

(2015) 06 KAR CK 0065

In the Karnataka High Court

Case No : Criminal Petition No. 100735/2015

Gurusiddappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 109, 302, 304B, 323, 324

Citation : (2015) 06 KAR CK 0065

Hon'ble Judges : G. Narendra, J.

Bench : Single Bench

Advocate : S.S. Yadrami, Advocate, for the Appellant; V.M. Banakar, Addl. S.P.P., for the Respondent

Final Decision : Allowed

Judgement

G. Narendra, J.—The petitioner is before this Court praying to enlarge him on bail in SC No. 06/15 on the file of the learned District & Sessions Judge, Koppal.

2. The petitioners have been arrayed as accused for the offences punishable under Sections 498A, 304B, 302, 342, 323, 324, 504 and 109 r/w Section 34 of IPC and Sections 3 and 4 for Dowry Prohibition Act.

3. The case of the prosecution is that the husband of the victim was employed as a driver with a private concern at the time of marriage and that subsequently after few months of marriage, it is alleged that the husband-first petitioner came to be appointed as a driver with the Karnataka State Road Transport Corporation and that on the fateful day on 6/9/2014 at about 8.00 am., the first petitioner is alleged to have demanded the victim to bring Rs. 15,000/- in order to enable him to secure a permanent appointment with the State Road Transport Corporation and that her mother-in-law and brother-in-law (second petitioner) also joined the first accused and demanded her to bring the money for the same which she refused and after that the first petitioner left the home and thereafter, he has alleged to have returned at 12.00 noon and he is said to have picked up a

quarrel and sprinkled kerosene on her and threatened to kill her. It is alleged that this act provoked her and the victim is alleged to have told the first petitioner to do whatever he can. Upon which the accused is alleged to have lit a match stick and thrown upon her and that unable to bear the pain, she cried out loudly. An unknown person is said come and poured the water on her and doused the flames. She has alleged that the act of setting her alight has been deliberately done with an intention of murdering her. This fact is alleged to have been recorded by the Head Constable between 11.45 pm to 2.30 am on the intervening night between 6/9/2014 to 7/9/2014. It is also alleged by the victim that till 7.00 O'clock she was not allowed to go to the hospital and only after her family members came, i.e. her mother and her relatives, they have forcibly taken her to the hospital. It is alleged that the incident occurred in the village and that she was shifted to the hospital at about 7.00 p.m. and the hospital is situated in Ilkal. On these accusations the petitioners have been arrayed as accused and have been remanded to judicial custody.

4. The learned counsel for petitioner would submit that the case is a false one and has been got up by the mother of the victim in collusion with the Kushtagi police. He would proceed to point several lacunas and inconsistencies both in the statement of the victim, which has been styled as or Dying Declaration prior to death. He would ridicule the very heading, stating that this singular fact is suffice to demonstrate the collusion between the relatives of the victim and the respondent police.

5. The petitioners counsel would submit that as per the allegation the incident is said to have taken place at 12 noon and that, the victim who narrates everything in detail and with clarity with regard to the incident, but when it comes to the issue of the person who doused the flames she conveniently states that an unknown did it. He would also submit that if the allegation that the victim cried out because of the severity of the burns then definitely the villages in the vicinity would have rushed to the spot. He would submit that the charge sheet has been submitted and unusually the respondent police have deliberately omitted to record the statement of any of the neighbors or of the alleged person, who is said to have doused the fire and this itself is suffice to demonstrate that all is not well and that the respondent police are acting in a partial manner and are colluding with the relatives of the victim. He would further draw the attention of this Court to the inpatient case sheet issued by the Government hospital, Ilkal, wherein the extent of burns is recorded as 25 - 40% and as superficial to deep on various parts of the body primarily on the left portion of the body, like the left upper limb and nape of the neck and little portion of the back and on abdomen and back. He would also draw the attention of the Court to the charge sheet, which has a sketch indicating the portions of the body, which had suffered burns. It is seen that the burns are scattered from the right foreleg ankle to left forearm and burns around the neck and certain small burns on the back and small portion on the right forearm. He would state that the scattered burns are indicative of an explosion or a blast and as alleged by the victim if the kerosene had been

poured, on the whole or either on one portion of the body, which was drenched in kerosene would have burnt and they would not have been such scattered burns. He would also draw the attention of this Court to the record maintained by the Hospital at Bagalkot, wherein it is stated that the patient was brought by the father and he is stated to have informed the hospital authorities that it is a case of accidental burns on 06.09.2014 at Kyadiguppa village. In the history of alleged homicidal burns, it is recorded at 15 - 20% burns and he would also draw the attention of this Court to the histopathological report, and also draw the attention of this Court to the follow up sheet and medical record maintained by the hospital at Bagalkot, wherein in the consent Form it is stated as cardiovascular respiratory failure and septic shock and the same is signed by the father of the victim. He would also point out to the timings in the hospital record maintained by the hospital. He would stated that as per the alleged statement of the victim she is supposed to have been shifted to the hospital from Kyadiguppa village after 7.00 p.m. But, he pointed to the time entered in the hospital record, which shows that she was admitted to the hospital at 6.45 p.m. itself. He would submit that Kyadiguppa village is at some distance away. The said village is at 10 kms. away from Ilkal hospital, and hence, he would also point out this as a serious lacuna, which creates a doubt with regard to the claim that the said statement was made by the victim herself. With regard to the histopathological report, it is stated that, "features suggestive of chronic hepatitis and fatty change", and he would also contest the opinion regarding the cause of death given by the Doctor, which reads as follows -

"On perusal of police inquest, hospital case records autopsy findings and Histopathological examination reports, I am of opinion that, DEATH IS DUE TO SEPTICEMIA AS A RESULT OF BURNS INJURY SUSTAINED."

