

Supreme Court of India

Nonappa Poojari vs State Of Karnataka on 2 December, 1993

Equivalent citations: AIR 1994 SC 1581, 1994 CriLJ 2185

Author: K J Reddy

Bench: K J Reddy, G Ray

JUDGMENT K. Jayachandra Reddy, J.

1. This is an appeal under Section 379 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The sole appellant was tried for the offence of committing murder of Lawrence D'Souza, the deceased in the case. The State preferred an appeal and the High Court accepting the evidence of P.Ws. 1 to 3, the eye-witnesses, reversed the acquittal and convicted the appellant under Section 302, I.P.C. and sentenced him to undergo imprisonment for life. Hence the appeal.

2. The prosecution case is as follows:

The deceased is the brother of P.Ws. 14 and 15. They along with their mother were residing in Pakshikere locality of Kemral village, Taluka Karkala. A chicken ran in the court-yard of the house of the mother of the deceased. The accused was tenant in one of the rooms there paying a rent of Rs. 20/- per month. According to the prosecution the accused supplied information to one Muddu Saliyan in regard to illicit supply and vending of arrack. The deceased was working as a ward boy in the hospital. He went to his mother 13 days prior to the date of occurrence namely 4-5-78. On that day the accused returned at about 9 p.m. fully drunk and picked up a hen from Koligudu bit its neck sucked the blood and threw it in the courtyard. The deceased questioned the accused as to why he had done so and there was exchange of words. The deceased left the place saying that he would go and inform C.W. 9, the younger brother of the accused. At about 10 p.m. P.W. 6 was sitting in the shop of C.W. 9 when the accused went there and told that he would not like to continue in the house of the mother of the deceased. Just then the deceased also came and complained to C.W. 9 in the presence of the accused and (sic) his conduct. They saw the hen also lying dead and in the morning of the next day the deceased left the village to purchase timber. At about 12.30 p.m. he got down from the bus. On the way P.W. 1 went to the hotel of P.W. 3. P.W. 1 was taking tea. He heard the cries from the direction of arrack shop. He got up and proceeded in that direction and saw the accused was cutting the deceased with the sword on legs and hands. P.W. 3 also witnessed the occurrence. P.W. 15 who heard about the incident ran to the arrack shop. He saw the deceased lying on a bench having sustained injuries and on being questioned the deceased told him that the accused had cut him. P.W. 15 informed C.W. 6. Thereafter a report was given and the police got information and took up the investigation. The deceased died on the way. Alternative F.I.R. was issued. The inquest was held on the dead body and the same was sent for post-mortem examination. The doctor who conducted the post-mortem found number of incised injuries on the hands and legs. After investigation the charge sheet was laid. The accused pleaded not guilty.

3. The prosecution mainly relied on the evidence of the eye-witnesses P.Ws. 1 to 3. P.W. 2 was treated hostile since he prevaricated in respect of certain details of the occurrence. The evidence of P.Ws. 1 to 3 was not acted upon by the learned Sessions Judge holding that their conduct was

somewhat unnatural and that there were some discrepancies. The High Court has examined the evidence of P.Ws. 1 to 3 in great detail and the reasons given by the trial court for rejecting their evidence. The High Court has rightly found that the learned Sessions Judge wrongly discarded the evidence of P.Ws. 1 to 3. We have gone through the judgments of the Courts below as well as the evidence of P.Ws. 1 to 3. We are of the view that the reasons given by the trial Judge for discarding the evidence of these two eye-witnesses are highly unsound. As a matter of fact P.W. 1 was a friend of the accused. He has given all the details of the occurrence. We do not find any reason to doubt his presence at the scene of the occurrence. His evidence finds ample support from the evidence of P.W. 3, another eye-witness, who is an independent witness. The learned trial Judge taking one minor discrepancy and comparing the same in respect of the other eye-witness eliminated the evidence of both the eye-witnesses. We are afraid the appreciation of the learned trial judge of the evidence of these two eyewitnesses is wholly unsound. Only one view is possible in this case namely that it was the accused who inflicted so many incised wounds with the sword on the deceased.

4. Mr. S. N. Bhat, learned Counsel for the appellant submits since all the incised injuries were found on the hands and legs the offence would not be one punishable under Section 302, I.P.C. We see no force in the submission. The injuries on the hands and legs are quite serious and the doctor opined that cumulatively they were sufficient in the ordinary course of the nature to cause death. Therefore, a clear case of murder is made out. We do not find any merit in the appeal. The appeal is dismissed accordingly.