
(2017) 03 KAR CK 0135
In the Karnataka High Court
Case No : 100080 of 2014

Pundalik son of Siddappa Kuri

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#) -
Punishment for murder

Citation : (2017) 03 KAR CK 0135

Hon'ble Judges : Anand Byrareddy, K. Somashekar

Bench : DIVISION BENCH

Advocate : Santosh B Malagoudar, V.M. Banakar

Judgement

1. Heard the learned counsel for the appellant and the learned State Public Prosecutor.
2. The present appeal is preferred against the judgment of conviction and the sentence of imprisonment for life for an offence punishable under Section 302 of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC", for brevity), with fine of Rs.5,000/- apart from lesser punishments for other offences alleged.
3. The facts, as stated by the prosecution, are that the complainant was a resident of Basapur Shigihalli and was aged about 35. It was stated that on 11.6.2012, the complainant had left his house at about 10 a.m., as usual, to attend to his land and returned home at about 4p.m., only to find the house door locked. Since his wife was not to be seen, he had inquired with the neighbour one Basamma Bheemarani, who informed him that at about 1p.m., Ningawwa, the wife of the complainant had left the house and handed over the key to her and had informed her that she was going to a hospital. It is on this information that the complainant is said to have waited for his wife to return home and when she did not return late in the night, he is said to have searched every hospital in Kittur, but could not trace her. He had even searched her at her parental home at Kenganur and her sister's house at Hunashikatti and other places, wherever he

had an inkling that she might have visited. But he could not trace her. It is four days later, namely, on 15.6.2012, that he had lodged a missing complaint with the Kittur Police Station and a case was registered of a missing person. On 18.6.2012, the complainant is said to have received information of a dead body having been discovered near Gavi Shiddeshwar Gudda within the limits of Kalabhavi village. The complainant, along with others, is said to have visited the spot and saw the dead body of a woman which was naked and the lower parts of the body below the waist had been eaten away by animals and the remaining portion of the body was highly decomposed. The face was also injured and not recognisable. There was a saree, a blouse, bangles, a purse, etc., lying near the body. It is thereafter in the belief that the dead body belonged to his wife, as he had recognised the clothes and other belongings, had registered a complaint with the Kittur Police Station for an offence punishable under Section 302 of the IPC. It was alleged by the complainant that his wife was having an illicit relationship with the accused and that the accused Pundalik wanted to elope with his wife and had brought her to Gavishiddeshwara Gudda and since the accused wanted her to accompany him and since she was reluctant, that he had grown furious and had murdered her. On the basis of the said complaint, a case had been registered against the accused and after further investigation and recording the statement of the witnesses, the accused was said to have been arrested and his voluntary statement was recorded. It is alleged that he had admitted the commission of murder and he had even lead the police to the person with whom he had pledged the jewellery taken from Ningawwa, namely, PW.3 and the pledged articles are said to have been identified by the complainant as being that of his wife and the same were also seized. It was alleged by the prosecution after further investigation that the accused was last seen together with the deceased when he had taken her on his motor cycle towards Gavi Shiddeshwara Gudda and it is on the basis of the last seen theory and the circumstantial evidence sought to be projected by the witnesses, that a charge-sheet was filed against the accused for offences punishable under Sections 302 and 404 of the IPC and after further proceedings, the accused had stood trial.

The court below, on analysis of the evidence, has proceeded to hold that the factum of the deceased having an illicit affair with the deceased was established by the evidence of PW.1, the complainant, PWs.4 and 5, the brothers of the deceased, who had spoken about their knowledge that their sister was having an affair with the accused and in spite of their advice, they had continued the affair and therefore, the court below has come to the conclusion that there was a close relationship between the deceased and the accused. And that since she had refused to go with him to Goa, as he had proposed that they elope to Goa and settle down there, he had in a fit of anger, murdered her. As regards the last seen theory, the court has found that the prosecution has rested the case on the evidence of a pawn shopper, whose statement had been recorded to the effect that they had seen the accused take the deceased on his motor cycle towards the Gavi Shiddeshwara Gudda. But however, those witnesses had turned hostile

and did not support the case of the prosecution. Therefore, the court below has relied upon the evidence of PW.3, who was the person with whom the jewellery of the deceased was said to have been pledged by the accused and that the accused had been introduced to PW.3 by PW.11 and since the police were able to recover jewellery at the instance of accused from PW.3. The court below has held that the evidence of PWs.1,3,4 and 5 was relevant.

Further, PW.16 was the person who is said to have sold the cell phone to the accused. It was alleged by the prosecution that after pledging the jewellery with PW.3, the accused had received Rs.25,000/- out of which, he had purchased a cell phone from PW.16. It is on the basis of the evidence tendered by the Investigating Officer, namely, PW.22 that the trial Court has opined that the circumstances have been sufficiently established to demonstrate the chain of events, which are proximate in point of time and closely linked, which would bring home the charges against the accused.

