The order of conviction for the offence u/s.304(I) of IPC passed against the accused Krishna @ Kempa is modified to the one u/s.302 of IPC and the accused is convicted for the said offence and he is directed to undergo imprisonment for life and to pay a sum of Rs.1000/- in default to undergo S.I. for one year for the said offence.

22. We place on record our appreciation for the services rendered by Sri.Chandrashekar A Chakalabbi, the learned Amicus curiae who has been appointed by us by order dated 14.3.2013 to defend the accused. . We direct the Registry to pay a sum of Rs.7,000/- as and by way of professional fee to the said Amicus Curiae.

Sd/-
JUDGE

Sd/-
JUDGE

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