
(2016) 03 KAR CK 0049
In the Karnataka High Court
Case No : Criminal Appeal No. 118/2012 (DB)

Shabab	Vs	APPELLANT
The State of Karnataka		RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 374(2)
Penal Code, 1860 (IPC) — Section 302, Section 34, Section 397

Citation : (2016) 03 KAR CK 0049

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Goutham V., Amicus Curiae and K. Srinivasa, Advocate, for the Appellant; Vijaykumar Majage, Addl. SPP, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. The above appeal is filed by accused No. 1-Shabab @ Kabab against the judgment and order dated 28th July 2008 passed by the District and Sessions Judge and Presiding Officer, Fast Track Court No. V, Bangalore Rural District, Bangalore in SC No. 161/2005 convicting the accused for the offences punishable under Sections 302 and 397 of IPC.

2. When the matter was posted for hearing, Sri K.A. Srinivasa, learned Counsel for the appellant remained absent. Hence, this Court had requested Sri Gautham. V., learned Counsel to assist the Court as Amicus Curiae on behalf of the appellant.

3. It is the case of the prosecution that the on 25.7.2004 at about 12 noon at Koramangala Extension Forest, the accused along with split up accused -juvenile offender - C. Murali with common intention, committed the murder of one Vijayamma and snatched gold ornaments from her possession, thereby committed the offences punishable under Sections 302 and 397 r/w 34 of IPC. The accused is convicted for the said offences. Therefore, the present appeal is by the convicted accused.

4. In order to establish its case, the prosecution examined in all 18 witnesses as P.Ws.1to 18, marked the documents Exs. P.1 to 38 as well as the material objects as M.Os.1 to 16. The statement of the accused under Section 313 Cr.P.C. was recorded.

5. The Trial Court on evaluation of the material on record and after hearing the defence, convicted the accused for the aforesaid offences. Hence this appeal by the accused against the judgment and order of conviction.

6. Sri Gautham. V., learned amicus curiae appearing on behalf of the accused/appellant, taking us through the entire material on record contended that, the learned Sessions Judge has grossly erred in convicting the accused/appellant for the offences punishable under Sections 302 and 397 of IPC, without any material on record; there are no eye witnesses to the incident; the version of P.W.I, who is the relative and grand daughter of the deceased is hearsay; that the accused was last seen together with the deceased. He further contended that she was well known to the accused before the incident; that there is no material to show as to for which purpose the deceased had accompanied the accused; that P.W.3 has stated in her evidence that the accused and the deceased were moving on a scooter; the scooter has been recovered but the owner of the scooter has not been traced to produce the R.C. book to show that he was the owner and hence, the link in the chain is missing. There is no direct evidence. The learned Counsel further contended that the weapons recovered at the instance of the accused may show that the accused is guilty, however recovery was made in presence of the police officers. The said material objects might have been planted by the police and one of the witnesses to the mahazar has also turned hostile to the case of the prosecution. Hence he contends that, the judgment and conviction of the accused by the trial Court is erroneous and contrary to the evidence on record and hence, he sought to set aside the impugned judgment and order of conviction.

7. Per contra, Sri Vijayakumar Majage, learned Additional State Public Prosecutor for the State sought to justify the impugned judgment and decree contending that the entire material on record discloses four circumstances viz., the accused and deceased were known to each other; they were last seen together on the scooter by P.W.3; recovery of the weapons like rod (M.O.11) and muchhu (M.O.15), one finger ring of the deceased at the instance of the accused; the FSL report Ex. P.36 clearly indicates the blood containing blood group of the deceased on the mud (M.O.13), shirt of the accused (M.O.16), saree (M.O.1) and on other recovered/seized materials; the murder is for gain. Therefore, he sought to dismiss the appeal.

8. We have given our anxious consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record.

9. Before proceeding further, it would be relevant to note that the depositions of

the witnesses in brief are as under:

"P.W. 1 - Nagesh is one, who has lodged a missing complaint as per Ex. P.38 along with P.W. 14 on noticing the dead body of Vijayamma lying in Koramangala forest area on 29.5.2004 at about 11 a.m.

