

B.N. Kavatakar vs State Of Karnataka on 12 May, 1993

Equivalent citations: 1994 SCC, SUPL. (1) 304, AIRONLINE 1993 SC 337

Author: S.R. Pandian

Bench: S.R. Pandian, G.N. Ray

PETITIONER:

B.N. KAVATAKAR

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT 12/05/1993

BENCH:

PANDIAN, S.R. (J)

BENCH:

PANDIAN, S.R. (J)

RAY, G.N. (J)

CITATION:

1994 SCC Supl. (1) 304

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal is directed by the above two appellants who are brothers. These two appellants along with their father who was arrayed as accused I were called upon to answer the charges punishable under Section 447, 326, 302 read with Section 34 IPC on the allegations that on September 24, 1977 at about 11.15 p.m. at Sevalagi village committed criminal trespass on the land belonging to the deceased, Jinnappa Dadu and that in furtherance of the common intention, they attacked Jinnappa with lethal weapons and caused several injuries to which injuries Jinnappa succumbed on September 30, 1977 at 3.50 a.m. The investigating officer, PW 21 recorded the statement of the deceased in the hospital on the night of September 24/25, 1977. On the basis of Ex. P- 32, a case was

registered, Ex. P-23. The Investigating Officer after inspecting the scene of occurrence, recorded the statements of the witnesses and arrested these two appellants on September 26, 1977 and recorded their statements. In pursuance of the statement given by the first appellant, MOs 1, 2, 1 (1989) 4 SCC 397: 1989 SCC (L&S) 653: (1989) 1 1 ATC 857:

(1989) 3 SCR 1010 9, 10 and 11 were recovered under Ex. P-18, and in pursuance of the confessional statement given by the second appellant, MOs 14 and 15 were recovered under Ex. P- 1 9.

2. According to the prosecution, the occurrence was witnessed by PWs 7, 8 and 9 of whom PW 7 is an injured witness. It is stated by the prosecution that PW 7 was sleeping by the side of the deceased in the field where the deceased had penned his sheep with the assistance of the shepherds, namely PWs 7 to 9.

3. After completing the investigation, the Investigating Officer laid the charge-sheet against all the three accused. The accused denied the offence when examined under Section 313 CrPC. The trial court not accepting the evidence of PWs 7 to 9 and the recoveries made by the I.O. as well as the veracity of the alleged dying declaration Ex. PW-22, acquitted all the three accused.

4. On being aggrieved by the order of acquittal, the State preferred an appeal before the High Court. The High Court on reevaluating the evidence, convicted these two appellants but acquitted their father by giving him the benefit of doubt. Hence the present appeal.

5. The counsel who has filed this appeal has since been elevated to the Bench, these two appellants stood unrepresented. Thereafter, the matter was referred to the Supreme Court Legal Aid Board.

6. We are happy that Mr U.R. Lalit, learned senior counsel has offered his assistance to the Court appearing on behalf of the appellants.

7. Mr Lalit after taking us through the recorded evidence and the impugned judgment challenged the finding of the court below on two grounds. According to him, the evidence is inadequate and insufficient to warrant the conviction against the appellants and secondly if the evidence even is accepted the offence would not amount to one punishable under Section 302 read with Section 34 IPC but would be only under Section 326 read with Section 34 IPC.

8. It may be noted, in this connection, that the High Court convicted them only under Section 302 read with Section 34 IPC. The occurrence has taken place on a moonlit night. Admittedly, PWs 8 and 9 did not sleep near the deceased but they came to the scene of occurrence after hearing the screams of the deceased and PW 7. As already stated, PW 7 is a star witness whose evidence establishes the presence of PW 7 at the scene of occurrence. Therefore, even if the evidence of PWs 8 and 9 is eschewed, we can safely rely upon the evidence of PW 7 which corroborates Ex. P-22, the statement recorded by PW 21 in the hospital. Therefore, we have no hesitation in accepting the finding of the High Court that the appellants participated in the occurrence and they are the perpetrators of the offence.

9. The next question that comes up for our consideration is what is the nature of the offence that the appellants have committed. The Medical Officer who conducted autopsy on the dead body of the deceased has opined that the death was as a result of septicaemia secondary to injuries and peritonitis. As we have indicated above, the deceased died after five days of the occurrence in the hospital. On an overall scrutiny of the facts and circumstances of the case coupled with the opinion of the Medical Officer, we are of the view that the offence would be one punishable under Section 326 read with Section 34 IPC.

10. In the result, we set aside the conviction under Section 302 read with Section 34 IPC and the sentence of imprisonment for life imposed therefore on each of the appellants. Instead we convict them under Section 326 read with Section 34 IPC and sentence each of the appellants to undergo rigorous imprisonment for a period of three years. With the above modification in the conviction and sentence, the appeal is dismissed.

11. We place on record our appreciation of the assistance rendered by the learned senior counsel, Shri U.R. Lalit as amicus curiae along with Mrs R.S. Hegde, Advocate-on-record.