State of Karnataka

Vs

Gangadharaiah

(M.K. Mukherjee, D.P. Wadhwa JJ)

27.08.1997

JUDGMENT

MUKHERJEE.J.

1. This appeal by the State of Karnataka is directed against the judgment and order dated August 25, 1987 rendered by the Karnataka High Court in Criminal Appeal No. 544 of 1986, whereby it set aside the conviction and sentence recorded against the respondent under Section 302 I.P.C. by the First Additional City Sessions Judge, Bangalore for committing the murder of his wife, Gangaboramma @ Papachhi and acquitted him.

2.(a) According to the prosecution case, the respondent married the deceased in or about the year 1971 and since then they were living together in his native village Kanakkuppa in the district of Tumkur. While residing there the respondent used to frequently come home drunk and beat and ill-treat the deceased. In expectation that good sense might prevail upon him if he was shifted to some other place, the parents of the deceased brought them to Bangalore and put them up in a house in Vivekananda Block, Palace Guttahalli. Their expectations were however belied as the respondent continued to come home late and under the influence of liquor, quarrel with and beat the deceased.

(b) In the evening of April 19, 1985, the respondent started quarrelling with the deceased and when Chinnathambi (P.W.5), a neighbour of the respondent, tried to intervene the deceased called him names and sent him back. At or about 9 P.M. when the quarrel reached a high pitch the deceased asked Kala (P.W.4), another neighbour, to go and fetch her (deceased's) mother (P.W.6) who lived nearby. Before however P.W.4 and P.W.6 could reach the house of the deceased, the respondent gave a knife blow on her neck which resulted in a severe bleeding injury. On being so assaulted she started running away but fell down in front of the house of Kempaiah who lived nearby. Soon thereafter Kala (P.W.4) and Narasamma (P.W.6) reached there and saw Papachhi lying dead. P.W.6 then went to Vyalikaval Police Station and lodged a report. On that report a case was registered against the respondent and on completion of investigation charge sheet was submitted against him.

3. The respondent pleaded not guilty to the charge levelled against him and contended that his co-brother Guddaiah was liked by his parents-in-law but he was not. In his absence Guddaiah used to visit his house and since the death of his wife they have been living together. After his examination under Section 313 Cr.P.C. the respondent filed a written statement in his defence (Ex. D-5) wherein he took a plea of alibi also stating that on April 16, 1986 he had gone to Kanakuppe village to attend a fair and during his absence Guddaiah had murdered his wife and had taken away her jewels and

other articles.

4. To bring home the charge levelled against the respondent, the prosecution relied upon the ocular version of the incident as given out by Chinnathambi (P.W.5), oral dying declaration made by the deceased before some female neighbours which was over-heard by Narasimhamurthy (P.W.8) and recover, of a knife from the trouser pocket of the appellant at the time of his arrest. Besides, the prosecution laid evidence through Dr. S.B. Patil (P.W.7), who held the post mortem examination upon the deceased, to prove that she met with a homicidal death owing to injury sustained on the neck.

5. On a detailed discussion of the evidence the trial Court found P.Ws. 5 and 8 reliable and as their evidence stood corroborated by the prompt lodging of the FIR by P.W.6 and the recovery of the knife from the respondent convicted him. In appeal the High Court concurred with the finding of the trial Court that the deceased met with a homicidal death but differed with the other findings.

6. We have heard the learned counsel for the parties and gone through the entire record. Our such exercise persuades us to hold that the reasons given by the High Court for setting aside the conviction of the appellant are patently wrong.

7. In view of the concurrent finding of the learned courts below that on the fateful night Papachhi met with a homicidal death owing to an injury inflicted on her neck and the fact that the above finding was not assailed before us, the only question that requires an answer in this appeal is whether the prosecution has succeeded in proving that the respondent was the author of the above crime. To answer this question it will be necessary to first examine the evidence of Chinnathambi (P.W.5), the sole eye witness to the crime.

