

State of Karnataka

Vs

Lakshmanaiah

Criminal Appeal No. 373 of 1981

(Kuldip Singh, K. Ramaswamy JJ)

21.07.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Lakshmanaiah was tried for the murder of his wife Nagarathamma and also for stealing his mother-in-law's property. He was convicted by the trial Court under S. 302, Indian Penal Code and was sentenced to imprisonment for life. He was, however, acquitted of the charge under S. 380, IPC. The appeal filed by Lakshmanaiah against his conviction under S. 302, IPC was allowed by the High Court' and he was acquitted. No appeal against his acquittal under S. 380, I.P.C. was filed before the High Court. This appeal is by the State of Karnataka against the judgment of acquittal rendered by the High Court.

2. Lakshmanaiah along with his wife and two children aged two years and eight months was residing in Mandya City. Gowamma, his mother-in-law, along with her younger daughter Leelavathi, was also residing in the same city at a short distance from his house. The prosecution case is that Lakshmanaiah used to demand money from his mother-in-law through his wife. He had executed two promissory notes ' for Rs. 2,000/- and Rs. 3,000/- in favour of his mother-in-law towards the money he had borrowed from her. He became disgruntled when his motherin law refused to comply with his demands and his wife declined to help him in getting more money from her mother. As a consequence he started abusing, ill-treating and assaulting his wife. Few months before the occurrence Gowamma brought her daughter Nagarathamma and her children to her house. After some time Lakshmanaiah also came to reside at the house of his mother-in-law. It is alleged that on January 12, 1979 Mahadev, a close relation of Gowamma came to their house at about 4 p.m. On that day apart from Lakshmanaiah, his wife and two children, there were Gowamma, Leelavathi and Mahadev present in the house .of Gowamma. According to the prosecution story Lakshmanaiah gave Rs. 30 to his wife which she further gave to her mother for buying clothes for the children so that they could wear the same on the ensuing "Sankranti" festival. Gowamma and Leelavathi went to the market to buy clothes for the children. Thereafter Lakshmanaiah gave Rs. 2/- to Mahadev and sent him to the market to bring "Heralikayi" a sort of vegetable. Thereafter Lakshmanaiah was left alone in the house- with his wife and two small children. When Gowamma and Leelavathi came back from the market they found the two children crying outside the house. On entering the house they did not find anybody inside. On further search they found the deadbody of Nagarathamma in the bathroom, her head ducked in the bucket full of water. After some time Mahadev also came back to the house and learnt about the death of Nagarathamma. Gowamma came to know from the neighbours that her son-in-law went out of the

house some time back. Case was registered with the police. Lakshmanaiah was found absconding. He was, however, arrested on January 16, 1979.

3. There is no direct evidence against the respondent. The prosecution relied on the following circumstances:

1. Motive as disclosed by Kalaraju PW 24, Puttamadappa PW25; Gowramma PW26 and Leelavathi PW 27.
2. Presence of deceased and the respondent in the house of PW 26 on the evening of January 12, 1979 as deposed by Mahadev PW 17, PW 26 and PW 27.
3. After sending PW 17, PW 26 and PW 27 from the house for purchasing clothes and "Heralikayi", the respondent was alone with the deceased along with two small children.
4. The respondent was going towards busstop holding his suit-case in his hand on the evening of January 12, 1979 as seen by Subbaiah PW 14 and corroborated by Chikkaiah PW 20 and Boraiah PW 22.
5. The conduct of the accused in absconding from the evening of January 12, 1979 till he was apprehended on the night of January 16, 1979.

4. On the question of motive PW 25, PW 26 and PW 27 have deposed that the respondent was demanding money from PW 26 through his wife and in that connection he used to maltreat her. PW 24 also corroborated their version. The trial court rightly did not attach much importance to the testimony of PW 24 but relying on the evidence of other three witnesses, came to the conclusion that the respondent used to maltreat and assault his wife because she refused to get money for him from her mother. The High Court has not adverted to this aspect of the prosecution case.

5. The circumstances regarding the presence of the respondent in the house of PW 26 and the act of his sending PW 17, PW 26 and PW 27 to the market for making purchases have been sought to be proved by the testimony of PW 17, PW 26 and PW 27. Gowramma PW 26 has consistently deposed that the respondent was living in her house and on January 12, 1979 he gave Rs. 30/- to her and asked her to purchase clothes for the children to be worn on the festival of "Sankranthi", She further deposed that she left the house along with her daughter PW 27. PW 17 Mahadev has deposed that he went to the market to buy "Heralikayi" at the asking of the respondent. The statements of these three witnesses have been relied upon by the trial court in proving the circumstance that the respondent was alone in the house with his wife and two children. The trial court further relied upon the evidence of these witnesses to prove the circumstance that the respondent manipulated to send the three witnesses out of the house on the pretext of buying clothes and "Heralikayi" from the market. A Bench of Karnataka High Court consisting of M. S. Nesargi and D. R. Vithal Rao, JJ. disbelieved the testimony of PWs. 26 and 27 on the following reasoning:

