

SUPREME COURT OF INDIA

K.N.Narendranath

Vs.

State of Karnataka

Crl.A.No.965 of 2009

(Dr. Arijit Pasayat J.)

08.05.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court upholding his conviction for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC'). The appellant was found guilty by III Additional Sessions Judge, Tumkur in Sessions Case No.55/1999.
3. Background facts in a nutshell are as follows:

“Kumadavathi (hereinafter referred to as the `deceased') daughter of PW3 was married to the accused. Accused had allegedly developed intimacy with Kalavathi (PW11) and on 05.12.1998 at about.8 p.m., in the house of the accused at Sadara Street, Koratagere Town, the accused strangled the neck and caused death of his wife - Kumadavathi and thereby, committed the offence punishable under Section 302 IPC. Mother of deceased (PW3) and her father (CW1) were informed about the death of their daughter and they went to the house of the accused and found that their daughter was dead. CW1, the father of Kumadavathi filed complaint as per Ex.P2. The said complaint was registered in U.D.R. No. 40/98. Inquest was conducted as per Ex.P1. Dead body of Kumadavathi was sent for postmortem examination to PW6, who conducted the postmortem examination and issued postmortem report as per Ex. P3. PW6 also furnished opinion as per Ex. P3(c) stating that death was due to asphyxia as a result of manual strangulation. After completion of investigation, charge sheet was filed against the accused. The accused pleaded not guilty and claimed to be tried. The prosecution examined PWs. 1 to 17 and got marked Exs. P1 to P11 and M.O. Nos. 1 to 4. Exs. D1 to D4 were got marked in the evidence of PWs. 3 and 13. Statement of the accused under Section 313 of the *Code of Criminal Procedure, 1973* (in short the `Code') was recorded. The defence of the accused is

that his wife Kumadavathi fell down from the stair case and died. The accused did not lead any defence evidence. The trial Court after considering the contentions of the learned Public Prosecutor and the learned counsel appearing for the accused and appreciating the oral and documentary evidence on record adduced by the prosecution, held that Kumadavathi suffered homicidal death by manual strangulation by the accused and the prosecution has proved beyond reasonable doubt that the accused appellant has committed the offence punishable under Section 302 IPC., and sentenced him as aforesaid by the impugned judgment of conviction dated 07.12.2004 and order of sentence dated 09.12.2004. Trial Court primarily relied on purported extra judicial confession made by the accused. The High Court did not accept the stand of the accused that the deceased sustained injuries due to fall from the stair case as probalibilized by the material on record. Stand of the accused was that the so called extra judicial confession made by the accused before PWs. 10 and 13 is not reliable and truthful. PW-13 was examined to prove the so called extra judicial confession. According to the prosecution accused had made the extra judicial confession. The High Court held that the extra judicial confession stated to have been made does not prove the prosecution case. PW-13 had stated in his statement before the police that he had gone to see the dead body of the deceased after her death and the accused informed him that the deceased fell down from the staircase and died having sustained injury. It was also stated in his cross examination that the accused told him about the incident after about two months. The accused was in custody from 5.3.1999 to 1.9.1999 and, therefore, it was highly improbable that accused informed PW-13 that his wife fell down form the staircase and died. But the High Court relied on the evidence of PW-13 to the extent that it was helpful to the prosecution to show that the accused was in love with Kalavathi PW- 11. Interestingly, PW-10 told the police about the extra judicial confession.”

4. Learned counsel for the appellant re-iterated the stand taken before the High Court.
5. Learned counsel for the respondent-State on the other hand supported the judgment.
6. This case primarily rested on the so called extra judicial confession which has been disbelieved by the High Court. The evidence of PW-10 has been referred to by the High Court. It is not on record as to who called PW- 10 to the spot of occurrence. No witness has spoken about PW-10 being called. On the contrary, Dr. Mallikarjuna has categorically stated in his examination that he told the investigating officer that the lady had died when he had examined her. After Dr. Mallikarjuna had already declared the deceased to be dead, there was no necessity for calling PW-10.
7. Above being the position, it would be unsafe to convict the accused appellant. His conviction is therefore set aside. He shall be released forthwith unless to be required in custody in connection with any other case.
8. The appeal is allowed.