
(2014) 10 KAR CK 0128
In the Karnataka High Court
Case No : Criminal Appeal No. 750/2011

Bairachari

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2014) 10 KAR CK 0128

Hon'ble Judges : P.D. Waingankar, J;N. Ananda, J

Bench : Division Bench

Advocate : Sandesh J Chouta, Advocate for the Appellant; Vijayakumar Majage, HCGP, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (hereinafter referred to as accused) was tried, convicted and sentenced to undergo imprisonment for an offence punishable under Section 302 IPC. Therefore, he is before this court.

2. We have heard Sri. Sandesh J. Chouta, learned counsel for accused and learned Government Pleader for the State.

3. Before advertng to appreciation of evidence and submissions made by learned counsel for parties, it is necessary to state the case of prosecution in brief and also certain facts which are not in dispute.

It is not disputed that accused is the father of deceased Rani. The deceased Rani was the third amongst five daughters of accused Byrachari and PW. 2-Vishalakshi.

4. It is the case of prosecution that deceased Rani had developed intimacy with PW. 6-Dinesha. Both of them were working in a Grocery shop at Channarayapattana. PW. 6-Dinesha had kidnapped the deceased, in relation to which a crime was registered against PW. 6 for kidnapping. Incidentally it is necessary to state that accused is Hindu-Vishwakarma by caste and PW. 6 Dinesha belongs to scheduled caste. PW. 6 has admitted these facts in his

evidence. PW. 6 has also admitted that before the deceased had attained age of majority, he had kidnapped her, therefore, a case was registered against him. It was resolved in the police station that the deceased should stay with her parents till she attains the age of majority and thereafter, she would be free to marry PW. 6-Dinesha.

It is also not disputed that PW. 6 had kidnapped the deceased once to Bangalore and they were brought back. He had again kidnapped her to Dharmasthala in relation to which a case was filed against him.

5. We find from evidence of PW. 6 that the deceased and PW. 6 had fallen in love and they wanted to marry. In that connection, a panchayat was held in the inspection bungalow at Channarayapattana. In the panchayat, it was resolved that, as the deceased had not completed 18 years, she should be sent to her parental house. Even thereafter, the deceased did not mend her behavior. She was going to work in a grocery shop at Channarayapattana wherein PW. 6 was also working. Her promiscuous activities had not come to an end.

6. As already stated, accused and PW. 2-Vishalakshi had five daughters. The deceased Rani was the third amongst five daughters of accused Byrachari and his wife PW. 2-Vishalakshi. The accused had performed the marriage of his elder daughter Bharathi. The conduct of deceased eloping with PW. 6 not once but twice and also her persistence to marry PW. 6 even before completing age of 18 years had affected the marriage of second daughter of accused (Nagajyothi). In addition to this, accused had to perform the marriage of his fourth and fifth daughters (Dhanalakshmi and Nethravathi). The conduct of deceased had affected the marital prospects of second, fourth and fifth daughter of accused and PW. 2.

7. It is the case of prosecution that on 06.03.2010 at about 11.00 p.m., the accused assaulted the deceased with a club and caused her death, thereby committed an offence punishable under Section 302 IPC.

8. The death of deceased in the house of accused on 06.03.2010 is proved from the evidence of PW. 11-N. Kumar, the then Circle Inspector of Police of Channarayapattana Police Station.

9. PW. 11-N. Kumar has deposed; that on 07.03.2010, at about 10.00 a.m., PW. 12-T. Narayana (CW. 28), the then Sub-inspector of Nuggehalli Police Station informed about the murder of deceased Rani in the house of accused; he reached the place of incident, secured panch witnesses, conducted mahazar and collected incriminating articles such as blood stained bed, blood stained pillow, two poison bottles and blood stained flakes of the floor.

10. The evidence of PW. 11 that he had visited the place of incident and found that murder of deceased had taken place in the house of accused and he had also collected the blood stained articles as aforesaid has not been controverted. The evidence of PW. 11 cannot be suspected. Therefore, we hold

that murder of deceased Rani had taken place in the house of accused on the night of 06.03.2010.

11. PW. 2-Vishalakshi, the mother of deceased has deposed; that dead body of her daughter was found near the fence of land of one Rangegowda and she had suffered injuries. The evidence of PW. 2 discloses that her daughter had met homicidal death however, to save her husband PW. 2 has deposed that the dead body of her daughter was found near the fence of land of one Rangegowda.

From the evidence of PW. 2, we find that she had determined to save her husband at any cost. It is probable that PW. 2 was also fed up with the conduct of deceased who had eloped with PW. 6-Dinesha not once but twice which had affected the honour of their family and also affected the marital prospects of her second, fourth and fifth daughter.