P.W.2 - Smt. Sujatha is the daughter of the deceased, who has stated that her daughter Mamatha -P.W.3 on 28.5.2004 had called her on telephone stating that her grand-mother was not seen from Thursday; that one Shabab-accused No. 1 S/o. Saifulla on the pretext of purchasing an auto had taken her and after that she had not been seen at all. On the basis of that information, she lodged a missing complaint as per Ex. P.38 on 29.5.2008 at about 6 a.m. to the Devanahalli Police Station about missing of her mother. She has identified the material objects - M.Os.1 to 9.

P.W.3 - Kum. Mamatha is the grand daughter of the deceased, who was residing with the deceased at Devanahalli. She has identified the accused. She has deposed to the effect that the accused used to visit her grand-mother/deceased frequently, and the accused and deceased had gone to purchase an auto to the deceased with a cash of Rs. 2,100/-. She has identified the material objects - M.Os. 1 to 9 and Scooter-M.O.10.

P.W.4 - Kum. Soumya, is an independent witness, who has identified the accused before the Court but she has turned hostile to the case of the prosecution.

P.W.5 - Saleem though has remained hostile to the case of the prosecution, has deposed that he sold the material object - rod - M.O.11 to the accused. The same was used for commission of the offence which is recovered as per Ex. P. 3.

P.W.6 - Sampath is the neighbour of the deceased, who has the witnessed recovery of incriminating articles found over the dead body, sealed and concealed in different places. He has deposed that within two days after commission of offence, the accused was arrested and all the incriminating articles i.e., M.Os. 11 to 15 were recovered at the instance of the accused on the basis of evidence of P.W. 17.

P.W.7 - Gopi is another witness to mahazar Ex. P.5. He has supported the case of the prosecution with regard to seizure of M.Os.8 and 9. According to him, the accused took him to the house of one Haseen Taj - P.W. 16 and one gold chain (M.O.5) and one mati and ole (M.O.7) were recovered from her possession at the instance of the accused. The same was videographed.

P.W.8 - N. Srinivasa is another witness to the mahazar - Ex. P.8 as well as the videograph made by the police. He has supported the case of the prosecution deposing that P.W. 16 - Haseen Taj has produced the material object not belonging to her and it belongs to the deceased which is linking the chain and he has identified his signature as Ex. P. 9(b).

P.W.9 - Ravindra is an independent witness to the Mahazar Ex. P.6 and he has

remained hostile to the case of the prosecution.

P.W. 10 - Uttamachandra is also a witness to the mahazar Ex. P. 12. He has deposed that the accused had pledged M.O.7 - one ole and one mati with him and within 3 to 4 days after pledging of M.O.7, the accused came along with police and M.O.7 was handed over to the police as per the mahazar - Ex. P. 12 and the receipt given to the accused is marked as Ex. P.13. The material object - ring was missing from the dead body as the finger was cut and removed for the purpose of taking the ring.

P.W.11 - Dr. Nagesh is the doctor, who has conducted postmortem on the dead body of the deceased and submitted the post mortem report as Ex. P.14.

P.Ws.12, 13, 14 and 15 have turned hostile to the case of the prosecution.

P.W. 16 - Haseen Taj is none other than the sister of father of the accused. Naturally, she has not supported the case of the prosecution.

P.W. 17-Chandrashekar K., P.W.18 - B.R. Rangashamaiah, and P.W. 19 - Veerabadrappa are the Police Officers, who investigated the case and filed the charge sheet."

10. On careful analysis of the evidence of prosecution witnesses and the documentary evidence, it is clear that there are no eye witnesses to the case of the prosecution and the entire case relies upon the circumstantial evidence. The trial Court, before passing the impugned judgment has seen the video graph recorded by the police at the time of recovery of material objects used for commission of the offence.

11. P.W.3 - who was studying in IX Standard as on the date of his deposition before court, was sufficiently matured to understand the natural events. She has specifically deposed that she saw the accused taking her grandmother on his motorbike on the date of commission of offence; the accused and the deceased were known to each other prior to the incident; that the accused was frequently visiting the house of the deceased and that she also knew the accused; that her father used to send words through the accused to the deceased and accused used to convey the message to her. She has further deposed that on Wednesday, prior to the incident, the accused had taken Rs. 500/- from the deceased assuring her that he would arrange an auto for the deceased to take her to some place. PW3 has identified the material object - M.O.10 the scooter. It is not seriously disputed that P.W.3 saw the accused carrying her grandmother on the scooter as a pillion rider and it was just immediately prior to the death of the deceased. Though lengthy cross-examination has been made to P.W.3, she has not shaken her veracity and there is nothing on record to disbelieve the evidence of P.W.3.

