
(2013) 07 KAR CK 0305
In the Karnataka High Court
Case No : Criminal Appeal No. 1245 of 2010

Katappa, Balaraj and Smt. Kavithamma	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2013) 07 KAR CK 0305

Hon'ble Judges : K. Sreedhar Rao, J;B.V. Pinto, J

Bench : Division Bench

Advocate : R.B. Deshpande, for the Appellant; Sampangiramaiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

B.V. Pinto, J.—This appeal is filed challenging the Judgment dated 11.11.2010 passed by the Fast Track Court-Chitradurga in SC No. 31/2010 convicting the appellants for the offences u/s 302 and 201 r/w Section 34 of IPC and sentencing each of them to undergo imprisonment for life and to pay fine of Rs. 10,000/-, in default to suffer simple imprisonment for six months for the offence u/s 302 r/w Section 34 of IPC and further sentencing them to undergo simple imprisonment for two years and to pay fine of Rs. 5,000/- each in default to suffer simple imprisonment for three months for the offence u/s 201 r/w Section 34 of IPC with a further direction that both the sentences shall run concurrently. It is the case of the prosecution that, accused Nos. 1 to 3 on 14.09.2009 in the garden of one Mandimat bearing survey No. 42 in Challakere Taluk committed the murder of Krishnappa who is the husband of accused No. 3 by assaulting him with knife where under accused No. 2 held the hands and legs of the deceased and accused No. 1 stabbed him on his chest and caused his murder, thereby they are alleged to have committed an offence u/s 302 r/w Section 34 of IPC.

2. It is the further case of the prosecution that, accused had made the deceased consume alcohol and thereafter committed his murder and thereafter they have

assaulted on his face four to five times in order to screen the evidence of murder, thereby they are alleged to have committed an offence u/s 201 r/w Section 34 of IPC.

3. The prosecution in order to prove the case has examined in all 45 witnesses and got marked Exs. P1 to P35 and produced MOs. 1 to 17. The defence of the accused was one of total denial. However, by the impugned Judgment the learned Sessions Judge was pleased to convict the appellants and sentenced them as aforesaid. It is this order of conviction and sentence which has been challenged by the appellants in this appeal.

4. The prosecution in this case commenced with filing of the complaint by one Venkatesh the owner of the land where the dead body was found. It is stated in the complaint that he is the owner of the land bearing Survey No. 42 of Buddanna Village, within Challakere police station limits, Chellakere and was growing the groundnuts. On 18.09.2009.. at about 2.00 p.m. when he was coming to his house through his fields, he saw the decomposed dead body lying by the side of the fence. The said body was found to be of a male person aged about 30 to 35 years and the dead body was almost completely decomposed and was not in an identifiable position. He has stated that the death might have occurred about two to three days prior to the date of the sighting the dead body.

5. The Chellakere police on receipt of the above information registered the case in Crime No. 320/2009 for the offences u/s 302 and 201 of IPC and commenced the investigation. PW. 44-Sri. Vasudev, Circle Inspector of Police of Chellakere on receipt of the file from PSI-PW. 34-Samiulla visited the scene of occurrence and prepared the panchanama as per Ex. P3. Thereafter, he has also prepared the sketch as per Ex P23 and took the photographs of the dead body and conducted the inquest proceedings on the dead body of the deceased as per Ex. P9 Panchanama and seized the clothes produced by PW. 31-Tippeswamy and subjected them to PF. He has also recorded the statements of other witnesses on 20.09.2009. On 22.09.2009, the staff produced the 3rd accused before him. According to the voluntary statement of accused No. 3, the act has been committed by accused Nos. 1 and 2. Accordingly, accused Nos. 1 and 2 were apprehended. On the basis of the information given by accused No. 1, PW. 44 has recovered knife-MO. 7 which was used for the commission of the offence as per Ex. P5-mahazar. Thereafter, after completion of investigation subjecting the materials to FSL and obtaining the report and also recording the statements of other witnesses, PW. 44 has filed the charge sheet in this case.

