

(2001) 03 KAR CK 0008
In the Karnataka High Court
Case No : Criminal Appeal No. 68 of 1998

B.R. Goutam

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2001) 2 KCCR 1345

Hon'ble Judges : Manjula Chellur, J;H.N. Narayan, J

Bench : Division Bench

Advocate : Tomy Sebastin, for the Appellant; Mohan Shanthana Goudar, State Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Narayan, J.—This appeal is directed against the judgment dated 24.12.1997 passed by the II Additional Sessions Judge, Dharwad, convicting A1 for the offence u/s 302 Indian Penal Code and sentencing him to undergo imprisonment for life and acquitted A2 of the said offence. Both A1 and A2 were charged and tried for the offence punishable u/s 302 read with 34 Indian Penal Code.

2. The case of the prosecution is that the deceased Sunita was married to one Manohar Kongi 5 or 6 years prior to the incident which occurred in the early morning of 25.4.1995. She was doing tailoring profession; she left her husband at Navalgund in Dharwad District and came down to Dharwad city with her 3 year old child Vinay and settled at Sriramnagar extension in Dharwad city since about 2-1/2 years prior to the death of her death. It is the case of the prosecution that she developed intimacy with the first accused - appellant Goutham who was aged 28 to 30 years and the deceased was aged 25 years. This relationship continued for about 8 to 9 months. This lady was brought to the Civil hospital, Dharwad at about 12 noon on 25.4.1995 by her sister PW-9 Sujatha with 70% burn injuries on her body. PW-8 Dr. Sheshagiri who was a Casualty Medical Officer, examined her and recorded the history of the incident

and sent intimation to the jurisdictional police. PW-10 - the Circle Inspector of Police, visited the Civil hospital and requested the duty doctor PW-8 for recording the statement of the injured who recorded the statement with the assistance of PC as in Ex.P6. Thereafter, the Circle Inspector-PW-10 recorded her statement as in Ex.P7 on the basis of which he registered a criminal case in Crime No. 96 of 1995 u/s 307 Indian Penal Code read with 34 Indian Penal Code against A1 and A2. He then sent a requisition to the Taluka Executive Magistrate PW-3 Bhimsenrao to record the statement of Smt. Sunita who was admitted to the Civil hospital with the history of burn injuries. PW-3 visited the hospital at 2 p.m. and recorded the statement of the injured Sunita in a proforma brought by him which is marked as Ex.P3. She died on the next day as a result of shock on account of burn injuries. An altered FIR was issued to the Court and further investigation was completed by PW-11 after preparing a spot panchanama during which period they seized Mos. 1 to 8. The dead body was subjected to P.M. examination in the hands of PW-2 Dr. Rajashekar Gurupadayya Puranik and another. The accused were arrested subsequently. During the course of investigation, the I.O. recorded the statement of PW-9 Sujatha - the younger sister of the deceased and after completing all the formalities of investigation, laid a charge sheet against both the accused persons. The charge against both the accused was that the accused with the common intention of committing murder and in execution of common intention, A1 poured kerosene on the deceased Sunita as she objected the 1st accused who visited her house in the company of A2 under the influence of alcohol at that odd time of 1 a.m. in the night and A1 poured kerosene on her when A2 caught hold of her hands and A2 set fire to her and ran away from the place. Both the accused pleaded not guilty to the charge framed against them and therefore, the prosecution was called upon to prove the charge against them. In proof of the said charge, the prosecution relied upon the ocular evidence of 11 witnesses and documentary material Exs. P1 to P10 and M Os 1 to 8 and closed its case.

3. The accused who were examined u/s 313 Criminal Procedure Code, denied the truth of the prosecution evidence and chose to file a statement in writing contending that on the date of incident at about 2 a.m. as usual, he went to see a friend who was residing by the side of the house of deceased Sunita; he overheard the cry from inside the house of Sunita, entered her house and found that she was actually in flames. He attempted to extinguish the fire, somehow he came out of the house and fell on the road and somebody took him to civil hospital, Dharwad. His father who came to know of the same, wanted to take him to KMC hospital, Hubli, but he took him to German hospital, Dharwad, from there he visited Mirag hospital five times and he had undergone operation thrice. This was disclosed by him to the police when he was taking treatment in the civil hospital, Dharwad. It is also in his statement that the police have concocted a false case against him on the basis of some people who were enmical towards him and taking advantage of present at the time of incident.

