

Supreme Court of India

Panchaiah vs State Of Karnataka on 4 November, 1993

Equivalent citations: 1994 AIR 963, 1994 SCC Supl. (2) 235

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

PANCHAIHAH

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT 04/11/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

RAY, G.N. (J)

CITATION:

1994 AIR 963

1994 SCC Supl. (2) 235

1993 SCALE (4) 477

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal has been filed by three original convicted accused 1, 3 and 6 namely, Panchaiah, Shankariah and Khan Sab. During the pendency of the appeal, the second appellant (original accused 3) died. Therefore, we are concerned with the case of the remaining appellants. These appellants along with three others were tried for offences punishable under Section 324 and Section 304 read with Section 34 IPC for causing injuries to PW 5 and for causing the death of Devendrappa. The case mainly rested on the evidence of PW 5 and PW 8 out of whom PW 5 is the injured witness. The trial court however acquitted all the six. The State preferred an appeal and the Division Bench of the High Court while acquitting the three other accused A-2, A-4 and A-5 convicted the appellants under Sections 302/34 IPC and 324 read with Section 34 IPC for causing death and injuries to PW 5 and sentenced each of them to undergo life imprisonment and simple imprisonment for six months respectively. The sentences are directed to run concurrently. Hence

the present appeal under Section 379 CrPC read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. The prosecution case is as follows. The accused, the material witnesses and the deceased belonged to Village Mylar in Bellary District, Karnataka. A-1 to A-3 are brothers. They were living jointly. They were running a hotel at the bus stand. A-4 to A-6 are brothers. They had a sister by name Peeravva. The deceased was the husband of PW 11. PW 10 is the cousin brother of the deceased Devendrappa. The father of the deceased made a complaint two years prior to the present occurrence against the deceased and seven others for having outraged the modesty of Peeravva, sister of A-4 to A-6. The charge-sheet was filed against the accused but they were acquitted. As a result there was a bitter enmity between the two groups. Proceedings under Section 110 CrPC were also registered against the deceased and the brothers of A-1 to A-3 made a complaint alleging theft of some articles against the deceased and in respect of the same, charge-sheet was also filed. While on May 4, 1979 namely, the date of occurrence Gurunanjaiah the brother of A-1 to A-3 made a complaint against the deceased and six others under Sections 147 and

436. At about 8.00 a.m. on May 4, 1979 the deceased along with PW 5 and PW 8 went to his land two miles away from the village to plough the land with a tractor. They ploughed the land till about 11.00 a.m. Thereafter they went to a Neem tree and sat in the shade. They took their food. After the rest at about 12.30 or 1.00 p.m. PW 5 and PW 8 got up on hearing some noise. They saw A-1 to A-6 coming there. A-1 was armed with cycle chain and A-2 to A-6 were having clubs in their hands. Accused abused the deceased in vulgar language and thereupon A-1 assaulted the deceased on his head with cycle chain. The deceased got up and sat in a frightened mood. Thereafter PW 5 and PW 8 rescued the deceased. Accused threatened PW 8. Thereafter A-1 to A-6 assaulted the deceased with clubs and A-1 with a cycle chain on various parts of the body. The accused after inflicting these injuries left the scene of occurrence. PW 5 and PW 8 found the deceased lying injured and unconscious, lifted him to the village. The mother of the deceased and PW 10 were informed about the occurrence by PW 5. Thereafter PWs 5, 8 and 10 carried the deceased to the hospital in the tractor. PW 7, a Compounder at the Primary Health Centre, Holalu informed PW 5 and others that the doctor had gone to Bellary. Thereafter PW 5 and others searched for a private doctor at Holalu and they could not find him. PW 5 and others then proceeded to Hirehadagali. On the way the deceased succumbed to the injuries. PW 5 and others carried the body of the deceased to the police station at Hirehadagali and informed PW 19, the Sub-Inspector. Thereupon PW 19 asked PW 5 to give a written complaint. Accordingly PW 5 got a report of the occurrence written and presented the same to the Sub-Inspector, who registered the case. The next morning PW 5 was sent for medical examination and inquest was held over the dead body and postmortem was conducted by doctor, PW 6. He opined that the injuries to the head which caused internal damage, caused death as a result of shock due to haemorrhage. On PW 5 the doctor found simple injuries. The accused were arrested and after completion of the investigation charge-sheet was laid. The prosecution examined 20 witnesses. The accused pleaded not guilty and stated that they were falsely implicated. The trial court examined the evidence of PW 5 and PW 8 and pointed out that they have given an exaggerated version and that the medical evidence show that the occurrence could have taken place at a different time and it was not safe to rely on the evidence of Gurunanjaiah. In that view of the matter all the accused were acquitted. The High Court once again examined the evidence of these two

eyewitnesses in great detail and was prepared to accept their evidence. So far as A-1, A-3 and A-6 are concerned since specific overt acts were attributed to them the High Court confirmed their acquittal.

