

(2016) 09 KAR CK 0004

In the Karnataka High Court

Case No : Criminal Appeal No. 188 of 2012.

**Maria Joseph alias Joseph Lurdu Swamy - Petitioner @HASH State of
Karnataka**

Date of Decision : 01-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 4 AirKarR 399

Hon'ble Judges : H.G. Ramesh and Rathnakala, JJ.

Bench : Division Bench

**Advocate : Venkatesh P. Dalwai, Advocate, for the Petitioner; S. Rachaiah,
HCGP, for the Respondent**

Final Decision : Dismissed

Judgement

Rathnakala, J. - This appeal is directed against the judgment of conviction and sentence dated 12.12.2011 recorded in V-Fast Track (Sessions) Court, Bangalore City, on his file in S.C.No.373 of 2011 whereby the appellant herein is convicted for the offence under Section 302 of the Indian Penal Code (for short hereinafter referred to as "IPC") and is sentenced to undergo imprisonment for life and to pay a fine of Rs. 50,000/- with default clause.

2. For the sake of convenience, hereinafter the parties are referred to as per their original status before the Trial Court.

3. Briefly stated, the complainant-police, charge-sheeted the accused in respect of the offence punishable under Section 302 of I.P.C. The allegation was, that the deceased Mary Stella was married to the accused and the couple were blessed with three children. For the last seven years prior to the incident, they were residing in a rented house at T.C.Palya, Bengaluru. The accused was working both as a painter and a carpenter. The deceased was working as an attender in a private college. Their eldest daughter was also working in a garments factory. Their two younger sons were students. The accused was given to boozing and used to extract money from the deceased to quench his thirst. Very often, he used to quarrel with her over money issue. He used to frequently shuttle

between his parents house at Tiptur and the matrimonial home. On 14.10.2010 in the afternoon when the deceased came home for lunch, he picked up quarrel with her for money, but she did not heed. After the lunch, she had gone for her work and returned home by 5.30 in the evening. By that time, the accused sharpened a vegetable cutting knife from the kitchen with an intention to do away with the life of the deceased. On her return, he again picked up quarrel for money and stabbed her with knife, thus causing multiple bleeding injuries. On hearing her scream, the neighbours gathered in front of the house, broke open the door and shifted the deceased to the hospital. She breathed her last while on the way to the hospital.

4. The accused was arrested from the spot itself. The cousin of the deceased (PW.1) lodged a complaint on the same night at 8.45 p.m. as per Ex.P1. F.I.R. was registered in respect of the offence punishable under Section 302 of I.P.C. After the investigation, the Investigating Officer charge-sheeted the accused for the offence punishable under Section 302 of I.P.C. On the Trial Court framing charges, the accused pleaded not guilty. During the trial, the prosecution examined PWs. 1 to 17, marked documents at Fxs.P1 to P11 and M.O.Nos.1 to 6. On conclusion of the prosecution side, the statement of the accused under Section 313 of Cr. P.C. was recorded. The accused opted not to lead defence evidence. his case was of total denial.

5. On giving audience to both parties, the Trial Court recorded the judgment of conviction against the accused in respect of offence punishable under Section 302 of I.P.C.

6. Sri. Venkatesh Dalwai, learned counsel for the accused/appellant while assailing the judgment of the Court below took us through the contents of Ex.P1 - complaint on the source of which the FIR was registered, so also through the evidence of the complainant - PW. 1. It emerges that on getting information over phone from a neighbour, the witness went near the house of the deceased, by that time, the Police had already arrived. Since the accused was already in the custody of the Police, as per the advice of the Police she lodged complaint as per Ex.P1 and the contents of Ex.P1 is not in her handwriting. Emphasising on this piece of evidence, learned counsel would contend that her evidence would manifest that the information had reached the Police Station even before the complainant (PW. 1) lodged the complaint and the said first information was suppressed by the Police. The Court would not have acted on Ex.P1 which is not a FIR. It is in the nature of statement under Section 161 of Cr.P.C. The evidence of PW. 1 is a hearsay evidence since she is not an eye witness to the incident. Further, learned counsel took us through the evidence of PWs.4, 5 and 6 who are the circumstantial witnesses, so also the neighbours of the deceased, to emphasise that they are also not the eyewitnesses. They have reached the spot subsequent to the incident. The evidence of another vital witness PW.7 - an auto rickshaw driver, who by chance arrived at the spot, since during cross-examination admitted that he had not given statement to the Police, learned