4. The learned Sessions Judge who heard the arguments of the learned Public

Prosecutor and defence Counsel and on perusal of the evidence on record found the evidence let in by the prosecution was quite convincing and satisfactory in proof of the charge against A1 and therefore held him guilty of the offence of murder. The learned Sessions Judge found the evidence adduced by the prosecution against A2 was not sufficient and therefore, acquitted him of the offence of murder.

5. We have heard the arguments of Sri Arun Kumar for M/s. Tomy Sebastin and Sri Mohan Shanthana Goudar - learned State Public Prosecutor for the Respondent. We have fully scrutinised the evidence.

6. Sri Arun Kumar - learned Counsel for the appellant putforth three contentions for consideration. The first contention is that there is inordinate delay in reporting the case to the police which delay is not explained by PW-9 an eye witness. The dying declaration does not disclose satisfactory explanation for going to the hospital after the long delay. That there was no necessity for the doctor and the IO to record repeated statements of the injured Sunita and that dying declaration recorded by the Taluka Magistrate as in Ex.P3 is not certified by the duty doctor as to the fitness of the declarant to make such a statement. Therefore, it suffers from legal infirmity. That the statement made by the accused u/s 313 Criminal Procedure Code is not fully considered by the trial Court. The learned Counsel has relied upon the ruling of the Apex Court reported in Paparambaka Rosamma and Ors. v. State of Andhra Pradesh 1999 (7) Supreme 640.

7. Sri Mohan Shanthana Goudar learned State Public Prosecutor however justified the order of conviction passed by the learned Sessions Judge and drew our attention to the judgment of the Apex Court reported in Koli Chunilal Savji and Anr. v. State of Gujarat 2000 SCC 432 and judgment of the Division Bench of this Court in Neelasing Sharanappa Hajeri v. State of Karnataka ILR 2000 Kar 4917. We have given our careful consideration to these contentions.

8. In the light of these contentions, the points that arise for consideration are:

(1) Whether the judgment of conviction recorded by the learned Sessions Judge, Dharwad, is sustainable in law?

(2) If so, whether the appeal is liable to be dismissed?

9. The prosecution essentially rests its case on the dying declaration Ex.P3 recorded by the Taluka Magistrate PW-3 Bhimasen Sindhe and the earlier statement made by the deceased herself which forms part of the first information leading to the registration of a criminal case against the accused persons, the history of the incident recorded by PW-8 and the evidence of PW-9 Sujatha - the younger sister of the deceased.

10. The homicidal nature of death of Sunita is not seriously disputed by the learned Counsel for the appellant before us. What is disputed by the learned Counsel at this stage is that the cause of death, according to PW-2 Dr.

Rajashekar is that death is due to shock on account of 70% of burn injuries and according to him, the injured would have suffered shock, she would not have survived for more than 24 hours and she would not be in a position to make statements before the doctor, IO and the Taluka Executive Magistrate.

11. Dr. Modi in his book "Modi's Medical Jurisprudence and Toxicology", twenty-second edition at page 312 observed regarding causes of death.

(i) Immediate cause of Death

(a) Shock

Severe pain and marked protein rich fluid loss from extensive burns which result in increased capillary permeability, cause shock and produce a feeble pulse, pale and cold skin, and hypertension resulting in death instantaneously or within 24 to 48 hours. Shock may also occur from fright before the individual is affected by burns, if his heart is weak or diseased.

If death does not occur from shock, it may subsequently occur from toxoemia due to the absorption of toxic products from the injured tissues in the burned area.

However, this is not a case of death as a result of toxoemia. The doctor has not noticed the death due to toxoemia, but it is purely due to shock as a result of 70% burns and the possibility of death as a result of shock after 48 hours is not ruled out. Incident in this case occurred around 1 to 2 a.m. on 25.4.1995. Sunita died on the early hour of 26.4.1995 within 48 hours. Therefore, we do not find any merit in the submission of the learned Counsel for the appellant.

12. His first contention that there is delay in registration of the case itself for want of information on the part of deceased and PW-9 is a factor which needs consideration in the hands of the Court. The Court has to consider whether the delay in registering the case for want of information to them is fatal to their case.