3. Mr. Javali, the learned Senior Counsel submits that evidence of these two witnesses had been discarded in respect of three accused. It would therefore be highly unsafe to convict the appellant on the same evidence. His further submission is that the fact that PW 5 was examined by the doctor at a belated stage makes his evidence suspicious. He also invited our attention to some of the admissions made by PW 5, the injured witness in his cross-examination where he has stated that all the accused beat the deceased indiscriminately and according to the learned counsel if that version is to be believed, there would have been number of injuries but the doctor found only six injuries on the deceased and out of them there were five abrasions. Therefore the evidence of PW 5 is contrary to the medical evidence. The learned counsel also pointed out that the occurrence took place at about 1.00 p.m. but the report was given at 7.00 p.m. and therefore the consultations and the resultant false implication cannot be ruled out in the case. In any event, according to the learned counsel the view taken by the trial court is quite reasonable and the High Court erred in interfering in an appeal against acquittal.

4. As mentioned above PW 5 is an injured witness. The doctor who examined him found as many as six injuries. The first injury was on the back at the level of 9th and 10th vertebrae measuring 22 cms x 5 cms. The second injury again was on the left scapula measuring 24 cms x 5 cms. The third injury was also at the same place measuring 15 cms x 5 cms. The other three injuries were on the right clavicle shoulder and knee. The doctor opined that these injuries could be caused by a cycle chain and the other with the clubs. Therefore the medical evidence corroborates the version of PW 5 when he stated that he was beaten by the cycle chain and clubs. Therefore he having received injuries during the same transaction cannot be doubted and his presence at the scene of occurrence is established. No doubt in the cross-examination he stated that all the accused beaten him indiscriminately. It may be exaggeration but specific overt acts are attributed to A-1, A-3 and A-6. The presence of injuries on a witness confirms his presence during the occurrence. That being so, his evidence assumes great importance. Even if there are some exaggerations, the Court has to examine the same and scrutinise the evidence. Having gone through the evidence and the reasoning of the trial court we are of the view that it erred in discarding the evidence of PW 5 in toto. Without being present and without having witnessed the occurrence, PW 5 could not have given the same version in the earliest report because of mere motive or out of consultation. The so-called exaggeration or discrepancies pointed out in their evidence both by the counsel as well as by the trial court in our view are not material and would not affect the veracity of the witness.

5. However, having regard to the background, the existing enmity his evidence has to be carefully scrutinized. Having gone through his evidence, we are in agreement with the High Court that A-1, A-3 and A-6 to whom specific overt acts were attributed must have participated in the occurrence. PW 5's evidence is further corroborated by the evidence of PW 8 whose name is also mentioned in the FIR. The version given by these two witnesses regarding the part played by the appellants is consistent and is amply corroborated by the medical evidence. We are of the confirmed view that the reasons given by the trial court are highly unsound and erroneous. Therefore the view taken by the High Court in these circumstances is correct and sound. So far as the nature of the occurrence is

concerned, we are of the view that a case punishable under Section 302 read with Section 34 is not made out. Undoubtedly there was bitter enmity between the two groups. If really the intention of the assailants whoever they may be was to cause the death of deceased they would have been armed with deadly weapons or would have inflicted more serious injuries. The doctor, PW 6 who conducted the postmortem noticed on the dead body only six injuries. The first injury was lacerated wound on the middle of the head measuring 2 cms x 1 cm and bone deep. The second injury, a bruise (exhymosis) black coloured on the antero lateral aspect of the right arm extending from the right shoulder joint aspect measuring 23 cms x 9 cms. The third injury was again a bruise (exhymosis) black coloured on the interior aspect of the left upper arm up to the left elbow joint measuring 10 cms x 9 cms. The fourth injury was an abrasion black colour on the left patella measuring 3 cms x 2 cms. The fifth injury was also abrasion black colour just middle to the injury No. 4. The last injury is again only an abrasion on the left side of the abdomen at the level of the umbilicus 6 cms. The doctor opined that there was extravasation of blood just below the head injury No. 1. The doctor opined that the death was a result of shock and haemorrhage. He further stated that injury to the brain and the vessels was due to external injury No. 1. Injuries 1, 4 and 5 would be caused by a hit with a cycle chain. The medical evidence thus shows that there is only one injury which was serious on the head and the other injuries were only buried abrasions. If really as contended by the learned counsel for the State that the intention of the appellant was to cause death, they would have inflicted more serious injuries. We find only one injury on the head which unfortunately resulted in the extravasation of blood causing injury to the brain. Under these circumstances it cannot be said that they had common intention to cause the death of the deceased. However the injuries inflicted would show that they had only knowledge in which case they are punishable under Section 304 Part 11 read with Section 34 IPC.

6. In the result we confirm the convictions of the two appellants Panchaiah and Khan Sab under Sections 324/34 IPC and the sentence of six months awarded thereunder. Their convictions under Section 302 read with Section 34 and the sentence of imprisonment for life thereunder are set aside. Instead they are convicted under Section 304 Part 11 read with Section 34 IPC and are sentenced to five years' rigorous imprisonment. The appeal is partly allowed to the extent indicated above. So far as Shankariah is concerned, the appeal abates.