

SUPREME COURT OF INDIA

Basavaraja

Vs.

State of Karnataka

Crl.A.No.1 of 2002

(Dr. Arijit Pasayat, V.S. Sirpurkar and G.S. Singhvi JJ.)

22.09.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court setting aside the acquittal of the appellant as was recorded by learned Sessions Judge, Chitradurga in SC No.82 of 1994. The trial court had acquitted the appellants for charge of commission of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC').

2. The prosecution case in a nutshell is as follows:

“On 30.4.1994 at about 1 p.m. the appellant herein had assaulted one Smt. Umadevi (hereinafter referred to as 'deceased') with an intention to cause her death, dragged her inside the cattle shed, where the accused No.2 poured kerosene oil on her person and accused No.1 set fire to her after lighting a match stick as a result of which, the said Smt. Umadevi sustained burn injuries and died. The incident in question took place in the house of the accused No.4. The deceased Smt. Umadevi had been married to the accused No.1. Thus, the accused No.1 is the husband of the deceased Smt. Umadevi. The accused No.3 Sarmangamma had been married to the complainant-PW 1 Virupakshappa. Both the marriages were performed at the same place and at the same place. The accused No.1 was not willing to lead a marital life with the deceased Smt. Umadevi on the ground that she was ugly to look at and was of unsound mind. Likewise, the accused No.3 Sarmangamma was also not willing to live with the complainant PW. 1 practically on the same grounds. Many panchayats were held in this connection to bring cordiality between the above said two spouses. The accused Nos. 1 & 2 are the brothers and accused No.3 is their sister. The accused Nos.4 & 5 are the parents of the accused Nos.1 to 3. The deceased Smt. Umadevi was the youngest sister of PW.2. Both PW1 and A1 had refused to stay with their respective spouses and even police had been approached and the PSI of the local police station had persuaded them to settle the matter but nothing useful came out. All these

accused persons were residing together in the same house. The deceased Umadevi had been telling to PW-3 Jayamma, the wife of PW.2, whenever she used to go to the house of Umadevi, that she was being ill-treated and assaulted by the accused on the ground that she was ugly to look at and was also of unsound mind. The deceased was also telling to her that she is not being provided with proper and adequate food in the house of her in laws. On the date of the incident, both PWs. 2 & 3 had gone to the house of the deceased at about 11 a.m. in the morning and when they tried to enter into the house, they were prevented from doing so. The accused persons A4 and A5 pushed them out of the house and the A1 and A3 had assaulted the deceased who was crying for help from inside the house. The accused No.5 had bolted the front door from inside. Thereafter both PWs.2 & 3 went near the cattle shed, on the northern side of the house and saw what was going on inside the house. The accused No. 3 told her brother accused No.2 to finish off the deceased and accordingly, the accused No.2 poured kerosene oil and the accused No.1 set fire to her. The accused Nos.4 & 5 had abetted the other accused to finish off the deceased. The incident in question happened in the cattle shed of the house of the accused persons. The said house of the accused persons where the incident in question took place, was located in a very isolated place, away from the village habitation. The cattle shed was filled with smoke and the deceased fell on the ground after sustaining the burn injuries. On seeing this ghastly incident both PWs.2 & 3 went into the village habitation and requested the villagers to come to the house of the accused persons, but no one obliged them by saying that their relationship with the villagers is not good and cordial. Thereafter, both PWs.2 & 3 returned back to their village at about 10 p.m. and informed the said occurrence to all their relatives. Thereafter, the complainant PW-1 along with few others visited the house of the accused persons by traveling in a tractor belonging to one Panchaiah. The dead body of the deceased Umadevi was lying in the cattle shed. It was completely charred. The inquest proceedings on the dead body of the deceased were held by the Tehsildar. The cattle shed, where the incident in question had occurred, formed part of the house belonging to the accused persons and they were in possession thereof.

The trial court found that the evidence of the Doctor PW 7 belied the version of PWs. 2 & 3. There was considerable delay in lodging the FIR and the evidence of PWs. 2 & 3 was not reliable and cogent. Accordingly as noted above acquittal was directed. In appeal filed by the State, the High Court felt that the evidence of PW 7 did not rule out the veracity of the evidence of PWs. 2 & 3. There was no serious contradiction between the evidence of PWs. 2 & 3 on one hand and PW 7 on the other. There was no unexplained delay in lodging the FIR. The occurrence took place at 11 AM on 30.4.1994 and the FIR was lodged at 11.45 PM as spoken by PWs. 2 & 3. Though PW 8 in his cross examination disclosed that the father of the deceased stated that he had come to know about the death at 6 PM as to why no complaint was lodged immediately, the High Court did not attach much importance to the said evidence. Accordingly, the trial court was not justified in directing the acquittal.”

3. Learned counsel for the appellant submitted that the High Court erroneously held that the evidence of PW 7 was not in serious contradiction with the evidence of PWs. 2 & 3. It was pointed out that the charge as framed indicated that the cause of death was due to burning after pouring kerosene, but the evidence of PW 7 indicated that the death was due to asphyxia as a result of smothering. In the examination under Section 313 of the *Code of Criminal Procedure, 1973* (in short the `Code') question nos. 61 and 62 relate to the cause of death being due to burning and the alleged involvement of the appellant in the same.

4. It was also submitted that the parameters relating to appeal against acquittal have not been kept in view by the High Court.

5. In support of the appeal learned counsel for the respondent-State submitted that the ocular evidence has to get primacy over other medical evidence. Merely because some hypothetical opinion was given by the PW 7, that cannot be a ground to doubt the veracity of the evidence of PWs 2 & 3. It was also submitted that there was no delay in lodging the FIR.

6. The charges framed against the appellant read as follows:

"That you accused Nos. 1 to 5 in furtherance of common intention of you all, on 30.4.1994 at about 1.00 p.m. near the house of you A1 malige Basappa situated in Sasalu village of Holalkere Taluk, assaulted Umadevi with the intention of causing her death and dragged T. Umadevi inside the cattle shed and you accused No. 2 Prabhudev poured kerosene oil on her and you accused No.1 set fire to her with the help of match stick and on account of which she sustained burn injuries and died and as such you all accused persons have committed the offence of murder punishable under Section 302 read with Section 34 IPC"

7. In the examination under Section 313 of the Code the following questions were put to the accused persons:

"61. He has further stated that the said injuries were post mortem in nature and bloody forth was oozing from both the nostrils and tongue was partially protruding and cheeks clenched and swollen and teeth were intact and rigor mortis was well established all over the body. What have you got to say?"

62. He has further stated that the death was on account of asphyxia as a result of smothering and the death was about 6 and 36 hours prior to the conducting of post mortem examination and that Ex.P6 is the post mortem report in this behalf. What have you got to say?"

8. In the post-mortem report also the Dr. PW 7 has categorically stated that the death was due to smothering. The evidence of the Doctor clearly shows that the burns were not anti-mortem in nature and were post mortem. This part of the evidence of the doctor has not been shaken. In fact, we are dismayed to find that the charges were framed on totally unfounded premises and even in the examination under Section 313 of the Code, with reference to the

evidence of PW 7 it was stated that the death was due to smothering. If that to be so, the question of the accused persons having caused the death by burning does not arise. Such casual framing of charge and examination under Section 313 of the Code is a disturbing feature.

9. In view of what has been stated, the inevitable result is that the appeal has to succeed, the conviction as recorded by the High Court is set aside.

10. The bail bonds of the accused persons for grant of bail in terms of order dated 22.4.2002 stands discharged.