

(2014) 12 KAR CK 0068
In the Karnataka High Court
Case No : Criminal Appeal No. 1113/2011

Ravi	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2014) 12 KAR CK 0068

Hon'ble Judges : P.D. Waingankar, J;N. Ananda, J

Bench : Division Bench

Advocate : Chetan Nag S., Advocate for the Appellant; P. Vishveshwaraiah, HCGP, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (hereinafter referred to as "accused") was tried and convicted for an offence punishable under Sections 498A and 302 IPC. Therefore, he is before this Court.

2. We have heard Sri Chetan Nag, learned counsel for the accused and learned Government Advocate for the State.

3. The accused was convicted for an offence punishable under Section 302 IPC for committing the murder of his wife at about 11.30 AM on 15.2.2007 in his rented house at Nelagaderanahalli within the jurisdiction of Peenya Police Station. It is the case of the prosecution that the accused had married the deceased viz., Shobha about 7 years prior to 15.2.2007. P.W. 2 - Neele Gowda is the father of the deceased. P.W. 5 - Gange and P.W. 9 - Gowri are the younger sisters of the deceased. P.W. 3 - Neele Gowda is the native of K.B. Road, Arakalgud. The accused was working as a mason and the accused and deceased were staying in a rented house at Nelagaderanahalli. P.Ws. 2, 5 and 9 were also staying in the house of the accused and deceased. P.W. 6 is the landlady of the house in which the accused and deceased were residing. P.W. 2 - Neele Gowda was also working as a mason. P.Ws. 5 and 9 were working in a garments factory.

4. It is the case of the prosecution that accused was suspecting the fidelity of the deceased. He had suspected that the deceased had illicit intimacy with one Pandian. On the date of incident, accused who had gone to the work returned back from the work and assaulted the deceased with a sickle and thereafter strangled her to death by his leather belt. When the accused came out and he was about to lock the door, the neighbours viz., P.Ws. 6, 7 and 10 came and apprehended the accused and he was tied to an electric lamp post. Thereafter the police were informed. The police came and arrested the accused, conducted spot inspection, recorded the statement of witnesses, seized incriminating articles and submitted a final report.

5. The homicidal death of deceased Shobha in the house of the accused at 11.30 AM on 15.2.2007 is not in dispute. P.W. 16 - Dr. Praveen had conducted post mortem examination and submitted a report as per Ex. P.12. The evidence of P.W. 16 and contents of post mortem examination report would reveal that the deceased had suffered following injuries:

"(1) stab wound vertically placed measuring 3 cm x 0.50 cm x bone deep present over the right cheek. 2 cm away from the outer canthus of right eye, 5 cm front of right ear. Margins clean cut.

(2) Stab wound obliquely placed measuring 3.5 cm x 0.5 cm x bone deep. Present over right side chin, 2 cm away from the midline and 4 cm below the right angle of mandible. Margins clean cut.

(3) stab wound vertically placed measuring 1 cm x 0.5 cm x muscle deep present over left cheek 4 cm away from the outer canthus of left eye. Margins clean cut.

(4) Ligature mark: a transverse ligature mark present over front and sides of the neck. interrupted over back and situated above, over and below the thyroid cartilage measuring 19 cm x 8 cm in length situated 4 cm below the right ear lobule and 5 cm below the chin and 6 cm below the left ear lobule.

On dissection of neck: the tissues beneath the ligature mark shows diffuse extravasations of blood into the neck muscles. Hxiod bone and thyroid cartilage intact."

6. The learned counsel for the accused would submit that as per the post mortem examination, the deceased had suffered clean cut stab injuries. The weapon of offence is shown as sickle with blunt edges. In the circumstances, the case of the prosecution that the accused had assaulted the deceased with a sickle cannot be accepted.

7. We have gone through the description of the sickle and also the photographs marked as exhibits. The weapon of offence has a semi-circular blade and a pointed tip. Even if the tip is blunt, if a person is assaulted with the sickle, it could cause stab injuries. In the circumstances, whether the edges of the injuries were clean cut or they were blunt do not assume any significance.

8. The learned counsel for the accused referring to the evidence of P.W. 16 and the contents of the post mortem examination report would submit that in the post mortem examination report, it is shown that the ligature mark was measuring 19 cm in length and 8 cm in breadth. The width of the leather belt seized in the course of investigation measures 3 cms. Therefore, the ligature mark found on the neck of the deceased and the ligature seized during investigation do not correlate. In the circumstances, the prosecution has failed to prove that the accused used his belt as a ligature to strangle the deceased.

9. We have seen the photograph of the belt. In our view the medical officer has committed an error while giving dimension of the ligature mark found on the neck of the deceased. It is difficult to concede that the width of the space between the larynx and upper part of neck was about 8 cms. Therefore, wrong description of the ligature mark found on the deceased would not belie the case of the prosecution that the belt - MO1 was used to strangle the deceased to death.

10. It is true that the independent witnesses viz., P.W. 6 - Parvathamma, P.W. 7 - Rajanna and P.W. 10 -Murthy who were examined to prove that they had seen the accused coming out of the house after committing the offence, have not whole-heartedly supported the case of the prosecution but, their evidence that deceased and accused were living in that house would lend support to the case of prosecution. Their evidence that accused and deceased were residing in that house and homicidal death of deceased took place in the dwelling house of the accused would lend support to the case of prosecution.

11. The evidence of P.Ws. 2, 5 and 9 would prove that the deceased was in the house before the incident took place. The deceased was staying in the house to carry out domestic work. The accused had left the house along with P.W. 2 but he returned back to his house. Therefore, the presence of the accused before the incident is proved. It is also proved that the accused was apprehended immediately after the incident. The accused has contended that he was arrested from his work place by the investigating officer however, accused has not stated which was that place of work and wherefrom he was arrested by the investigating officer.

12. In a decision reported in (2007)1 SCC (Cri) 80, in the case of Trimukh Maroti Kirkan v. State of Maharashtra, the Supreme Court has held:

"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 Vs. State of Himachal Pradesh, it was observed that the fact that

the accused alone was with his wife in the house when she was murdered there with "khokhri" 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 Vs. 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 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were 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 U.P. Vs. 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 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 Tamil Nadu Vs. 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."

13. In the case on hand, the homicidal death of the deceased Shobha had taken place in the dwelling home where the deceased and accused were residing along with P.Ws. 2, 5 and 9. The evidence of witnesses would reveal that just before the commission of the crime, accused and deceased were seen together. The accused was apprehended immediately after the incident. The explanation offered by the accused that he was arrested by the police from the place of his work is as vague as it could be. The accused has not stated the place of his work and also the point of time at which he was arrested by the police. Thus, from the above evidence, prosecution has proved that the accused had the motive to commit the murder of his wife. The accused had assaulted the deceased with a sickle and thereafter strangled her to death. The accused was apprehended soon after the incident. The accused has offered false explanation that he was arrested by the investigating officer from the place of his work.

14. The learned trial Judge on proper appreciation of evidence has convicted the

accused for an offence punishable under Section 302 of IPC.

15. The learned counsel for accused would submit that possibility of accused having assaulted the deceased in a sudden quarrel, cannot be ruled out. Therefore, the acts committed by the accused do not squarely fall under Section 302 of IPC.

16. We are not persuaded to accept the submissions for the following reasons:

"The accused had assaulted the deceased with a sickle and caused bleeding injuries. Thereafter, the accused had strangled the deceased with a belt and caused her death. Therefore, the acts committed by the accused would squarely fall under Section 302 IPC. There are no reasons to interfere with the impugned judgment. The impugned judgment is confirmed. The appeal is dismissed."