
(2015) 01 KAR CK 0542
In the Karnataka High Court
Case No : Criminal Appeal No. 3556 of 2012

Hussainappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 01 KAR CK 0542

Hon'ble Judges : L. Narayana Swamy, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Ishwaraj Raj S. Chowdapur, for the Appellant; Prakash Yeli, Addl. S.P.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.

1. The appellant has challenged his conviction and sentence for the offence punishable under Section 302 of the IPC on a trial held by the Fast Track Court at Raichur.

2. The facts reveal that Narsamma (the deceased) died a homicidal death on 22.02.2011 at about 9.00 pm. She is said to have been taken by the appellant to the open place in the land bearing Sy. No. 17/A of Askihal village and was hit with the stone M.O.-2. She is said to have died at the place. The accused is said to have had illicit relationship with Narsamma (the deceased) and she developed affair with other persons. Therefore, the appellant is said to have, had the motive to cause her death.

3. On a complaint filed, the case was registered, investigation was held and after collecting the evidence, charge sheet was laid against the appellant under Section 302 of IPC. During the trial, the prosecution examined PW-1 to PW-17. In their evidence Ex. P1 to P27 were marked and M.O. 1 to M.O. 14 were

produced. The Trial Court, after recording the evidence, has questioned the accused on the incriminating evidence under Section 313 of Cr.P.C. and after recording the statement, as the appellant had no defence evidence, heard the parties and under the impugned judgment and order, convicted the appellant for the offence punishable under Section 302 of IPC and ordered to undergo imprisonment for life and to pay fine. Aggrieved by the conviction and sentence, this appeal is filed.

4. We have heard the learned counsel for the appellant and the learned Additional S.P.P. for the State.

5. The point arise for our consideration is:

"Whether the conviction ordered by the Trial Court for the offence punishable under Section 302 of IPC and the sentence thereon warrants interference at the hands of this Court?"

6. Learned counsel for the appellant submits that the matter is dependant only on the circumstances i.e.

(i) the motive

(ii) the homicidal death

(iii) last seen

(iv) the seizure of incriminating clothes of the deceased and the appellant and

(v) the seizure of the stone used for the assault.

He submits that the materials placed on record by the prosecution is insufficient to convict the appellant. Further more, it is contended that the incriminating evidence was not put to the accused while recording the statement under Section 313 of Cr.P.C. and the judgment of the Trial Court, accepting such incriminating evidence, without bringing it to the notice of the appellant, is improper.

7. On the other hand, learned Additional S.P.P. supports the judgment and order of the Trial Court and submits that the circumstances relied upon by the prosecution have been proved satisfactorily and the prosecution was able to establish the guilt of the appellant beyond reasonable doubt.

8. We have gone through the evidence recorded by the Trial Court and also the statement under Section 313 of Cr.P.C. Now, as could be seen from the circumstances which has been brought on record, of last seen, the two witnesses examined by the prosecution have not supported the case of the prosecution. There is some evidence relating to motive and also the homicidal death, as it is the evidence of the doctor that the death was homicidal.

9. So far as the circumstances relating to the seizure of clothes and the blood stain containing "B" group human blood, is said to be another strong circumstance against the appellant. Perusal of the FSL report produced by the

prosecution at Ex. P-24 reveals that the Police Officer, during the course of the investigation, had seized M.O.-2 the blood stained stone, which was found at the place of the incident, so also the sari M.O. 11, the blouse M.O. 12 and langa M.O. 13 and these aforesaid three clothes were of the deceased Narsamma. He had also seized M.O. 3 one white colour shirt and M.O. 4 one design lungi from the accused. These seized articles were sent to the opinion of the expert and the FSL report Ex. P24 was secured.

10. Perusal of the report at Ex. P-24 reveals that the seized articles inclusive of the sari, blouse, the petticoat, the shirt, underwear and lungi which are at item Nos. 6 to 11 were examined. The serology report after examination was secured and the item Nos. 1 to 10 were found stained with human blood. The blood group of the blood stains was also found to be "B" group on all these articles. Amongst the aforesaid articles, stone is article No. 1. It also contained "B" group blood. So from looking to the species of blood on all these articles and the report at ExP-24 it is clear that the blood stains on the stone, sari, blouse and the shirt of the accused were of "B" group blood.

11. According to the prosecution, this appears to be a strong circumstance which has been placed on record to connect the appellant with the crime. But the perusal of the statement recorded by the learned Sessions Judge under Section 313 of Cr.P.C. does not reveal any questions having been posed to the accused, on these incriminating circumstances, which has been placed on record by the prosecution, through the evidence of PW-14 the Investigating Officer.

12. It is well established principle of law that whatever circumstance is relied upon by the prosecution, the evidence available to establish the said circumstance has to be brought to the notice of the accused by framing questions under Section 313 Cr.P.C. and his answer is to be sought by the Court. This effort has not been done as seen from the statement recorded by the learned Sessions Judge under Section 313 Cr.P.C.

13. As the matter is dependant only on the circumstances and the incriminating material is not brought to the notice of the accused while recording the statement under Section 313 Cr.P.C., we are of the opinion that the matter is to be remitted to the Sessions Court with a direction to record the statement of the accused under Section 313 Cr.P.C. bringing to his notice about all the incriminating circumstances in the evidence of the prosecution and to afford an opportunity to him to put-forth in his evidence on his behalf, hear the arguments and then dispose of the case in accordance with law.

14. Without expressing any opinion on the evidence or the circumstances brought on record in the evidence of the prosecution, the impugned judgment and order will have to be set aside and the matter has to be remitted to the Trial Court to proceed with the case from the stage of recording the statement under Section 313 Cr.P.C. and dispose of the same in accordance with law.

15. Hence, we allow the appeal. The judgment and order of convicting the

appellant for the charge under Section 302 of IPC and the sentence thereon are set aside. The matter is remitted to the Trial Court to record the statement under Section 313 Cr.P.C. afresh and to afford an opportunity to the appellant to produce his defence evidence, if any, and then dispose of the case in accordance with law.

To avoid the delay, the appellant is directed to appear before the Sessions Court on 10.02.2015.

Registry is directed to send the records to the Trial Court forthwith.