13. It is settled proposition of law that delay in registration of the case as such is not fatal to the prosecution case. Mystery in not informing the police at the earliest point of time is not disclosed either by PW-9 or by the prosecution. The accused himself could have informed the injuries sustained by Sunita on the date of incident, he could have shifted her to the hospital by himself. He did not do that. We have already extracted his statement made before the learned Sessions Judge while examining u/s 313 Criminal Procedure Code. We will take his statement into consideration after considering the prosecution evidence.

14. It is undisputed that the injured Sunita was brought to civil hospital, Dharwad at 12 noon on 25.4.1995 by PW-9 with the assistance of PW-5 Saifuddin Sayyad Jamadar, a neighbour in an autorickshaw of PW-6 Babu. According to them, the injured Sunita did not disclose the cause of injuries. PW-8 Dr. Sheshagiri - a Senior Specialist in civil hospital was the Casualty Medical Officer. She was brought to hospital by PW-5 Saifuddin Sayyad Jamadar with the

history of burns caused by one Goutham at 3 a.m. on the same night. Sunita was brought to the hospital at 12 noon. On examination he found that the patient was conscious, her pulse was 85 per minute. There were superficial deep burns over chest, portion of abdomen, whole of the back, both arms, portion of external portion of thigh, thus there were 70% of burns. The patient was admitted to emergency ward and the police was informed. Upon a requisition of Vidyagiri police as in Ex.P5, he obtained the declaration from the injured at 2.15 p.m. as in Ex.P6. On 26.4.1995 at 5.45 a.m. the patient died and he informed the police about the death of Sunita. Exs. P5 and P6 were produced before the Court for the first time by the witness as they were pasted to the accident register. Ex.P6 is not in the hand writing of Dr. Sheshagiri. The statement was dictated to the PC by the doctor and it was signed by him. The history of incident recorded by him is not seriously disputed by the defence. The cross examination is not at all directed against this aspect. PW-10 Datta, the Circle Inspector of police who visited the hospital on receipt of a letter from the hospital about this case, visited the hospital and recorded her statement as in Ex.P7 and immediately sent the requisition to the Taluka Executive Magistrate who recorded dying declaration. He thereafter returned to the police station, registered the case u/s 307 Indian Penal Code and submitted FIR to the jurisdictional Magistrate at 4.50 p.m. From the perusal of this evidence, we find that there is no delay in registration of the case and submitting FIR to the jurisdictional Magistrate. The delay is caused on account of bringing the injured to the hospital itself. It is in this context the statement made by the accused u/s 313 Criminal Procedure Code which is relevant for our consideration. We are aware of the position of law that the accused cannot be convicted solely on the ground of his statement though not in the nature of admission/confession made by him. It is always for the prosecution to establish the guilt of the accused beyond reasonable doubt. But where the statement of the accused supports or corroborates the prosecution case, the Court has necessarily to give due weight to such a statement of the accused.

15. The dying declarations made by the deceased are of similar in nature. On careful perusal of Exs.P6, P7 and P3 we do not find any discrepancy in these three consecutive statements. The deceased unequivocally declared before these authorities viz., the doctor, the police officer and the Taluka Executive Magistrate that she deserted her husband at Navalgund 2-1/2 years prior to the date of incident and her marriage with her husband viz., Manohar Kongi took place about 5 to 6 years prior to the date of incident, she came and settled at Dharwad city at Sriramanagar. The 1st accused was working in a private company. he came in contact with this lady and both of them developed intimacy for over nine months and that the 1st accused was in the visiting terms. It is the case of the prosecution that PW-9 Sujatha - the younger sister of the deceased who was staying with her parents at Hubli, came to stay with her sister during vacation. At about 1 or 2 a.m. on the said night, when both Sunita and Sujatha were sleeping, A1 came and knocked at the door, when Sunita opened the door, she

found A1 drunk and that A2 was also present with him. The case of the prosecution as projected through evidence of PW-9 Sujatha is that A1 asked the deceased to sleep with A2 on the said night which she objected and scolded him for visiting her house at the night after taking alcohol and bringing to her house the strangers. Aggrieved by the said response of the deceased, it is stated that he searched and found a bottle of kerosene and poured the same upon her when A2 was holding her and set fire to her by lighting a match box. This story of PW-9 that A2 assisted A1 by holding the hands of the deceased when A1 lighted a match stick and set fire - is disbelieved by the learned Sessions Judge for want of corroboration. We do not propose to divert our attention to that aspect of the matter as the State has not questioned that finding or the acquittal of A2.

