SUPREME COURT OF INDIA

Siddaiah @ Sidda @ Sundi

Vs.

State of Karnataka

(N S Hegde and B P Singh JJ.)

08.08.2002

ORDER

1. The appellant was charged for having committed the murder of his wife on 19th April, 1997 by strangulation. He was tried by the Sessions Judge, Mandya and found guilty for the offence of murder of his wife he was sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-, in default of payment of fine to undergo simple imprisonment for a further period of 15 days for an offence under Section 302 of IPC.

2. His appeal to the High Court having failed the appellant is before us in this appeal.

3. The prosecution case briefly stated is: The deceased Nanjamanni was the third wife of the appellant. It is the prosecution case that there were frequent quarrels between the deceased and the appellant because of the fact that the appellant was given to drinking. On the date of incident it is stated that when PW.2 came at about 2 o'clock in the afternoon to deliver his wedding invitation, he noticed from the outside of the house of the appellant that the appellant and the deceased were quarrelling, therefore, he went, instead of extending invitation to them, to the house of PWs.1 and 3 who were deceased's parents and informed them about the said quarrel. On hearing, it is the case of the prosecution that all PWs.1 to 3 who are also the residents of the same village came near the house of the appellant and found the appellant walking out of his house with a nylon rope. Noticing this act of the appellant the said witnesses went inside the house and found the deceased with a ligature mark on her neck. It is the further case of the prosecution that at about 5 p.m. in the evening the appellant came with a doctor, PW.13 but the said doctor did not go into the house to examine the deceased as he was informed that she had already dead. The prosecution case is also that the appellant had told the said doctor that his wife had hanged herself and he brought her down to the ground and that she was lying unconscious and asked the doctor to revive her. It is the further case of the prosecution that at about 7 p.m., PWs.1 and 2 went to the police station and made an oral statement to the S.I., PW.16 and lodged a complaint in regard to the death of the deceased. Thereafter, PW.16 informed his superior-PW.18, who took up the investigation and visited the scene of the incident and held inquest proceeding-Ex.P.12. It is the case of the prosecution that after the incident in question the appellant had absconded and was arrested on 27th of April, 1997. In support of its case the prosecution has examined PWs.1, 2 and 3 who had witnessed the accused going out of his house immediately after the

incident in question had occurred. The prosecution witnesses 4, 5 and 6 who are neighbours have not supported the prosecution case except to the incident that they had witnessed frequent quarrels between the husband and wife. Prosecution also relied upon the recovery of MO.7, nylon rope at the instance of the appellant, according to the prosecution, which was used in strangulation. The post mortem report and the evidence of the doctor shows that the deceased died homicidal death due to strangulation with rope. On this basis the prosecution tried to establish the case against the appellant. As stated above the learned Sessions Judge accepted the prosecution case and convicted the appellant for the offence under Section 302 IPC.

4. The High Court in appeal practically disbelieved the entire prosecution case. So far as Ex.P.1- complaint is concerned, the High Court has not placed reliance because of the fact that there was a prior intimation given to the police at 3 o'clock pursuant to this the investigation had already started even before Ex.P1 came into existence. Therefore, in view of the fact that the earliest version of the incident was not brought on the record the High Court felt doubtful to accept the contents of Ex.P1. Similarly, in regard to the recovery of MO.7, the High Court rejected the prosecution case holding that on the statement of PW.10 it is clear that the appellant was in police custody at least 3 days itself after the date of incident. Therefore, it is not safe to rely upon the said recovery. In regard to the oral evidence of PW.1 to 3 the High Court has not accepted it except to the extent of quarrel between the husband and wife. In regard to the presence of PWs.1 to 3 at the time of the incident, the High Court observed that it is doubtful whether they were present at that time because of the fact that the relationship between PWs.1 and 3 on the one hand and the appellant on the other was not cordial because of some criminal case which was pending against PW.3. That apart, the High Court pointed out that it was not the natural conduct of PWs.1 to 3 to keep quiet till after 6o'clock before lodging a complaint in spite of the fact that the appellant committed murder of their daughter. Still the High Court found the appellant guilty.

5. We have perused the evidence of PWs.4, 5 and 6. In their evidence no witness says that at the time of incident on that day they had witnessed the accused quarrelled with his wife. In the cross-examination they have denied having witnessed the incident. In this background the High Court relied on the following circumstances to hold the appellant guilty:

(1) accused was a drunkard;

(2) husband and wife were quarrelling frequently;

(3) accused's presence at the time of the incident, admitted by him in his 313 statement;

(4) appellant absconded till the date, 27.4.1997.

6. In our considered opinion these four circumstances are not sufficient to hold the appellant guilty beyond reasonable doubt. First of these circumstances will not be by itself a conclusive proof to hold the appellant guilty of murder of his wife. Even the second

circumstance that the appellant and deceased's frequent quarrel would not be a circumstance which would by itself prove the guilt of the appellant. Herein, we may note the fact that about 15 days before the incident deceased went with appellant and stayed with him till the date of incident itself shows that there was no such discord as to motivate the appellant to murder his wife. Third circumstance, that the accused present at the time of the actual death of the deceased was arrived at by the wrong on a wrong reading of his 313 statement. We have seen 313 statement of the accused in this regard which is written in Kannada language and on translation the same reads thus :

> "Day my wife died I had gone to work. In the afternoon at about 1.30 or 2 o'clock I came to my house for lunch. At that time there were 15 to 20 ladies had gathered in my house. When I saw my wife she was struggling. In her hand there was some iron object. They told me to bring the doctor, therefore, I went to get a doctor. By the time I reached the house we heard the voice of crying, therefore, the doctor told me that since she has already died there is no purpose of my seeing, therefore, he went away. After the doctor went away I stayed at home. At about 3 o'clock the police came to my house and asked me to go with them and I went with them. This is all what happened".

7. From the reading recorded under Section 313 Cr.P.C., we are unable to conclude that the appellant had admitted that he was present at the actual time when the deceased died. If the whole statement is read, it shows that when he came to his house there were 15-20 ladies gathered and the deceased was struggling, therefore, he went to get the doctor. In our opinion, this statement has been understood by the High Court to mean "presence at the time of the incident is very much admitted by him in 313 statement". From the translation extracted hereinabove, we do not think it is correct to infer that the appellant has admitted that he was present at the time of incident. From this statement we think it will be hazardous to base a conviction holding that the appellant was present when the deceased died. Therefore, appellant should explain how she died. If we exclude this circumstance also what is left is the factum of the appellant having absconded from 19.4.1997 to 27.4.1997. Here the prosecution case is that he was arrested on 27.4.1997 whereas from the evidence of PW.10 it is seen that the appellant was in custody three days after the incident itself. This aspect of the matter has been accepted by the High Court itself when it considered the case of the prosecution as to the recovery of MO.7, therefore, we think it is not safe to rely upon this part of the prosecution case also. Even if circumstances 1 and 2 are believed cumulatively even then we think these two circumstances are sufficient to hold the appellant guilty.

8. From the above discussion it is clear that the prosecution has failed to establish each and every link as to material facts in the chain of circumstances relied upon by it and we think it is not safe to base a conviction on such circumstantial evidence.

> For the reasons stated above we allow this appeal and the impugned judgment under appeal is set aside and the accused is directed to be released forthwith if not required in any other case.

9. We must record our appreciation for the service rendered by Shri Shiv Kumar Suri, Advocate as amicus curiae and we direct the payment of a sum of Rs.750/- as fee to him.