

(2015) 08 KAR CK 0316

Karnataka High Court

Case No: Criminal Appeal No. 856 of 2012

State of Karnataka

APPELLANT

Vs

Krishna U. Setu

RESPONDENT

Date of Decision: Aug. 6, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 302, 304B, 306

Hon'ble Judges: Mohan M. Shantana Goudar, J; Budihal R.B., J

Bench: Division Bench

Advocate: Vijayakumar Majage, Addl. SPP, for the Appellant; M. Narayana Reddy, Advocate for Umesh B.N., Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

Mohan M. Shantana Goudar, J

The judgment and order of acquittal dated 27.03.2012 passed by the Fast Track Court at KGF in Sessions Case No. 185/2011 is called in question in this appeal by the State. By the impugned judgment, the Trial Court has acquitted the accused of the offences punishable under Section 304B, 302 and 201 of IPC.

2. Case of the prosecution in brief is that the respondent-accused is the husband of deceased Asha (aged about 23 years) and father of deceased Suryaprakash (aged about 3 years); their marriage was performed on 11.12.2006 and out of the said wedlock, Suryaprakash was born; after the marriage they lived happily for about 7 to 8 months; thereafter, accused started suspecting fidelity of deceased Asha, consequently, started torturing her both physically and mentally; about one year prior to the incident in question, the parents of the deceased Asha hired a house in their village and allowed the accused alongwith deceased Asha and child Suryaprakash to live in the said house at Pasaladoddi Village, Andhra Pradesh State; however, the harassment of the accused against deceased Asha continued even in

the village of the parents of the deceased; the parents of the deceased had purchased a house spending a sum of Rs. 25,000/- for the purpose of accused and the deceased; the married couple started living in the said house; however, the harassment of the accused continued despite repeated requests by the parents of the deceased, the accused did not mend his conduct; being intolerant of such harassment, deceased Asha had consumed poison and hence she was admitted to Kuppam Medical College Hospital for treatment; parents of the deceased had spent about Rs. 20,000/- for the treatment of the deceased Asha at an earlier point of time; after recovery Smt. Asha was back to the Mardaghatta Village along with the accused and Suryaprakash and started living at Mardaghatta Village i.e., village of the accused; since six months prior to the incident in question, the accused started pressurizing her to bring a sum of Rs. 20,000/- from her parental place, but such demand by the accused was not met by the parents of the deceased.

At about 4.00 p.m. on 22.06.2011, the accused allegedly throttled deceased Asha as well as Suryaprakash by setting ablaze by pouring kerosene. PW-9, relative of the deceased, called the complainant (father of the deceased) and informed about the incident in question at 5.00 p.m. on 22.06.2011 and thereafter, the parents and family members of the deceased came to Mardaghatta Village and saw the dead body; complaint came to be lodged at Mardaghatta Village at 11.15 p.m. on 22.06.2011, which came to be registered in Andersonpet Police Station at 00.15 hours, intervening between 22.06.2011 and 23.06.2011, in Crime No. 53/2011 for the offences punishable under Sections 304B and 302 of IPC. The first information report reached the jurisdiction judicial Magistrate at 2.30 p.m. on 23.06.2011 i.e., within about 2 hours of registration. PW-14, the Deputy Superintendent of Police, has completed the investigation and laid the charge sheet.

3. In order to prove its case, prosecution in all, has examined 16 witnesses and got marked 15 exhibits and 5 material objects. On behalf of the defence 8 exhibits were marked. As aforementioned, the Trial Court has acquitted the accused.

4. Sri Vijayakumar Majage, learned Addl. SPP taking us through the entire material on record submits that absolutely there is no valid reason for coming to such conclusion; the Trial Court has merely narrated the evidence of the witnesses and thereafter, has come to the conclusion abruptly; the medical evidence on record clearly reveals that it is the case of strangulation and thereafter burning with the help of kerosene. Thus, according to him, the accused ought to have been convicted for the offence punishable under Section 302 of IPC.

He further submits that the Trial Court has ignored the settled principle of law that it is for the accused to explain the circumstances in which the incident has taken place, particularly when the incident has taken place in the matrimonial house, wherein accused only was residing along with the deceased. Since no explanation is forthcoming by the accused, the presumption shall be raised against the accused against his innocence. On these among other grounds, he prays for setting aside

the judgment and order of acquittal of the Trial Court.

5. Sri M. Narayana Reddy, learned counsel appearing on behalf of the respondent argued in support of the judgment and order of the Court below. He contends that the Trial Court has rightly acquitted the accused inasmuch as the material is not sufficient to bring home the guilt against the accused; merely because the incident has taken place in the house of the accused, the accused shall not be held liable only on the said ground; the material on record clearly reveals that the deceased Asha has got suicidal tendency and she attempted to commit suicide earlier. Thus, according to him, it is the case of suicide and not the case of homicidal death. On these among other grounds, he prays for dismissal of the appeal.