16. The accused filed a statement u/s 313 Criminal Procedure Code as to how he was present at the time of incident in the house of the deceased and the circumstance under which he entered her house. A new story was projected by the accused at the end of the trial. However, the accused wanted this Court to rely upon his statement. Therefore, we do give proper weight to his statement. From his statement the presence of A1 at the scene of offence at the relevant point of time is therefore not disputed. In other words, he admitted his presence at the scene of offence when the deceased was suffering with burns. According to him, he also sustained injuries to his hands, but no more. But he offered explanation stating that he came out of the house somehow and somebody took him to the civil hospital. This story projected by the accused is difficult to accept. If a lady who suffered 70% of burn injuries would afford to stay in the house till she was taken to the hospital on the next day afternoon, how the accused who sustained only injuries to his hands prepared to go to civil hospital from where he was shifted to German hospital by his father. How he was made to escape from the clutches of the police is still a mystery. He produced certain medical reports disclosing that he took treatment at German hospital, hospital not far away from the jurisdiction, police but thereafter visited Mirage. He was treated for the said burn injuries till the end of March, 1997 for over two years. The accused was arrested in this case and enlarged on bail.

17. It is now time for us to examine the nature of dying declaration made by the deceased and whether the Court can rely upon such dying declaration. From the perusal of Exs.P6, P7 and P3 recorded by PW-8, and PW-10 respectively, we find that the deceased had given detail statements as to the cause of injuries and she has specifically implicated A1 who was responsible for causing such injuries by pouring kerosene and setting fire to her. The learned Counsel for the appellant has contended that the dying declaration recorded by PW-3 Taluka Executive Magistrate is not authenticated, in the sense, he failed to obtain the doctors certificate as to the fitness of the deceased to rely on such a statement. It is in this context, learned Counsel for the appellant has relied upon the ruling of the Supreme Court in Paparambika Rosamma's case. The dying declaration produced in that case is in the question and answer format. In the dying declaration found in the said case, it is noticed that the medical officer at the end

of the dying declaration has certified "patient is conscious while recording the statement" and the Apex Court noticed that the injured sustained extensive burn injured on her person and the Apex Court observed that the certificate at the end only says that "patient is conscious while recording the statement" but no more regarding fit state of mind. The Apex Court observed in medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the Courts below. It is upon this ground that benefit of doubt was given to the accused as the dying declaration was suspicious.

18. The learned State Public Prosecutor drew our attention to the decision of the Apex Court reported in Koli Chunilal Savji's case wherein at para 7 it is held as follows:

Coming to the first question, the answer to the same would depend upon the correctness of the submission of Mr. Keswani, that in the absence of the doctor while recording the dying declaration, the said declaration loses its value and cannot be accepted. Mr. Keswani in this connection relies upon the decision to this Court in the case of Maniram v. State of Madhya Pradesh. In the aforesaid case, no doubt this Court has held that when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor and after being duly certified by the doctor that the declarant was conscious and in his senses and was in a fit condition to make the declaration. In the said case the Court also thought it unsafe to rely upon the dying declaration on account of the aforesaid infirmity, and interfered with the judgment of the High Court. But the aforesaid requirements and a mere rule of prudence and the ultimate test is whether the dying declaration can be held to be truthful one and voluntarily given. It is no doubt true that before recording the declaration, the Officer concerned must find that the declarant was in a fit condition to make the statement in question. In Ravi Chander v. State of Punjab, this Court has held that for not examining the doctor, the dying declaration recorded by the executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise. In the case of Harjit Kaur v. State of Punjab, this Court has examined the same question and held (SCC p. 547 para 5):

As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained in endorsement to that effect. Merely, because that endorsement was made not on the dying declaration itself but on the application, that would not render the dying declaration suspicious in any manner.

The Division Bench of this Court in Neelasing Sharanappa Hajeri's case relying

upon the said judgment of the Apex Court held as follows:

Dying Declaration cannot be rejected only because it does not contain the Doctor's opinion or certificate regarding the injured Wife's condition due to the burn injuries suffered by her. It cannot be rejected on the ground that one of the statements of the wife contained her thumb impression whereas the dying declaration did not.

A contrary view is expressed by another bench of this Court earlier in ILR 2000 Kar 92 (State of Karnataka v. Shankar and Anr.). However, we choose to rely upon the observation made by the Division Bench of this Court in Neelasingh's case as the Division Bench has relied upon the Apex Court's judgment. The judgment rendered in Short Notes is contrary to the judgment of the Apex Court.