6. During the trial the complainant Venkatesha has been examined as PW. 1. He has stated regarding the fact of finding the dead body lying in his field.

7. PW. 2-Shivanna. is the signatory to seizure Mahazar as per Ex-P2. PW. 6-Basavaraja is a signatory to Ex-P4- seizure Mahazar.-

8. PW. 3-Thippeswamy, PW. 4-Ramamurthy PW. 5-Manjunatha, PW. 10-Eranna, PW.-16 Harish, PW. 17-Varadaraju, PW. 18-Raju, PW. 19-Srinivas, PW. 20-Eranna,

PW. 21-Karianna, PW. 26-Thimmaraya, PW. 36-Thippeswamy, PW. 39-Srinivasareddy, PW. 40-Thippeswamy, PW. 41-Byanna, PW. 42-Lokesha and PW. 45-Basha have turned hostile and have not supported the case of the prosecution.

9. PW. 7-Obaiah is also a Signatory of Ex-F5 Seizure Mahazar. PW. 8-Thippeswamy is a signatory to Ex-P7 regarding seizure of shirt which is marked as MO. 8. PW. 9-Jagadeeshchary is a signatory to Seizure Mahazar Ex-P8 seizure of shirt which is marked as MO. 9.

10. PW. 11-Thippeswamy is a signatory to inquest proceeding as per Ex-P9. PW. 12-Thippeswamy on receipt of information from his brother Basavaraju regarding the death of the deceased in his field goes to the scene of occurrence.

11. PW. 13-Eranna is the brother of the deceased. He has stated that accused No. 3- is the wife of the deceased and accused No. 2- is the brother of accused No 3. He also states regarding the missing of the deceased for about 2-3 days. On seeing the photograph of his brother published by the Chellakere police station, he went to the police station and identified the clothes and slippers as per MOs. 1 to 6 as belonging to his deceased brother.

12. PW. 14-Chithaiah and PW. 15-Balappa have stated regarding the missing of the deceased for about 2-3 days. On identifying the photograph of his brother they went to the police station and identified the clothes and slippers as per MOs. 1 to 6 as belonging to the deceased.

13. PW. 22-Ramakrishna and PW. 23-Siriappa have stated that they know the accused persons. Accused No. 3 is the wife of the deceased Krishnappa and they were frequently quarreling with each other and have also stated regarding the fact of illicit relationship of accused No 3 with accused No. 2. They have also stated regarding the fact of deceased being killed by the accused persons. PW. 23 has further stated that he had been to the Chellakere police station and identified the clothes and slipper as per MOs. 1 to 6 as belonging to the deceased.

14. PW. 24-Krishnappa and PW. 25-Karianna have deposed regarding the fact as per the version stated by PWs-22 and 23.

15. PW. 27-Jyothi is the Women Police Constable who has apprehended accused No. 3. PW. 28-Dinesh is a Police Constable who has transmitted the FIR to the learned JMFC at his home office.

16. PW. 29-Rangaswamy is the Police Constable who has kept watch on the dead body of the deceased and has taken the dead body to the hospital for postmortem examination and after receipt of the postmortem examination report he has handed over the body to the relatives of the deceased.

17. PW. 30-Dhananjaya is the Police Constable who has carried the articles to the FSL at Davanagere for test and examination. PW. 31-Thippeswamy is the Police Constable who has carried the shirt of the deceased to the FSL, Davanagere as

per the instructions of the Circle; Inspector of Police. PW. 32-Chidanandamurthy is the Head Constable who has carried the articles to FSL at Bangalore for DNA test.

18. PW. 33-Nischalkumar is the Sub-Inspector of Police who has apprehended accused No. 2. PW. 34-Samiullah is also the Sub-Inspector of Police who has registered the case on receipt of complaint from the complainant and transmitted FIR to the Court and handed over the further investigation to Circle Inspector of Police,

19. PW. 35-Mohammed Jaffar Sadik is the Police Constable who has taken the photographs of the dead body of the deceased.

20. PW. 37-Dr. Shivakumar. N is the Medical Officer at Government Hospital at Challakere who has taken the blood samples of the son-Narasimha and daughter-Shruthi of the deceased for DNA test and handed over the blood samples in a sealed cover to the; Police.