8. It is not in dispute that P.W.5 is the next door neighbour of the respondent. He testified that in the evening in question, he came back from his place of work around 5.00 P.M. and since then was in his house. At or about 6 P.M. he found that the respondent and his wife had started quarrelling with each other. He then went to their house and asked the respondent to stop the quarrel, to which he replied that as he (P.W.5) was a Tamilian, he should not intervene into their matter. P.W.5 next stated that at or about 10.00 P.M. while he was sitting in front of the door of his house, he saw the respondent, inflicting a knife blow on the neck of the deceased. The deceased then started running away. After going some distance, she fell down on the ground and met with her death. He lastly stated that the respondent then left the house through the rear door. In disbelieving his evidence the High Court first referred to the following answer elicited in his cross-examination: "At 7 P.M. I tried to intervene in the quarrel but they did not allow. Then I went in my house" and observed that if he went inside his house his evidence in the examination-in-chief that he was sitting throughout in front of the door of his house - so as to enable him to see the assault - could not be believed. This observation of the High Court is clearly unsupportable. P.W.5 testified that since evening he was in his house and at or about 10.00 P.M. when he was sitting in front of the door of his house the assault took place. When a person is in his house continuously for three or four hours it is reasonably expected that he would occasionally come out. The High Court was, therefore, not at all justified in inferring from the above noted answer elicited in cross-examination that P.W.5 could not have been an eye witness to the incident. Another reason which weighed with the High Court to discard his evidence was that he admitted in cross-examination that the only thing he saw was that Papachhi was lying on the road, which, according to it, clearly meant that he did not see the incident. The above observation of the High Court is also unsustainable for the above statement of P.W.5 has to be read in the context of his entire testimony and not in isolation. When the evidence of this witness is

read as a whole it is abundantly clear that what P.W.5 intended to say was that after the deceased fell down he saw her dead body only. In other words, the above statement related to a stage after the murder was committed and not prior to that. As P.W.5 lived in the adjacent house he was the most probable and natural witness. That apart, when nothing could be elicited in his cross-examination to indicate that he was inimically deposed towards the respondent or was interested in the cause of the prosecution it must also be said that he was a completely disinterested witness. We are, therefore, of the opinion that the High Court was not at all justified in disbelieving the evidence of P.W.5.

9. The evidence of P.W.5 gets ample support from that of Smt.Kala (P.W.4), whose house also adjoins the house of the respondent. This witness testified that in the night in question, she found the respondent and the deceased quarrelling. Then the deceased called her and told to fetch her (deceased's) mother. She then went to the house of Narasamma (P.W.6), mother of the deceased, and reported that the respondent and the deceased were quarrelling with each other. To that, her mother told P.W.4 that as they frequently quarrelled she would go after she had collected water from the tap. Thereafter, both of them proceeded to the house of the deceased only to find her lying on the ground in front of the house of one Kempaiah with bleeding injury. The evidence of P.W.6 is also in conformity with the above evidence of P.W.4.

10. In our considered view, however, the most important circumstance which goes a long way to prove the prosecution case - and which was not at all considered by the High Court - is that no body other than the respondent could have committed the murder. The evidence on record clearly indicates that at the time the incident took place the only persons inside the house of the respondent were - besides the respondent - the deceased and their two minor children. When this circumstance is considered in the light of the unimpeachable evidence on record that the death took place in course of a quarrel that took place between the respondent and the deceased in their house the only legitimate inference that can be drawn is that nobody else other than the respondent could have committed the murder. Indeed, even if the ocular version of the incident as given out by P.W.5 is left out of the consideration as also the other circumstances brought on record by the prosecution, namely the dying declaration and the recovery of the knife from the possession of the respondent, still then the respondent must be held to be guilty for the murder of his wife. This inference of ours gets further assurance from the fact that the respondent who was seen by all the witnesses in his house at the material time ran away from the house immediately after the death of his wife and he could be apprehended only after three weeks. On the conclusion as above we need not go into the question whether the dying declaration or the other circumstance relied upon by the prosecution stand proved or not and, for that matter, whether the findings of the High Court in this regard are proper.

11. For the reasons aforesaid, we are constrained to say that the High Court has reversed the findings of the trial Court without properly displacing the cogent reasons given by the latter and the High Court did not consider the vital points in the case. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and restore that of the trial Court.