

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31ST DAY OF MAY 2012

P R E S E N T

THE HON'BLE MR. JUSTICE K. L. MANJUNATH

A N D

THE HON'BLE MR. JUSTICE RAVI MALIMATH

CRL.A. No.2840/2010 [A]

BETWEEN:

STATE OF KARNATAKA,
THROUGH VIDYAGIRI POLICE STATION,
REP. BY ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL'S OFFICE,
HIGH COURT CIRCUIT BENCH UNIT,
DHARWAD.

...APPELLANT

(By Sri.V.M.BANAKAR, ADDL. SPP)

AND:

D. ARUNKUMAR S/O KRISHNEGOUDA,
R/O DODDAKOPPAL, TQ. K.R. NAGAR,
DIST. MYSORE,
NOW R/AT DHARWAD KALLED BUILDING,
KALAGHATAGI ROAD &
DHARWAD VIDYAGIRI OASIS HOTEL

... RESPONDENT

(By Sri. K L PATIL ADV.)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) & (3) OF
CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST
THE JUDGEMENT AND ORDER OF ACQUITTAL DATED

27.11.2009 PASSED BY THE FAST TRACK COURT-III, DHARWAD IN S.C.NO.19/2009 FOR THE OFFENCES PUNISHABLE U/S 302 OF IPC AND BE SET ASIDE THE AFORESAID JUDGEMENT AND ORDER OF ACQUITTAL; CONVICT AND SENTENCE THE ACCUSED/RESPONDENT FOR THE OFFENCES WITH WHICH HE HAS BEEN CHARGE SHEETED IN ACCORDANCE WITH LAW.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, **K.L.MANJUNATH, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The State through Vidyagiri Police, Dharwad, has preferred this appeal under Section 378 (1) & (3) of Code of Criminal Procedure, challenging the judgment of acquittal passed by Fast Track Court-III, Dharwad in S.C. No.19/2009 on 27.11.2009 for the offence punishable under Section 302 of Indian Penal Code.

2. It is the case of the prosecution that the deceased Hasamsab @ Rafiq after the competition of his ^{was} work returning to his house along with CWs-8 and 9 at about 23.00 hours on 23.08.2008. When the

2

deceased along with CWs-8 and 9 were on Poona-Bangalore National Highway near a petrol bunk, the accused who was hiding, suddenly came in front of them and assaulted the deceased by means of a club on his forehead and right-ear. The deceased sustained grievous injuries and he fell unconscious. He was shifted to a hospital for treatment. He succumbed to the injuries on 24.08.2008 at about 02.45 hours. On a complaint lodged before Vidyagiri Police Station in Crime No.164/2008, a case was registered against the accused for the offence punishable under Section 302 IPC. The accused was arrested on 24.08.2008 and since then, he was in judicial custody. After investigation, the Police Inspector of Vidyagiri Police Station submitted the charge-sheet for the afore-said offence. Since the offence was exclusively triable by the Sessions Court, the Magistrate committed the matter to the Sessions Court and thereafter, the Sessions Judge made over the case to the Fast Track Court.

3. Since the accused pleaded not guilty and claimed to be tried, the prosecution opened its case and in all examined 26 witnesses as PWs-1 to 26 and relied upon Exs.P-1 to 18 and MO's-1 to 4. Ex.D-1 was marked while cross-examining PW-19. After recording the statement under Section 313 Cr.P.C., the matter was heard.

4. The Fast Track Judge framed the following points for consideration:-

- (i) Whether the prosecution proves that when the deceased Hasamsab @ Rafiq was going to his house with CWs.8 and 9 after finishing his duty on 23.08.2008 at 23.00 hours, the accused came suddenly from hidden place and assaulted on the forehead, right side ear and head etc., by a club (badige) and Hasamsab sustained grievous injuries and he was unconscious and when he was under treatment in the hospital, he died on 24.08.2008 at 02.45 hours and thereby the accused has committed an offence



punishable under Section 302 of IPC beyond reasonable doubt?

- (ii) Whether the prosecution further proves that the death of the deceased is culpable homicide amounting to murder?
- (iii) What order?

5. After appreciating the evidence, the Fast Track Court held both points in the negative and ultimately, the accused was acquitted under Section 255(1) of Cr.P.C. for the offence punishable under Section 302 IPC by its judgment dated 27.11.2009 and the accused was ordered to be set at liberty if he is not required in any other case. Challenging the correctness of the judgment of acquittal, the present appeal is filed.