"In the first instance, it has to be seen whether the accused had managed to send away PWs 26 and 27 to purchase clothes for the children. It is the say of PWs 26 and 27 that the accused gave Rs. 30/- in the hands of the deceased and asked her to request PW 26 to go to the market and purchase clothes for the children. What is stated In Ex. P. I in this behalf is that the deceased told her children to observe Sankranti festival and that the accused had given money in her hands for that purpose

and requested her that she and PW 27 should go and purchase clothes. PW 26 told the deceased that she should go and bring clothes but she said that she was unable to walk that much distance and requested PW 26 and PW 27 themselves to go. This variance leads to an inference that the version of PW 26 and PW 27 that the accused had asked the deceased to spend PW 26 and PW 27 for purchasing clothes is a latter improvement made by PW 26 and PW 27. Therefore, we hold that the prosecution has not succeeded beyond reasonable doubt to establish that the accused had managed to send PW 26 and PW 27 out of the house at that point of time."

6. Since the High Court has found contradiction in the statement of PW 26 and the FIR Exhibit-P. 1 (got recorded by Gowramma) it would be useful to reproduce the relevant part of the FIR:

"My daughter gave me 30 rupees and told me that the son-in-law had asked to buy new clothes for the children and requested me, to go and buy them. I asked her to go and buy the clothes herself but she asked me to go. I went to the cloth shop along with my younger daughter."

7. The relevant part of the statement of P.W. 26 is as under:

"Then my son-in-law gave Rs. 30/- to my daughter and asked her to get cloth for the children through me. I told my daughter that I find it difficult to make purchases and it was better for them to go and purchase the cloth. In turn my daughter told me "I cannot go there please go." I agreed and took my younger daughter Leelavathi along with me to the cloth shop. We returned home at 6.30 in the evening after buying the cloth.'

8. Reading the two quotes above we do not find any contradiction. We are at a loss to understand how the High Court -has found contradiction in the statement of P.W. 26 and the FIR when none exists. There has been total lack of application of mind on the part of the learned Judges of the High Court. Even if there is any contradiction on a non-material point that is no ground to reject the whole of the testimony of the witnesses. The High Court did not make any effort to read the statements of P.W. 26 and P.W. 27 and appreciate the same. We are of the view that the High Court fell into patent error in rejecting the testimony of P.W.26 and 27. The High Court rejected the testimony of P.W. 17 on the ground that the Investigating Officer P.W. 31 stated that Mahadev P.W. 17 had six "Heralikayis" in his hand at the time of recording of his statement, whereas P.W. 29 stated that after the occurrence when he went to the house of P.W. 26 he saw the "Heralikayis" in the hands of P.W. 17. Ultimately three "Heralikayis" were produced in the Court. According to the High Court the discrepancy in regard to the number of "Heralikayis" is sufficient to reject the testimony of P.W. 17. We do not agree with the High Court. The material part of the testimony of P.W. 17 is that he was sent to the market to buy "Heralikayis". Whether the "Heralikayis" were two, three or six was not material. In any case the discrepancy is so minor that it cannot render the testimony of P.W. 17 unworthy of acceptance. The High Court was not justified in rejecting the evidence of P.W. 17 on a flimsy ground.

9. The trial Court relying upon the testimony of P.W. 14, P.W. 20 and P.W. 22 came to the conclusion that the circumstance relied upon by the prosecution to the effect that the respondent was going towards busstand holding suit-case in his hand at about 6.30 p.m. on January 12, 1979 was proved. There is no discussion, not even mention, of this circumstance by the High Court. According to us, the trial Court rightly relied upon this circumstance in connecting the respondent

with the crime. The High Court has also not discussed the circumstance that the respondent was absconding till the night of January 16, 1979 when he was arrested which is surely a link in the chain of circumstances to establish that the respondent alone had committed the offence of murder of his wife. All the above discussed circumstances would prove that the respondent alone had killed his wife Nagarathamma and the prosecution brought home the offence against the respondent beyond any shadow of doubt.

10. We are of the view that the High Court judgment is patently perverse and has to be set aside. We, therefore, allow the appeal, reverse the High Court judgment and set aside the acquittal of the respondent under S. 302, Indian Penal Code. We restore the judgment of the trial Court, convict him under S. 302, I.P.C. and sentence him. to undergo rigorous imprisonment for life. We direct that the respondent Lakshmanalah be taken into custody forthwith to undergo the balance sentence of imprisonment for life. Appeal allowed.

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