During cross-examination by the learned Public Prosecutor, PW. 2 has feigned ignorance if the accused, PW. 2 and deceased were sleeping in their house on the night of 06.03.2010.

12. The evidence of PW. 11 that he had collected blood stained bed, blood stained pillow and other incriminating articles from the house of accused has not been controverted. Therefore, evidence of PW. 2 that her daughter Rani had met with homicidal death lends corroboration to the evidence of PW. 11.

13. The evidence of investigation officer (PW. 11) that he had seized incriminating articles such as blood stained bed, blood stained pillow, blood stained flakes of floor and prepared mahazar as per Ex. P13 does not suffer from any discrepancy.

It is natural that the mother of deceased had not come out with true version of incident to save her husband (accused). The photographs marked as per Ex. P23 to P28 would disclose that deceased Rani was assaulted in her house and she had succumbed to injuries. We do not find any reasons to suspect the contents of photographs marked as per Ex. P23 to P. 28.

14. The evidence of investigation officer that after the arrest of accused, he gave voluntary statement as per Ex. P15. The accused led the investigation officer and other panch witnesses to his house and removed a club from "attick" of his house does not suffer from any discrepancy. It is true that, witnesses who had accompanied the investigation officer and accused to the house of accused have not supported the case of prosecution however, that cannot be a ground to discard the evidence of investigation officer, which is consistent and credible.

15. From the contents of Serology report (marked as per Ex. P22) we find that the bed, flakes of floor of house of accused, one T-Shirt, Petticoat, One Long skirt and inner garment of the deceased were stained with "O" blood group. The scientific evidence would also provide strong incriminating evidence against the accused.

16. It is seen from the evidence of private witnesses that majority of them have turned hostile. From the evidence of investigation officer and scientific evidence, we find that homicidal death of Rani had taken place in her house during the night of 06.03.2010. PW. 2 and other witnesses have made an unsuccessful attempt to establish that dead body of Rani was found near the fence in the land of one Rangegowda. The defence theory that someone had caused homicidal death of Rani near the land of one Rangegowda and thereafter, the dead body was shifted to the house of accused cannot be accepted.

17. From the evidence on record, it is established that prior to incident, the inmates of house were accused Byrachari, his wife PW. 2-Vishalakshi and the deceased. Out of the three, deceased Rani met homicidal death. PW. 2 was cited as witness. The accused was found in his house, his clothes were also stained with blood. It is not the case of accused that some strangers had trespassed their house and caused the death of his daughter.

18. The evidence of PW. 6-Dinesha would reveal that he had an affair with the deceased even before she attained the age of majority. He had kidnapped her not once but twice and a case was also filed against him. It was also resolved in panchayat that deceased Rani should stay with her parents till she attains the age of 18 years and later she could marry PW. 6. The deceased was hasty and she continued her relationship with Dinesha defying the resolution of panchayat. This conduct of deceased had spoiled the marital prospect of her elder sister viz., PW. 2 Nagajyothi, second daughter of accused. The accused and PW. 2 had responsibility of performing the marriage of younger sisters of deceased (fourth and fifth daughters of accused and PW. 2 namely Dhanalakshmi and Nethravathi). The deceased had continued her intimacy with PW. 6 though she had been repeatedly advised. Even on the date of incident, the deceased had come home at 11.00 p.m., without having regard to the fact that she was an unmarried girl, she was less than 18 years of age and her promiscuous activities would let down the honour of family and it would affect marital prospects of her elder sister and younger sisters.

19. From the circumstances, it can be inferred that, on the date of incident, the deceased had come home at about 11.00 p.m., notwithstanding persistent request made by her father that her indecent conduct would let down the honour of family and it would also affect the marital prospects of her elder sister namely Nagajyothi and younger sisters namely Dhanalakshmi and Nethravathi. It appears, the accused had questioned the conduct and behaviour of deceased coming home at 11.00 p.m., and the deceased had justified her conduct with impunity. The accused had picked up a club and assaulted on the face of deceased. The accused had acted in a fit of anger and he was aware that assault on the head of deceased with a dub is likely to cause her death however, from the facts and circumstances, it is not possible to infer that accused had assaulted the deceased with a club with the intention to cause her death.

20. In the facts and circumstances of the case, it is necessary for us to record a

finding whether the acts attributed to accused would attract an offence punishable under Section 302 IPC.

21. The learned Government Pleader would submit that the accused had not only assaulted on the head of deceased but also on her lips.