6. PW-1 is the father of the deceased. He lodged the complaint as per Ex. P-1, he is also the witness for scene of offence panchanama Ex. P-2, he has deposed about the harassment by the accused against Asha. He has also stated in the complaint as well as in his deposition that the deceased attempted to commit suicide about one year prior to the incident since she could not tolerate the ill-treatment by the accused.

PW-2 is the paternal uncle of the deceased, though he has treated as hostile by the Public Prosecutor, his evidence is relevant to show that the accused used to quarrel with deceased Asha frequently prior to the incident in question.

PW-3 is the cousin of the deceased; his evidence is on par with the evidence of PWs-1 and 2 with regard to the quarrel of the accused as well as earlier attempt made by the deceased Asha for committing suicide.

PWs-4, 5, 6 and 7 have turned hostile to the case of the prosecution; their evidence is not much use for the prosecution.

PW-8 is the mother of the deceased, her evidence is almost on par with the evidence of PW-1. PW-8 has also deposed about the accused quarreling with the deceased frequently and about the earlier attempt of deceased to commit suicide.

PW-9 has deposed that the accused was present in front of the house and he talked with PW-9; PW-9 informed the parents of the deceased about the incident in question over phone.

PW-10 is the photographer, who has taken the photos of the dead body.

PW-11 is the Doctor, who conducted autopsy over the dead body of Smt. Asha. The Post Mortem report is at Ex. P-11.

PW-12 is the witness for inquest panchanama Ex. P-13 in respect of Suryaprakash.

PW-13 is another witness for inquest panchanama Ex. P-14 in respect of deceased Asha.

PW-14 is the Investigating Officer, who completed the investigation and laid the charge sheet.

PW-15 is the Doctor, who conducted autopsy over the dead body of Suryaprakash and the Post Mortem report is at Ex. P-15.

PW-16 is the Taluka Executive Magistrate; he conducted inquest panchanama Ex. P-14.

Thus the case of the prosecution mainly depends on the evidence of PWs-1, 2, 3, 8 and 9; almost all other witnesses except official witnesses have turned hostile to the case of the prosecution.

7. As aforementioned, the complaint was lodged by the father of the deceased. He has stated therein that at the time of marriage of the deceased with accused No. 1, he had given certain gold ornaments, both to the bride as well as bridegroom; for about 2 years, the accused was looking after his daughter very well and thereafter, he started torturing deceased Asha on the ground that she is having illicit relationship with another person. Accused used to assault the deceased frequently; though the parents of the deceased advised the accused, the conduct of the accused did not improved, ultimately, the complainant being the father of the deceased, purchased a house for a sum of Rs. 25,000/- in his native place i.e., Pasaladoddi Village in which both the deceased and accused stayed. Despite the same, the ill-treatment of the accused continued on the very ground of suspecting the fidelity of deceased Asha. Since deceased Asha could not tolerate the ill-treatment, she tried to commit suicide by consuming poison. However, her life was saved by the complainant by admitting her to Kuppam Medical College Hospital by spending a sum of Rs. 25,000/-. Subsequently, the deceased and accused shifted their residence to the place of the accused i.e., Mardaghatta Village but the harassment of the accused continued till her death. At 4.00 p.m. on 22.06.2011 both the deceased found dead in the matrimonial house; this material found in Ex. P-1 is fully supported by the evidence of PW-1 complainant. Even PW-1 has deposed in his evidence before the Court almost *pari materia* with the averments made in his complaint.

In the cross-examination, he admits that he had not lodged any complaint against the accused earlier to the incident in question on the ground that the accused was harassing the deceased; no document is furnished by him to show that the victim was admitted to Kuppam Medical College Hospital as mentioned *supra*; nobody in Mardaghatta Village informed him that the accused has committed the offence in question.

8. Looking to the evidence of PW-1, it is clear that the accused had not demanded dowry either from the deceased or from her parents. Admittedly, no dowry demand was made by the accused.

PW-2 is the uncle of the deceased i.e., younger brother of PW-1, he has also deposed about the earlier harassment by the accused against deceased Asha and about Asha consuming poison, because of such quarrel by the accused. The evidence of PW-2 is

useful to the case of the prosecution only to show that the accused used to harass the deceased Asha frequently.

However, in the cross-examination, PW-2 has deposed that he does not know as to what is written in Ex. P-2(scene of offence panchanama).

Be that as it may, the evidence of PW-2 would clearly reveal that the accused used to harass deceased Asha frequently.

9. The evidence of PW-3 is almost similar to the evidence of PW-1. Though in the examination-in-chief, PW-3 has tried to improve the case of the prosecution by deposing that he has seen the incident of setting fire by the accused after pouring kerosene by the accused, in the cross-examination, he admits that he has not stated so before the Police during the course of investigation; Ex. D-2 is marked to that extent.

Thus, the attempt of the prosecution to project PW-3 as eye-witness is frustrated in view of the Ex. D-2, hence, it is clear that PW-3 is not an eye-witness to the incident. However, his evidence would also make it clear that the accused used to torture deceased Asha on the ground that she is having illicit intimacy with other person and that the torture continued for many years.