4. The learned Counsel for the appellant however would point out that the case of the prosecution rests completely on circumstantial evidence and not even on the last seen theory, because the witnesses who had claimed to have last seen the accused with the deceased had not supported the case of the prosecution. Therefore, the only evidence that the trial Court has relied upon is the evidence of PW.1, PW.3, PW.4, PW.5, PW.14, PW.16 and PW.22. It is pointed out that the inordinate delay in filing the complaint is not explained. The deceased was missing according to the complainant from 11.6.2012. However, the complaint is lodged only 4 days later on 15.6.2012 and there is no indication of any suspicion of the accused or anybody else being involved nor was any mention made about the jewellery worn by the deceased. It is only in the complaint of 18.6.2016, when the dead body was discovered, that a fresh complaint is lodged making allegations against the accused and also making reference to the jewellery that his wife may have been worn. This would clearly indicate an after-thought in seeking to make out a case against the accused without any basis. The mere suspicion of the plaintiff cannot take the place of proof and the complaint in that regard by itself would not amount to proof. Insofar as the illicit relationship, according to the trial Court, being also claimed and supported by PWs.4 and 5 is not correct, for both PWs.4 and 5 have resiled from their statements said to have been recorded earlier and have denied that their sister was having any kind of illicit relationship and therefore the theory that there was illicit relationship between the deceased and the accused is not established. The alleged recovery of jewellery from PW.3 is not again supported by PW.3 as PW.3 has denied knowledge of any such pledge being made by the accused or that PW.11 had brought the accused and introduced him in the accused making pledge of the jewellery. In the face of which, the court below was not in a position to place reliance on the evidence of PW.3 and the evidence of the hostile witnesses could not have been relied upon. It was not a case where the trial Court was relying on that portion of the evidence of a hostile witness which would still support the case of the prosecution. The entire evidence of PW.3 was negatived and did not

support the case of the prosecution. There was no occasion to even rely upon any portion of the testimony of PW.3 in support of the claim that the jewellery had been pledged by the accused with the said witness. Therefore, the further evidence of PW.14 to the effect that the jewellery had been weighed and valued by him did not establish that the jewellery did belong to the deceased. The mere alleged identification by the complainant as to the jewellery recovered from PW.3 belonging to his wife again take place the proof. There was no material evidence produced to demonstrate that the jewellery did not belong to Ningawwa and that the accused had pledged with PW.3.

PW.16 was the person who is said to have sold the cell phone to the accused and that the same was purchased with the money obtained after pledging the jewellery of Ningawwa. This is also not established as PW.16 has denied having ever seen the accused and the cell phone in question did not stand in the name of the accused and was found to be in the name of some other person. In the absence of any support from the evidence of PW.16, it could not be said that the trial Court was justified in placing reliance on the said evidence.

That would leave only the testimony of PW.22, the Investigating Officer, who has merely projected the theories sought to be built up on the so-called circumstantial evidence. Therefore, the learned Counsel would submit that the entire case of the prosecution was without any basis in the absence of evidence, which was clearly circumstantial in nature.

In the present case on hand, the evidence itself is absent and the trial Court having proceeded to rely on evidence which could not, in the eye of law, be free from doubt, as the evidence is that of hostile witnesses who have resiled from their statements is not tenable since it can hardly support the findings of the court below. And the accused who is a young man of 24, being visited with a serious punishment of life imprisonment on evidence which does not stand the test of scrutiny, would necessarily have to be set aside as it has resulted in a gross miscarriage of justice in the appellant having been found guilty without any basis.

5. The learned State Public Prosecutor, on the other hand, seeks to justify the judgment.

6. However, on a close perusal of the record and with reference to the contentions urged by the learned Counsel for the appellant, it is indeed found that except the say of PW.1, the complainant, as to his strong suspicion that his wife had been murdered by the accused for gain or for other reason of having fallen out with her is a theory. There is no other evidence supporting such a contention. Though PW.4 and PW.5, the brothers of the deceased are said to have made statements of their knowledge about the accused and the deceased having illicit affair has not been reiterated in their testimony before the court. They have been treated as hostile witnesses. Similarly, PW.3 with whom the accused is said to have pledged the jewellery taken from the deceased has also

not supported the case of the prosecution. The court below was not therefore justified in placing reliance on the evidence of PWs. 3, 4 and 5. Similar is the case with other witnesses. Except PW.22, who has formally tendered evidence to support the case of the prosecution. In appreciating the evidence in cases based entirely on the circumstantial evidence, it is well established in more than one decision of the Apex Court as to the manner in which circumstantial evidence is to be appreciated. In a recent decision in *Vijayakumar v. State of Rajasthan*, (2014) 3 SCC 412 : (AIR 2014 SC (Supp) 1225), the Apex Court has held that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. If this test is applied to the case on hand, the prosecution has miserably failed to establish the circumstances that could bring home the charges against the accused.

In another celebrated case in *Sharad Birdhi Chand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : (AIR 1984 SC 1622), the Apex Court has laid down that wherever the case is based on circumstantial evidence, the following features are required to be complied with:

- (i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely " may be- fully established,
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (iii) The circumstances should be of a conclusive nature and tendency,
- (iv) They should exclude every possible hypothesis except the one to be proved, and
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In *Munish Mubar v. State of Haryana*, (2012)10 SC 464 : (AIR 2013 SC 912), it was held by the Apex Court that the circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, did not permit the Apex Court to arrive at any other inference but one, indicating the guilt of the accused.

As pointed out by the learned counsel for the appellant in the present case on hand, when there was strong suspicion by the complainant - husband on the

fidelity of his wife and there being a circumstance of the complainant having overheard the accused and the deceased discussing about their plan to elope to Goa and the deceased also having been confronted by him on an earlier occasion would also give rise to a theory that it is the complainant who has possibly murdered his wife and made it seem that she had disappeared or eloped with the accused. Therefore, the present case sought to be projected on the basis of the evidence relied upon by the trial court was not tenable as the testimony of the witnesses was certainly not in support of the case of the prosecution.

Consequently, the appeal is allowed. The judgment of the court below is set aside. The accused is acquitted. The fine amount, if any, shall be refunded to the appellant. The bail bond, if any, furnished, stand cancelled.

Appeal allowed.