22. The learned counsel for accused has relied on the following decisions to contend that assault on the deceased with a club does not attract an offence punishable under Section 302 IPC.

23. In a decision reported in Surinder Kumar Vs. Union Territory, Chandigarh, the Supreme Court has held that, number of blows and the injuries cannot be decisive to bring the offence under Section 302 IPC.

24. In a decision reported in Sunder Lal Vs. State of Rajasthan, the Supreme Court has held: in order to bring the offence under Clause (3) to Section 300 IPC, the prosecution must prove that injuries are sufficient to cause death in the normal course of life. It is not sufficient for the prosecution to prove that accused had knowledge that injury is likely to cause the death.

25. In the aforesaid decision, the Supreme Court following the judgment of Virsa Singh Vs. The State of Punjab, has held: in order to bring the acts of accused under Clause (3) of Section 300 IPC, the prosecution has to prove:-i) bodily injury; ii) nature of injury must be proved and it must be proved that there was intention on the part of accused to cause such bodily injury which is sufficient to cause death in the ordinary course of life; iii) if the prosecution has proved that accused has caused injury with intention and knowledge that injury is likely to cause death, then an offence punishable under Section 300 IPC is not attracted.

26. In the case on hand, the deceased, a girl aged less than 18 years had come home at 11.00 p.m., on the date of incident. The accused and PW. 2 had repeatedly warned the deceased not to be in the company of PW. 6. The deceased had been assured that she would be free to marry PW. 6 after she attains the age of 18 years. The deceased had been informed that her indecent conduct would let down the honour of family of accused, it would also affect the marital prospects of her elder sister namely Nagajyothi and younger sisters namely Dhanalakshmi and Nethravathi. The deceased had been advised not to marry PW. 6 and to stay away from his company till she attains the age of 18 years. The deceased did not mend her behavior. This had provoked the accused. It is probable that accused on seeing the deceased coming home at 11.00 p.m., had lost his control and in a fit of anger he had assaulted the deceased with a club on her head and also on her lips.

27. It is relevant to note that even as per the case of prosecution, accused was found in his house after the incident. This would demonstrate that after accused assaulting his daughter which resulted in her death regained normalcy and he was repenting for what was done by him. It is not a case where the accused had

tried to destroy or cause disappearance of evidence after the incident.

28. From the evidence on record, it can be inferred that accused had assaulted on the head of deceased with a club with the intention of causing her death or causing such bodily injury as is likely to cause her death. Therefore, the acts committed by accused would squarely attract an offence punishable under Section 304 Part-I IPC.

29. The learned Sessions Judge without appreciating the background of incident, time of offence, place of offence and weapon of offence and subsequent conduct of the accused, has erroneously held him guilty of an offence punishable under Section 302 IPC. Therefore, we alter the offence from 302 IPC to 304 Part-I IPC.

30. We have heard the learned counsel for accused.

31. The learned counsel for accused would submit that accused was aged about 62 years on the date of offence. He would not have assaulted and caused the death of his daughter (deceased) but for her indecent conduct of eloping not once but twice with PW. 6 and continuing her indecent behaviour inspite of advise by the panchayatdars that she would be free to marry PW. 6 after she attains the age of 18 years.

32. The learned Government Pleader would submit that accused had killed his daughter to save his honour. The accused was against the decision taken by deceased to marry PW. 6 who belongs to Scheduled Caste. In other words, it is a case of "honour" killing.

33. At the outset, the submission of learned Government Pleader that it is a case of "honour" killing cannot be accepted because the prosecution has adduced evidence to show that accused and others had consented for the marriage of deceased with PW. 6 after deceased attains the age of 18 years, but the fact remains that accused had assaulted the deceased with a club and caused fracture of parietal bone which is sufficient to cause death in the ordinary course of life. Therefore, we deem it proper to sentence the accused to undergo simple imprisonment for a period of 7 years and pay fine of Rs. 5,000/- in default to undergo simple imprisonment for a period of six months.

34. In the result, we pass the following:

ORDER

The appeal is accepted in part. The accused is acquitted of an offence punishable under Section 302 IPC. The accused is convicted for an offence punishable under Section 304 Part-I IPC. The accused is sentenced to undergo simple imprisonment for a period of 7 years and pay fine of Rs. 5,000/- in default to undergo simple imprisonment for a period of six months for an offence punishable under Section 304 Part-I IPC,. The bail bond, if any, executed by the accused stands cancelled. The period of detention undergone by the accused during trial and also during post-conviction stage is given set off as provided

under Section 428 Cr.P.C.

Office is directed to send back the records along with a copy of this judgment to the trial court to implement the sentence.