PW-8 is the mother of the deceased, her evidence is almost on par with the evidence of PW-1. She has also deposed about the quarrel between the accused and the deceased Asha and about accused suspecting fidelity of deceased Asha frequently, and consequently, torture by the accused. She has also deposed that despite the request, the conduct of the accused did not improve.

In the cross-examination, she admits that neither herself nor any family members lodged the complaint against the accused regarding the harassment by the accused prior to the incident in question.

10. Though the prosecution has led the evidence of PW-9 to show that accused was present at the scene of offence and that he talked with PW-9 to the effect that he set deceased ablaze, it is not successful, having regard to answers given by PW-9 in cross-examination. In cross-examination, through PW-9, Exs. D-2 to D-7 are marked from his statements.

Looking to the admissions given in cross-examination by PW-9, it is amply clear that whatever he has deposed in his examination-in-chief, is full of improvements. Therefore, his evidence cannot be believed.

11. From the aforementioned discussion it is evident that there are no eye-witnesses to the incident in question. Consequently, the case rests on the circumstantial evidence. The prosecution is able to prove that the accused used to torture the victim repeatedly by suspecting her fidelity; being intolerant, deceased Asha tried to commit suicide by consuming poison about one year prior to the incident in

question, consequently she was admitted to Kuppam Medical College Hospital wherein, she got treatment. Even thereafter, harassment continued till the date of her death.

12. Undisputedly, the incident has taken within four walls of the matrimonial house of the deceased and accused, wherein they lived. The incident has taken place at 4.00 p.m. Therefore, it is incumbent on the part of the accused to explain the circumstances for the death of two persons which have taken place. The accused has not ventured to give any explanation in his statement recorded under Section 313 of Cr.P.C.

13. However, from the material on record and from the admitted case of the prosecution, it is clear that deceased Asha attempted to commit suicide even at an earlier point of time. Suggestions are made on behalf of the accused to the witnesses that deceased Asha was mentally ill and therefore, she has committed suicide. Such suggestions are denied by the witnesses.

Be that as it may, the fact remains that the deceased had got suicidal tendency and she had tried to commit suicide earlier.

14. In the absence of any other material against the accused, merely on the basis of the presumption, the accused will not be convicted for the offence punishable under Section 302 of IPC. The post-mortem report as per Ex. P-11 relating to deceased Asha reveals that the tongue is protruded and bitten. Blood was found oozing out from mouth and both the eyes. However, the Doctor has mentioned that there are no injury marks on the body including the neck. On dissection the neck there are no hemorrhagic pressure marks, Hyoid bone was intact. Rigor mortis present all over the body.

However, the histopathology report of Pathology Department was obtained at the time of giving final opinion. This report has reached the Doctor, who conducted post-mortem examination after three months. The report of Histopathology Department reveals that there was pressure on the neck which had caused asphyxia leading to death. Thus, the opinion of the doctor, who conducted post-mortem examination, and the opinion of the Histopathology report are contradictory to each other; there are two opinions of the Doctors. On the basis of such conflicting opinions, it cannot be concluded that accused has strangled and thereafter burnt the deceased. Thus, the case under Section 302 of IPC is not made out.

15. So also the case under Section 304B of IPC is not made out inasmuch as there is absolutely no evidence of dowry demand by the accused. However, it is stated in the complaint that the accused demanded Rs. 20,000/- and such demand was not satisfied and therefore, quarrel ensued in that regard.

This portion of the evidence also does not find support from the near relatives on material aspects. Moreover, the demand of Rs. 20,000/- cannot be equated to

demand of dowry. Hence, it is not a case of dowry death. Accordingly, in our considered opinion the accused cannot be convicted for the offence punishable under Section 304B of IPC.

16. However, the material on record clearly proves that the accused shall be convicted for the offence punishable under Section 306 of IPC. The death has occurred within about 5 years of marriage. The deceased Asha and accused lived happily for about 2 years and the child was born subsequently. The accused started torturing the victim Asha on the ground that she is having illicit relationship with the third person and such harassment continued till her death. Hence, it is clear that because of the harassment by the accused, deceased Asha committed suicide by setting herself ablaze and in the said process, the innocent child is also burnt.

17. Having regard to the totality of the facts and circumstances of the case, it is clear that it was the accused who abetted the deceased Asha to commit suicide. Consequently, the accused is liable to be convicted for the offence punishable under Section 306 of IPC.

18. Heard the learned counsel on record regarding imposition of sentence.

Having heard the learned counsel on the question of sentence, following order is made:

- "a. Accused is hereby convicted for the offence punishable under Section 306 of IPC;
- b. The judgment and order of acquittal dated 27.03.2012 passed by the Fast Track Court at KGF in Sessions Case No. 185/2011 acquitting the accused for the offences punishable under Sections 304B, 302, 201 of IPC stands confirmed;
- c. The accused is sentenced to undergo imprisonment for a period of five years for the offence punishable under Section 306 of IPC;
- d. He is entitled to get the benefit of setoff of the period, which he has already undergone in prison in connection with the crime in question;
- e. The Trial Court is directed take steps to secure the accused to suffer the rest of the sentence."

Accordingly, appeal is partly allowed.