12. The prosecution has produced the video graph. The trial Court after perusing the video graph has recorded a finding that the accused was seen pointing to the rod and machu concealed near the scene of offence, which are used by him for

commission of offence.

13. Counsel for the accused vehemently contended that though it is the case of the prosecution that M.O.11 - rod was used by juvenile accused, it is the accused herein, who is facing the trial, has pointed out the material object. According to him, the material object -M.O.15 was allegedly used by accused facing trial and it was concealed in a different place. But, both the material objects, M.Os.11 and 15 were recovered at the instance of the accused, who is facing the trial. It is an admitted fact that one of those materials was used by the juvenile accused.

14. To connect the accused with the commission of offence, though recovery of articles at the instance of the accused is P.W.17, who arrested the accused and recorded the voluntary statement of accused facing trial as per Ex. P. 31 (relevant para Ex. P. 31(a)). He has deposed that on 30.5.2004, the accused led him, police and panchas to the place where M.Os. 11 and 15 were recovered. The trial Court has clearly observed that the video graph is very clear that it shows as to how the accused, who is facing the trial, picked up those two material objects concealed beneath the ground and produced them. P.W.5 is the person, who is said to have sold M.O.11 (rod) to accused. He has turned hostile to the case of the prosecution and has denied as to what he has stated before the police. However, from the evidence it is clear that, important material object, which is used for the commission of offence, is recovered at the instance of the accused.

15. P.Ws. 6 to 8 are the witnesses for recovery of incriminating articles found over the dead body, sealed and concealed in different places. It is also not in dispute that within two days after commission of offence, the accused was arrested and incriminating articles were seized at the instance of the accused.

16. P.W.7 has supported the case of the prosecution with regard to seizure of material objects -M.Os.8 (pair of chappal) and 9 (kerchief). According to him, the accused took him to the house of one Haseen Taj (relative of the accused) from where one gold chain (M.O.5) and one mati and ole (M.o.7) were recovered from her possession at the instance of the accused.

17. While discussing the evidence on record both oral and documentary, the trial Court has observed that there are some discrepancies in the evidence of the prosecution such as accused wearing unstained clothes on the next day, however, the police claim that the accused was wearing blood stained shirt - M.O.16 after 3 to 4 days. It has also observed that it is unable to understand as to how the accused would wear blood stained clothes and move around the city exhibiting them; therefore, the recovery of M.O.16 in the police station as per the mahazar - Ex. P.7 cannot be believed and is not at all believed; moreover the prosecution has failed to establish that the blood stains found over shirt of the accused (M.O.16) were that of human blood. The said observations made by the learned trial Court is contrary to Ex. P.36 the FSL report dated 7.10.2005 wherein it is clear that the blood stained items - one saree, one blouse, one langa, one shirt,

one iron rod, one choori and blood sample (in a bottle) clearly disclose that they were the blood stains with "B" Group of blood. The same was determined by adopting absorption and elution technique. As per the serology report, the origin of the blood stains are of human origin and of "B" group of blood.

18. By a careful perusal of the evidence of P.Ws. 1 to 18, Exs. P.1 to 38 and material objects M.Os. 1 to 16 it is clear that under the following circumstances, the accused is involved in the commission of offence:

- "i) accused and deceased were known to each other;
- ii) The last seen circumstance i.e., the accused and the deceased went on a scooter just prior to the incident.
- iii) Recovery of weapons like rod used for commission of offence and ring (on which the name of the deceased was found) at the instance of the accused; and
- iv) The blood stains found on the material objects - saree (M.O.1), langa (M.O.2), blouse (M.O.3), rod (M.O.11), knife (M.O.15) and shirt (M.O.16) of the accused, clearly indicate that they are of human origin having "B" group of blood."

19. On consideration of the entire material on record, we conclude that the impugned judgment and order of conviction passed by the trial Court convicting the accused for the offences punishable under Sections 302 and 397 of IPC is just and proper. The accused has not made out any case for interference by this Court while exercising the appellate jurisdiction under Section 374(2) of the Code of Criminal Procedure. Accordingly, we dismiss the appeal.

20. We would like to place on record our appreciation to the learned Amicus Curie for assisting the Court in this regard. Hence, we direct the Office to pay an honorarium of Rs. 10,000/- to him.