6. He would submit that a perusal of the record does not show any treatment for septicemia. He would also draw the attention of this Court to page 157 of the charge sheet, wherein the burns is recorded as 15 to 20% and it is stated that the ventilator has been removed against medical advice and patient has been taken away against medical advice. He would submit that the very allegation that they sought Rs. 15,000/- for securing permanent job by itself is preposterous and he would point out that the petitioner had already been appointed by the K.S.R.T.C., and hence, the very allegation itself is false and it is one more fact which would show the alleged Dying Declaration in a very poor light and it would also point out that the alleged Dying Declaration is said to have been recorded on the intervening night on 06.09.2014 and 07.09.2014 and that when the patient is alleged to have suffered only 15 - 20% burns. He would state that the records are concocted and he would proceed to take this Court to the various medical records, wherein a certificate records 85% burns and another between 25 - 40% and the record maintained by the Bagalkot Hospital at 15 - 20% burns. He would also submit that, it is the father, who had admitted and also got the victim discharged from the hospital and the father of the victim has clearly stated that it is a case of accidental burns.

7. In the above facts and circumstances the petitioner's counsel would plead that petitioners be enlarged on bail. He would also point out that even as per the hospital records apart from the statement of the father-in-law of petitioner No. 1, who has stated that the burns are accidental, it has been alleged that it is the petitioner No. 1 who has poured the kerosene and he would submit that there is no allegation of any overt act against the petitioner No. 2 and in the light of the said fact he would submit that the present detention amounts to pre-trial punishment and prays that the petitioner be allowed.

8. Per contra, the learned Additional State Public Prosecutor would admit the inconsistencies in the medical record with regard to the percentage of burns. He would also admit to the statement made by the father with regard to the cause of burns, as the same being part of charge sheet and is seen that at page No. 130 the document is filed along with the charge sheet, wherein the total burnt area on the body has been shown as 25%.

9. The learned Additional State Public Prosecutor would admit that it is unusual for the respondent police not to have recorded the statements of neighbours and also the alleged person, who is said to have doused the fire. It is also not stated as to how the patient was shifted from the Kyadiguppa village to the hospital. He would also submit that the victim was taken to the hospital by her parents only. He would draw the attention of this Court to the statement of the mother, wherein it is pointed out that she is alleged to have called the mobile phone of her son-in-law i.e., the petitioner No. 1 herein and it is alleged that the daughter i.e., the victim is alleged to have told her that her mother-in-law i.e., the petitioners and their mother are going to kill her, and hence, she immediately galvanised her brother-in-law, another relative and started to Kyadiguppa by bus and that thereafter they took the victim to the hospital. He would submit that the statement corroborates with the case of prosecution, and hence, he would pray that the petition be dismissed as they are accused of having committed a heinous crime.

10. The case of prosecution, prima facie appears to be a little improbable and illogical. It is alleged that she was set of fire and then thereafter she was prevented from going out of the house and that she was crying out aloud in pain. If the said statement is taken to be true, then everybody who tries to stop a person on fire would also definitely suffer some burns. It is not the case of the prosecution that any of the accused have suffered any burns.

11. Nextly, it is seen that there is an alleged statement by the victim in the so called Dying Declaration that an unknown person barged into the house and said to have doused the fire and left. Assuming it to be true that a person with so much of concern and awareness would not have stopped with dousing the fire, but would have definitely informed the police. It is also seen that the Doctor has rendered an opinion regarding the cause of death. The Doctor has relied upon many reports and to arrive at a conclusion and he would submit that the death is due to septicemia, whereas the report and the consent form of the Bagalkot

hospital would submit that it is due to cardiovascular respiratory failure and septic shock. It is also recorded by the father of the victim with the hospital authorities at Bagalkot that the fire was an accidental fire. The other fact which would go to the aid of the petitioners is that the allegation that they demanded Rs. 15,000/- to secure a permanent job with the K.S.R.T.C. which appears to be prima fade false for the simple fact that the petitioner is already employed with the Karnataka State Road Transport Corporation. That being the case and further the gross inconsistency in the percentage of the burns recorded by various hospitals raises a doubt and as per the charge sheet the burns are said to be scattered and the total percentage of all the burns taken to be together is 25% and that it varies from deep to superficial. Whereas one report is suggestive of 80% burns, another report is suggestive of 25-40% and another report is suggestive of 15-20% burns and ultimately it is recorded as 25% burns in the document produced along with the charge sheet. All these inconsistencies and contradictions create a doubt in the mind of this Court as to the veracity of the alleged Declaration prior to death and it is also pointed out that the Doctor has not certified as to the condition of the patient as to whether the patient was in a state of mind and also the time taken to record the statement of nearly 2 hours 45 minutes does not appear to be believable. The alleged Dying Declaration does not contain the seal of the hospital nor the comment of the Doctor in whose presence it was recorded. In that view of the matter, this Court is of the considered opinion that the petition deserves to be allowed and is accordingly allowed, subject to the following conditions:

- i) Petitioners are directed to be enlarged on bail in S.C. No. 6/2015 pending on the file of the District and Sessions Judge, Koppal, subject to executing a bond for a sum of Rs. 50,000/- each and furnishing two sureties for the Kkesum to the satisfaction of the trial Court.
- ii) Petitioners shall not leave the jurisdiction of this Court without the prior permission of the trial Court.
- i) Petitioners shall attend the Court on all the hearing dates without fail.
- ii) In the event of violation of any of these conditions the respondents are at liberty to approach this Court for revocation of this order.

The observation regarding the merits of the case made hereinabove are made for the limited purpose of considering the bail application only and the trial Court shall not be influenced by any of the above observation and shall independently consider and dispose of the case on merits.