counsel would argue that this witness was subsequently planted to strengthen the case of the prosecution. According to learned counsel, other witnesses PWs. 11 and 14 whose evidence was also counted upon, are the cousin and brother of the deceased respectively and their entire evidence is hearsay. PWs.8 and 12/ children of the deceased are also not the direct eyewitnesses to the incident. The weapon alleged to have been used for commission of offence was not sent for medical opinion, thus the nexus between the crime and weapon allegedly used for commission of offence - crime and the accused, is not established. Learned counsel while concluding his submission, requests to take note of the prosecution case that for the last two months the accused was not residing in the matrimonial home and in the absence of evidence of direct eyewitnesses to the incident, even the circumstantial evidence since suffered with discrepancies urges that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts and the impugned judgment passed has resulted in great miscarriage of justice. Thus, seeks for acquittal of the accused from the charges under Section 302 of I.P.C., on the principle of benefit of doubt.

7. Learned High Court Government Pleader while seeking to sustain the judgment of conviction submits that undisputably, it is a homicidal death established by the medical evidence. May be for temporary period accused was away from the station, but it is established by the evidence of circumstantial witnesses - PW.2 (spot mahazar witness), PWs.4, 5 and 6 (neighbours) and PW.7 (chance witness) that the accused was present at the scene of offence and was immediately arrested. The weapon used i.e. knife which is ordinarily used in the kitchen, was blood stained and was seized immediately under the mahazar. The Doctor PW. 17, who conducted the postmortem, had opined in his report - Ex.P1 1 that "death is due to shock and haemorrhage as a result of stab injury sustained to heart" and while in the witness box also, he testified that the injuries on the dead body were caused by knife, which was sharpened at one side and blunt on the other side. The Trial Court on a meticulous examination of the evidence has held that the evidence of the prosecution was consistent and the minor contradictions in the evidence of the witnesses will not affect the prosecution story and has rightly recorded the judgment of conviction against the accused for the offence punishable under Section 302 of I.P.C. It is a well reasoned judgment not calling for any interference in this appeal.

8. In the light of the above submission, we have gone through the evidence placed on record before the Trial Court so also the judgment impugned.

9. Going by the evidence of the relevant prosecution witnesses, PW.1 - complainant is the cousin of the deceased, who arrived at the spot subsequent to the incident that occurred at 5.45 p.m. on 14.10.2010 and lodged a complaint as per Ex.P1 at 10.45 p.m. As per the complaint - Ex.P 1, she received the information at 6.15 p.m. and lodged the complaint at 8.45 p.m. The complaint itself alleges that the accused stabbed the deceased with a knife. Though the learned counsel appearing for the appellant emphasizes that even before PW. 1

reached the spot, the Police had the information about the incident and were present at the spot, no attempt was made during the cross-examination of the Investigating Officer that Ex.P1 is not the first information, which reached the Police Station at the earliest point of time. Even otherwise if S.H.O does not register a case before ascertaining the information received, that does not vitiate the investigation. Though it was elicited during the course of cross-examination of PW. 1 that the complaint is not in her handwriting, the defence will not stand to score anything out of this admission, since PW. 1 corroborated the contents of the complaint-Ex.P1. Thus complaint/Ex.P1 is proved by the prosecution. PW.2 is the witness to the spot mahazar-Ex.P2 conducted on 15.10.2010, under which the blood stained knife was seized from the spot. He has identified the knife. Though PW.2 was treated as hostile witness, he has corroborated the contents of mahazar - Ex.P2, during his cross-examination by the prosecution (on treating him as hostile witness), he admitted the contents of mahazar/Ex.P2 and identified the M.Os. seized under mahazar. It was also his cross-examination evidence that the accused was found tied with a rope on the evening of 14.10.2010 at 5.00 p.m.

