

(2014) 12 KAR CK 0058
In the Karnataka High Court
Case No : Criminal Appeal No. 1179/2011

Shiva

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2014) 12 KAR CK 0058

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

Bench : Division Bench

Advocate : N.R. Krishnappa, Advocate for the Appellant; Vijayakumar Majage, HCGP, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (hereinafter referred to as accused) was tried and convicted for offences punishable under Sections 302 and 201 IPC. Therefore, he is before this court.

2. We have heard Sri. N.R. Krishnappa, learned counsel for accused and Sri. Vijayakumar Majage, learned Government Pleader for the State.

3. The accused had married deceased Thimmajamma on 21.03.1988. The deceased Thimmajamma had lost her first husband, therefore, she married the accused. Thereafter, the deceased and accused were staying in Anchekoppalu of Arasikere Taluk. The accused left the deceased and came to Kadur. The accused was working in a Hotel by name "Gokul" at Kadur. P.W.6-Manjunath Rao was the proprietor of that Hotel. The deceased by the conduct of accused was convinced that accused was no more interested in her and had abandoned her. On 05.10.1989, the deceased came to Gokul Hotel and contacted P.W.6-Manjunath Rao. She showed the photograph of accused and told P.W.6 that he is her husband and he had abandoned her. The accused who was working in that Hotel came and scolded the deceased for visiting the Hotel. P.W.6 pacified them and told them to sort out the differences in the room, which P.W.6 had provided to

the accused. On that day, deceased stayed with the accused. On the following day morning also there was a quarrel. Therefore, accused took the deceased. Thereafter, she was never seen alive.

4. On 10.10.1989, a decomposed dead body was found near Railway Bridge of Rangegowdana Koppalu. One S.G. Papanna of Rangegowdana Koppalu lodged the first information stating that dead body of a woman who had been strangled to death was found near railway bridge of Rangegowdana Koppalu. The crime was registered for an offence punishable under Section 302 IPC against unknown persons.

5. P.W.8-Ramegowda, the younger brother of deceased had gone to the native place of deceased. He did not find her. Later, when Kadur Police showed the photograph and clothes of deceased, P.W.8 identified the photograph of hand of deceased by looking at the Tattoo mark. The evidence of P.W.8 regarding identification of dead body of deceased has not been controverted by the accused.

6. The case of prosecution is based upon circumstantial evidence. The prosecution has adduced evidence to prove following circumstances:--

"I Motive

II Homicidal death of Thimmajamma (deceased)

III The deceased was last seen alive in the company of accused.

IV The conduct of accused before and after the incident.

V Recovery of bloodstained stone on the information volunteered by the accused."

7. The accused has not disputed that he had married deceased Thimmajamma on 21.03.1988. It appears, accused had felt that his marriage with deceased Thimmajamma was tentative. The accused had lived with the deceased for a short period in Anchekoppalu village. Thereafter, he left the deceased and came to Kadur. The accused had not disclosed to deceased about his avocation or stay at Kadur. The deceased became suspicious about the conduct of accused. She visited Hotel Gokul at Kadur where the deceased was working.

8. P.W.6-Manjunath Rao was the proprietor of Hotel Gokul. He had accommodated the accused in a room behind the Hotel. The accused after seeing the deceased near the hotel, scolded her. P.W.6 pacified them and told them to sort out the differences. The accused had taken the deceased to the room which was provided to him by P.W.6. They stayed in that room. On the following day, again there was quarrel between the accused and deceased. P.W.6 intervened. The accused took deceased and left the Hotel. Thereafter, the deceased was never seen alive. After two days, accused returned to the Hotel of P.W.6. The accused, after arrested by the police gave information leading to place of incident and recovery of bloodstained stone. These facts have been deposed by P.W.6-Manjunath Rao (Proprietor of Hotel Gokul, Kadur) and P.W.8-Ramegowda (the

younger brother of deceased).

The evidence of other witnesses relates to mahazar drawn on the dead body which was in a decomposed state.

9. From the contents of postmortem examination report, evidence of P.W.14-Dr. Shyamala and photograph of the deceased, we find that deceased had suffered multiple fractures of skull bones which had caused her death. Since the dead body was thrown under the railway bridge, it was eaten by maggots and it was in a decomposed state.

