
Vasanth Hublikar Vs State Of Karnataka & Others

Criminal Appeal No. 245 Of 2015

Court: Karnataka High Court At Bengaluru

Date of Decision: May 11, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 452, 453, 454#Indian Penal Code, 1860 " Section 34, 201, 302, 404, 414

Citation: (2023) 05 KAR CK 0025

Hon'ble Judges: Venkatesh Naik T, J

Bench: Single Bench

Advocate: M.R. Hiremathad, K.S. Abhijith

Final Decision: Allowed

Judgement

Venkatesh Naik T, J

1. The appellant, Sri Vasanth Hublikar, has filed the present appeal under Section 454 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.')

praying to set aside the judgment dated 19-11-2014 passed by II Additional District and Sessions Judge, Davanagere, in Sessions Case No.137 of

2012, in so far as rejection of handing over of material object Nos.10 to 12, i.e. two gold chains, one neck gold chain and one ring respectively,

belonging to Smt. Sharadamma, wife of the appellant.

2. Brief facts of the case are that, on 3-6-2009, Smt. Sharadamma (hereinafter referred to as, 'deceased'), wife of the appellant, was murdered and at

the time of committing murder, gold articles belonging to the deceased were stolen. In this regard, the Investigating Officer filed charge-sheet for the

offences punishable under Sections 302, 201, 404 and 414 read with Section 34 of the Indian Penal Code, 1860. The learned Sessions Judge acquitted

the accused persons, but failed to handover material object Nos.10 to 12 to the husband of the deceased, i.e. the appellant.

3. Further, the learned Sessions Judge made observation that there is dispute of title between the appellant and respondent No.2/accused No.4 with

regard to material object Nos.10 to 12 and hence, declined to pass any order.

4. Being aggrieved by the judgment of the learned Sessions Judge in so far as rejection of handing over of material object Nos.10 to 12, the appellant

has preferred this appeal.

5. Learned counsel appearing for the appellant has contended that the learned Sessions Judge has erred in rejecting the application filed by the

appellant without passing any speaking order; none of the persons, or the accused have claimed title of material object Nos.10 to 12; neither the

prosecution-respondent No.1 has objected the application filed by the appellant for handing over material object Nos.10 to 12. Hence, the learned

Sessions Judge is not justified in rejecting the claim of the appellant. He further contended that the learned Sessions Judge assumed the dispute of title

between the appellant and respondent No.2/accused No.4 and no reasons have been assigned while passing the impugned judgment. On these

grounds, he prays to allow the appeal.

6. Learned High Court Government Pleader appearing for the State has contended that the prosecution is not claiming gold, or any other articles

seized in the present case. He has further contended that in the voluntary statement of respondent No.2/accused No.4, i.e. Ex.P.27, he has clearly

disclosed that material object Nos.10 to 12 belongs to the deceased.

7. Though respondent No.2/accused No.4 is served with the notice, he is unrepresented.

8. Heard the learned counsel for the parties and perused the material on record.

9. The point that arises for consideration in this appeal is:

Whether the appellant is entitled for the relief, as sought for in the appeal?

10. Admittedly, the Investigating Officer has filed charge-sheet against accused Nos.1 to 4 for the offences punishable under Sections 302, 201, 404

and 414 read with Section 34 of the Indian Penal Code, 1860. As per the charge-sheet, on 3-6-2009 at about 2:00 p.m., accused Nos.1 to 3 in

furtherance of their common intention, went to the house of the deceased with an intention to extract money from her. On the said day, accused

Nos.1 to 3 caught hold the deceased tightly, accused No.1 closed her mouth and accused No.2 and 3 caught hold her hands and legs and thereafter,

accused No.1 placed a towel inside the mouth of the deceased with an intention to see that, she should not make any hue and cry. When the deceased

fell on the floor, accused No.1 committed murder of the deceased by cutting her neck with the help of a radium cutter knife. After committing the

murder, they have taken away the valuable golden articles of the deceased.

11. In order to establish the case of the prosecution, it examined in all twenty-one witnesses as per P.Ws.1 to 21, marked documents as per Exs.P.1 to

P.31 and material object Nos.1 to 13.

12. The learned Sessions Judge, while acquitting the accused persons, passed the following order:

xxx xxx xxx

Since there is dispute with respect to the title of deceased to the MOs. marked at MO. 10 to 12, so orders for disposal of the said golden

articles is kept pending till the title of deceased to the same is proved by her husband PW.15 Vasanth Hublikar and accused No.4 R.

Jayaram.

13. Under such circumstances, it is necessary to refer Section 454 of the Cr.P.C., which reads as under:

454. Appeal against orders under Section 452 or Section 453.-

(1) Any person aggrieved by an order made by Court under section 452 or section 453, may appeal against it to the Court to which appeals

ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the

order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the

case in which the order referred to in sub-section (1) was made.

14. On perusal of the evidence of the appellant-P.W.15, he has categorically stated that material object Nos.10 to 12 belongs to his wife, Smt.

Sharadamma. In the cross-examination, the learned counsel for respondent No.2/accused No.4 has not suggested any question with regard to claiming

title over material object Nos.10 to 12. Further, a perusal of Ex.P.27-voluntary statement of respondent No.2/accused No.4, wherein he has

categorically stated that material object Nos.10 to 12 belongs to Smt. Sharadamma, wife of the appellant.

15. Admittedly, none of the persons has claimed title over material object Nos.10 to 12, including respondent No.2/accused No.4. When trial is

concluded, the learned Sessions Judge ought to have disposed of material object Nos.10 to 12 under Section 452 of the Cr.P.C. with regard to handing

over of material objects Nos.10 to 12 in favour of the appellant.

16. In the present case, the appellant has made out a case that material object Nos.10 to 12 belongs to his wife, Smt. Sharadamma, and none of the

persons have claimed title over material object Nos.10 to 12 either before this Court, or before the trial Court. Hence, the judgment dated 19-11-2014

passed by II Additional District and Sessions Judge, Davanagere, in Sessions Case No.137 of 2012, in so far as rejection of handing over of material

object Nos.10 to 12 deserves to be set aside.

17. Accordingly, I pass the following

ORDER

i. Criminal Appeal is allowed;

ii. The judgment dated 19-11-2014 passed by II Additional District and Sessions Judge, Davanagere, in Sessions Case No.137 of 2012, in so far as

rejection of handing over of material object Nos.10 to 12 is hereby set aside;

iii. The appellant-Sri Vasanth Hublikar (P.W.15) is entitled to material object Nos.10 to 12; and

iv. The trial Court is directed to handover material object Nos.10 to 12 to the appellant, with proper identification and with a condition that he shall

execute indemnity bond for a sum of Rs.3,00,000/-(Rupees three lakh only) with one surety for the likesum to the satisfaction of the trial Court.