19. We have noticed three consecutive statements made by the deceased before three authorities and the prosecution has not imputed any animosity to these official witnesses against the accused and it is not brought to the notice of the Court as to why these responsible officers of the State attempted to implicate the innocent accused in the murder case.

20. We have, on careful examination of the entire evidence find no material at all to infer that all these witnesses viz., P Ws 3, 8 and 10 falsify the case against the accused. PW-3 in particular has stated before the Court that he did not obtain the statement of the doctor as he personally verified the condition of the patient to make the statement when she was mentally fit to make a statement and the statement recorded by him is true and correct. PW-8 recorded her statement at 2.15 p.m. on the same day while PW-10 recorded it after one hour. None of the doctors and witnesses examined on behalf of the prosecution has stated that she was not in a position to make any statement. No such evidence is elicited in cross examination of any one of the witnesses examined on behalf of the prosecution. Therefore, we do not find any material on record to discard this evidence placed by the prosecution and to discard the dying declarations said to have been made by the deceased. It is true that it is an untested statement before the Court, but where dying declaration is found to be truthful and which finds sufficient corroboration, is sufficient to convict the accused for the offence.

21. Apart from the dying declaration, the prosecution has examined PW-9 - the sister of deceased Sunita whose presence at the time of incident cannot be disputed by us even though her statement was recorded after four days of the incident. The presence of Sujatha at the time of incident was spoken to by deceased herself which finds a place in the FIR and it is a record at the earliest point of time. Therefore, mere delay in recording the statement by the I.O. due to intervening causes viz., the death of the injured Sunita and the fact that PW-9 was staying with her parents' house at Hubli, does not make her statement false. Her presence at the scene of offence on the said night is most natural. This witness PW-9 has been cross examined at length by the defence, but to our surprise, this young lady stood the test of cross examination and we do not find

any infirmity in her evidence. We have noticed that where there is delay in recording the statement of eye witnesses, that circumstance alone would not create any doubt as to the genuineness of such statement. PW-9 has fully corroborated the dying declaration given by her sister. The story projected by the prosecution, in our opinion, is so natural but surprisingly we find no padding of prosecution case at all. If that were so, they would have offered certain explanation for shifting the injured to the hospital after such a long time. After careful examination of the entire evidence on record, we do not rule out certain invisible hands which came in the way of shifting this injured to the hospital till 12 noon. The fact that the accused ran away from the house of the deceased, took treatment in the civil hospital at 4.15 a.m. on the same day, which information was passed on to his father who came and took him to German Hospital, Dharwad, for treatment of burn injuries-are all circumstances which go to show that somebody must have stopped these two ladies from going to the hospital or to the police station. Therefore, we find from careful scrutiny of the entire evidence on record viz., dying declarations coupled with eye witness account given by PW-9 clearly establishes the guilt of the appellant in the commission of murder. When we are holding him guilty of the offence of murder, we will refer to another contention canvassed by the learned Counsel for the appellant. The question canvassed for our consideration is whether the offence committed by the accused falls within the definition of Section 300 Indian Penal Code or it falls under exceptions to Section 300 Indian Penal Code. The learned Counsel for the appellant contended that there was a quarrel between the deceased and the accused and due to provocation, he poured kerosene and set fire to her. He had no intention to kill her initially and therefore, he is only punishable u/s 304 Part II Indian Penal Code. We do not accept this contention at all. The intention of the accused can be found from his conduct. He brought a stranger to the house of the deceased and if the allegations made by PW-9 are true, then this accused wanted the deceased to sleep with him on the said night. As she failed to oblige him, he searched for a bottle of kerosene which he poured and set fire to her and ran away without giving any assistance to her. The nature of offence committed by him cannot be treated lightly. When a man poured kerosene and set fire to another person, the only inference is that he never intended to cause only injury, but in the nature course of event the person who suffers burns would die, that is the natural consequence of setting fire to a person by pouring kerosene. Therefore, we do not find any merit in the contention. Hence, in our opinion the judgment of conviction and sentence passed by the learned Sessions Judge is quite sustainable in law. No interference is called for at this stage in this appeal. We therefore, hold that there is no merit in the appeal and it is liable to be dismissed.

In the result, the appeal is dismissed.