PW.3 is another witness to the spot mahazar-Ex.P2. He has identified his signature on the mahazar, though turned hostile to the case of the prosecution.

PWs.4, 5 and 6 are the neighbours, who came out of their respective house on the evening of 14.10.2010 on hearing the screaming of the deceased, broke open the door and saw the accused so also the deceased with bleeding injuries.

Out of the above witnesses, PW.5 though partly turned hostile to the case of the prosecution, during the course of her cross-examination by the prosecution, she corroborated her statement recorded under Section 161, Cr. P.C. to some extent.

PW.7 is a chance witness, who is the driver of auto-rickshaw, who happened to pass in front of the house of the deceased. He was the one, who broke open the door and entered the house with other neighbours.

All these witnesses in synchronous tone testified the fact that when they entered the house after breaking open the door, the accused came out; they saw the deceased inside the house with bleeding injuries. Firstly, when they saw the accused, they enquired with him about the deceased; he replied that she is not yet returned from her work.

PWs.8 and 12 are the daughter and son of the deceased, who testified about boozing, torturous and abusive behaviour of their father/accused.

PWs. 11 and 14 are the kith and kin of the deceased and thus supported prosecution case. They arrived at the spot after receiving information about the incident and seen the accused tied with rope to the tree.

PW.15 is the Scientific Officer, who examined the articles seized by the Investigating Officer during the investigation and found blood of ?B? group on the seized articles, which is also blood group of the deceased.

PW.16 is the Investigating Officer, who registered the case; conducted the investigation and filed the charge-sheet before the Court.

PW.17 is the Doctor, who conducted the post-mortem and opined that injury Nos.1 to 9 found on the dead body are caused by the knife, which must be sharp on one side and blunt on the other side. His opinion as to cause of death is "due to shock and haemorrhage as a result of stab injury sustained to heart". They were ante-mortem in nature. He testified that injuries are possibly caused by weapon/knife/M.O.No. 1 seized under the mahazar.

10. In the absence of any suggestion to the Investigating (officer during his cross-examination discrediting the genuineness of the first information that reached the Police Station, the learned Trial Judge has rightly acted upon the complaint - Ex.P1, seizure/spot mahazar - Ex.P2, F.S.L. report - Ex.P6, post-mortem report - Ex.P1 1 which are substantiated by the evidence of complainant/PW.1, mahazar witness/PW.2. Scientific Officer/PW.15, Doc-tor/PW. 17, who conducted post-mortem and the circumstantial witnesses PWs.4 to 7, PWs.1 1 and 12 (neighbours/kith and kin of the deceased), being the natural witnesses have no personal animosity against the deceased. "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him" that is the law contemplated under Section 106 of the Indian Evidence Act, 1872. The Apex Court in the case of Gajanan Dashrath Kharate v. State of Maharashtra reported in (2016)4 SCC 604 extracted the relevant paragraph No.22 of the judgment in the case of Trimukh Maroti Kirkan v. State of Maharashtra, reported in (2006)10 SCC 681, which reads thus:

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313, CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal the medical evidence disclosed that the wife died of strangulation during late night hours or

early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302, IPC. In *State of T.N. v. Rajendran* the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."

11. We are convinced that the prosecution established its case beyond all reasonable doubt that when the deceased suffered fatal injuries, the accused alone was present in the house, thus the burden heavily rests upon him to explain the circumstances anything other than the prosecution case. He has not availed the opportunity while recording his statement under Section 313 of Cr. P.C nor did he adduce any defence evidence. The chain of events established as above by the prosecution unequivocally point towards guilt of the accused and the accused only. The prosecution has successfully proved that the accused caused multiple grievous injuries to the deceased with weapon/knife/ M.O.No.1. The very fact that he has caused ten injuries to the deceased establishes that his overt act is intentional and focused only to cause the murder of his wife. The ingredients of Section 300 of IPC not falling under any of the exceptions contemplated therein is successfully proved, which is punishable under Section 302 of IPC. The judgment of conviction recorded by the learned Sessions Judge so also the sentence of life imprisonment and fine cannot be interfered. The appeal is dismissed accordingly.