21. PW. 38-Gopalappa is the Junior Engineer who has prepared the sketch of the scene of occurrence as per Ex. P25.

22. PW. 43-Shivanna has stated regarding the last rites done by him to the deceased.

23. PW. 44-Vasudeva is the Circle Inspector of Police, Chellakere who has conducted the investigation by recording the statement of the witnesses, obtained the reports from the FSL and also collected the postmortem reports and after completion of the investigation, submitted the charge sheet.

24. Heard Sri. R.B. Deshpande, learned Counsel appearing for the appellants and Sri. Sampangiramaiah, learned HCGP for the State.

25. Learned Counsel for the appellants submits that, apart from the last seen circumstance, which is spoken to by PWs. 13 to 15 who have stated that the deceased was seen with the accused, there is no other evidence to connect accused with the crime. Therefore, he further submits that other evidence regarding the recovery is also not conclusively proved by the prosecution and that the, dead body was found in the open land. Under the circumstances, the learned Sessions Judge has wrongly convicted the accused. Hence, he prays that the appeal may be allowed.

26. Sri. Sampangiramaiah, learned HCGP on the other hand submits that, the circumstances which have been established by the prosecution indicates that the deceased had died homicidal death and that there was dispute between accused No. 3 and the deceased. Therefore, accused No. 3 has killed the deceased with the help of accused Nos. 1 and 2.

27. We have re-appreciated the entire evidence on record. We find that, out of the 45 witnesses examined by the prosecution, PWs. 13 to 15 are examined by the prosecution in order to prove the last seen circumstances and the DNA finger

print indicates that the dead body belongs to one Krishnappa who is the husband of accused No. 3. Apart from that, there is voluntary statement of accused No. 1 based on which a knife has been recovered. MO. 7- is the Knife and the same has been subjected to FSL examination. However, there is no report regarding any incriminatory circumstance so far as knife is concerned. All other important and relevant witnesses have turned hostile to the prosecution as observed in para 9 above.

28. We have carefully gone through the entire Judgment of the learned Sessions Judge. The last seen circumstance spoken to by PWs. 13 to 15 indicates that they had seen the deceased on 15th, whereas the death must have occurred on 18th or 19th of the said month. Accused No. 3 is none other than the wife of deceased. Hence, this circumstance of husband and wife being seen together on 15th will not become the last seen circumstance. Hence, so far as this aspect is concerned, we are of the considered opinion that the evidence of PWs. 13 to 15 stating that they saw deceased and accused No. 3 together on 15th does not at all constitute the last seen theory so far as the death of the deceased is concerned.

29. On a careful consideration of the Judgment of the learned Sessions Judge, we find that the learned Sessions Judge has only relied upon the voluntary statement of the accused to convict the accused which is not permitted at all. Under the circumstances having regard to the other witnesses on record we are of the considered opinion that the learned Sessions Judge has erroneously convicted the accused. On a careful scrutiny of the evidence we find that, there are no materials to connect the act of the accused with the crime in question and the accused are therefore entitled to an order of acquittal. Accordingly, the following order is passed:

ORDER

The appeal is allowed.

The order of conviction and sentence passed against the appellants/accused by the learned Sessions Judge is hereby set aside and the accused are acquitted, of all the charges leveled against them.

It is submitted that accused Nos. 1 and 2 are in custody and hence it is directed that, they shall be set at liberty forthwith if not required in any other case.

Accused No. 3 is on bail. Bail bond executed by her shall stand discharged. Fine amount if any deposited shall be refunded to her.

Registry is directed to transmit the operative portion of Judgment to the concerned trial Court and the jail authorities forthwith.