6. We have heard the learned Government Advocate for the State and the learned counsel for the respondent. According to him, the Sessions Court has committed a serious error in not believing the evidence of PW-19, who is an eye-witness who was present at the

8

time of the incident and there was no difficulty for PW.19 to identify the accused since, the deceased, PW-19 and the accused were working together in the hotel of PW-1. Merely because, he is a child witness and related to the deceased cannot be a ground to disbelieve the evidence of PW-19 and acquit the accused. Therefore, he requested the Court to re-appreciate the evidence on record and reverse the findings of the Sessions Court and convict the accused for the offence punishable under Section 304 IPC.

7. *Per contra*, learned counsel for the respondent submits that the prosecution has failed to prove the presence of the accused at the time of alleged commission of offence. The evidence of PW-19 has been rightly rejected by the Sessions Court. PW-1 in his evidence has not stated that PW-19 informed him about the accused hitting the deceased with the club. If really, the accused had hit the deceased in the presence



of PW-19 and PW-7, naturally, PW-19 would have informed PW-1 in regard to the accused assaulting the deceased with MO-4. Therefore, he requests the Court to dismiss the appeal and confirm the judgment of acquittal.

8. He further submits that the trial court has rightly believed the versions of PWs-9, 10 and 11 and also PW-12, the Police Constable who shifted the injured to the hospital. He further submits that it has come in the evidence that the incident has taken place on the National Highway known as Poona-Bangalore Road [PB Road] near a petrol Bunk and during the time of incident, several vehicles must have been moving on the Highway so also the public. He further contends that the distance between the hotel of PW-1 and ~~the~~^{So} of the place of incident is very nearer and there was no difficulty for PW-1 to reach the place of incidence and straight away lodge a complaint taking PW-19 with him

8/

to the police station. Under the circumstances, he requests the Court to dismiss the appeal.

9. Having heard the learned counsel for the parties, the points to be considered by this Court are:

- (i) Whether the appreciation of the evidence by the court below is just and proper?
- (ii) Whether the judgment of acquittal has to be reversed on the ground that appreciation of evidence is perverse?

10. It is not in dispute that the deceased, accused and PW-7:Maruti were working in the hotel of PW-1. It is the case of the prosecution that in the morning of 23.08.2008, there was a quarrel between the deceased and the accused, as the deceased had not returned a sum of Rs.500/- payable to the accused. On account of the same, there was a rift between them and it is also the case of the prosecution that on account of non-payment of Rs.500/- to the accused by the deceased, the accused was waiting on the National Highway

R

watching the arrival of the deceased, PWs-7 and 19, who were coming together, and suddenly, he attacked the deceased with MO-4. It is also the case of the prosecution that PW-19 immediately informed the PW-1 who is the owner of the hotel wherein all these persons were working.

11. In order to prove the guilt of the accused, the prosecution has mainly relied upon the evidence of PW-1, PW-7:Maruthi, PW-19:Shabbirahammad, who is a child witness. There is no corroboration between the witness of PW-1 and PW-19. PW-7:Maruti has also not supported the case of the prosecution. According to Maruthi, he was not going with the deceased at the time of the incident and it is his case that he had been to hotel and after finishing the work, he left the hotel on his own and not with the deceased. But, PW-19, who is a child witness and nephew of the deceased (sister's son), deposed that the deceased, PW-7 and himself were

2

going together on a bicycle. At that time, the accused has attacked the deceased, but either PW-7 or PW-19 have not stated as to what happened to the bicycle on which they were proceeding. The bicycle has not been seized and no one has deposed that PW-7, PW-19 and the deceased were proceeding on the bicycle when the incident took place and what has happened to the bicycle.

12. PW-1 has categorically stated that PW-19 came and informed him that someone has assaulted the deceased. This evidence is not challenged and is accepted by the prosecution. If PW-1 says that PW-19 informed him that someone assaulted the deceased with a club, it only shows that the accused was not the person who assaulted the deceased because there was no difficulty for PW-19 to inform PW-1 and mention the name of the accused as accused is well-known to the deceased, PW-19, PW-7 and PW-1. When PW-19 has

2

not informed PW-1 about the assault made by the accused to the deceased, any court would entertain a doubt in regard to the evidence of PW-19.

13. The trial court has also appreciated the other witnesses examined by the prosecution and has rightly come to the conclusion that the evidence of other witnesses will not assist the prosecution to prove the guilt of the accused.

14. In the circumstances, we are of the view that the appreciation of evidence by the Sessions Court is just and proper and cannot be termed as perverse. Accordingly, both the points are answered.

15. In addition to that, in a case of acquittal by the Sessions Court, the appellate court shall always be very slow in reversing the same, save unless and until the Court comes to the conclusion that the appreciation

&

of evidence is perverse and any material evidence has not been considered by the Sessions Court.

In the result, we do not see any merit in this appeal. Accordingly, the appeal is **dismissed**.

Sd/-
JUDGE

Sd/-
JUDGE

RKK/-