10. In our considered opinion, the finding of learned Sessions Judge that deceased Thimmajamma died due to homicidal death does not call for interference.

11. As already stated, deceased Thimmajamma was a widow. The accused had married her on 21.03.1988 and stayed with her in Anchekoppalu village. Thereafter, he had left the house of deceased and he had come to Kadur and working in Hotel Gokul belonging to P.W.6. He had not informed this matter to the deceased. It is obvious that accused had thought of abandoning the deceased after leading marital life with her for few months. In our opinion, the conduct of accused would demonstrate that accused had felt that his relationship with the deceased was tentative. The accused with the intention of discarding the deceased had come to Kadur and he was working in Hotel Gokul belonging to P.W.6. He had not disclosed his work place to the deceased.

The deceased developed suspicion about the conduct of accused. She came in search of the accused to the Hotel of P.W.6. The accused after seeing the deceased in the Hotel of P.W.6 got annoyed and scolded the deceased. The accused had the intention of eliminating the deceased. Therefore, he showed his ostensible affection with her and stayed with her for a day. On the following day, accused and deceased left the Hotel and thereafter, the deceased was never seen alive. The accused came back to the Hotel of P.W.6 after two days. The accused who had taken the deceased from the Hotel of P.W.6 has not offered explanation as to what happened to the deceased after she left the hotel of P.W.6 in the company of accused. The accused was the husband of deceased. He had taken her from the Hotel of P.W.6 towards the place of incident.

12. In a decision reported in Trimukh Maroti Kirkan Vs. 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. The accused has not offered explanation as to what happened to the deceased. On the other hand, he has tried to establish that deceased had illicit intimacy with one Harish and he might have committed the murder of deceased. In our considered opinion, such an explanation is false.

14. The accused was working in Hotel Gokul belonging to P.W.6 and he had left the Hotel in the company of deceased. He did not return back to work for two days. He came back to Hotel on the third day. The accused has not explained as to where he was staying during that period.

15. From the medical evidence, it is proved that incident of murder had taken place about 4 to 5 days prior to the date of postmortem examination viz., 10.10.1989. After the accused was arrested, he had given voluntary information. The accused had taken the investigation officer and showed the stone.

16. At this juncture, it is relevant to state that deceased was done to death by dropping a stone on her head, the same has resulted in comminuted fractures of skull bones of deceased.

17. Thus to sum up, the prosecution has proved that the accused had married the deceased on 21.03.1988. They lead marital life for few months. Thereafter, the accused left the house of deceased in Anchekoppalu village and he came to Kadur and he was working in a sweet mart, thereafter, he was working in Hotel Gokul of which P.W.6 was the owner. He was staying in a room provided by P.W.6 which was situate behind Gokul Hotel. The accused had not disclosed about the place of work or nature of work to the deceased. It is obvious that accused wanted to get rid off the deceased therefore, he had not bothered to visit the deceased after he came to Kadur. When the deceased came in search of accused to Gokul Hotel, the accused got annoyed and took her to the place of incident after pretending that he was still cordial with the deceased. The accused dropped a size stone on the head of deceased and caused her death. Thereafter, he came back to Gokul Hotel to resume work. The accused has not offered explanation about the deceased who was last seen alive in his company.

18. It is also relevant to notice the conduct of accused during trial. The accused was released on bail. The accused jumped bail on 25.07.1994. Thereafter, the case was transferred to Long Pending Register on 05.08.1999. The accused was arrested and produced before the court on 23.11.2010 (after a period of 16 years). The prosecution had examined PW"s.1 to 3 before the case was transferred to Long Pending Register. After the accused was arrested, he was put on trial. The prosecution has examined the remaining witnesses. The conduct of accused would also demonstrate that he wanted to stay from the process of law till the evidence against him fades away.

19. The learned Sessions Judge on proper appreciation of aforestated proved circumstances has held the accused guilty of offences punishable under Sections 302 and 201 IPC.

20. In view of the above, we do not find any reasons to interfere with the impugned judgment. The appeal is dismissed.