SUPREME COURT OF INDIA

Ramesh Vithal Patil

Vs.

State of Karnataka

Crl.A.No.56 of 2006

(Ranjana Prakash Desai and Madan B. Lokur JJ.)

31.03.2014

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellant-accused no.1 was tried along with five others (original accused nos. 2 to 6 respectively) by the III Additional Sessions Judge, Belgaum for offences punishable under Sections 498-A, 304-B read with Section 34 of the IPC.

2. Accused no.1 is the husband of deceased Hira alias Vaishali ('the deceased', for convenience). Accused no. 2 is the father of the appellant, accused nos. 3 & 4 are the brothers of the appellant, accused no. 5 is the wife of accused no. 2 and accused no. 6 is the wife of accused no. 3.

3. The appellant was married to the deceased on 27/06/1985. According to the prosecution, the appellant and other accused subjected the deceased to cruelty in their house at Kasaba Nandgad, Taluka Khanapur, District Belgaum. They asked her to bring five tolas of gold and Rs.10,000/- from her parents. On account of this unbearable cruelty, on 10/12/1987 the deceased committed suicide by jumping in the Malaprabha River near Khanapur along with her ten month old daughter Jyoti.

4. In support of its case the prosecution examined 11 witnesses. The important witnesses who unfolded the prosecution story are PW1-Bhavakanna and PW2-Balram,

elder brothers of the deceased and PW5-Babita, wife of PW2. PW4-Dr. Ishwarappa, the Medical Officer attached to District Civil Hospital at Belgaum, conducted post-mortem examination of the deceased. He opined that death of the deceased was due to asphyxia on account of drowning. The accused pleaded not guilty to the charge.

5. The trial court came to a conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the accused. The trial court observed that while in court PW1 and PW2 stated that all the accused were harassing the deceased and asking her to bring 5 tolas of gold and cash of Rs. 10,000/- from her parents; that the deceased was made to work in the house for the whole day; that the deceased was not given food to eat and that on her last visit to her maternal house the deceased had told her brothers that if the demand of her in-laws is not met she would be murdered, the FIR lodged by PW1 does not contain these allegations. In the FIR there are vague allegations about the demand. PW5, the wife of PW2 has not referred to the specific amount and quantum of gold allegedly demanded by the in-laws of the deceased. She has not even referred to the last visit of the deceased. The trial court was also of the view that since the accused belonged to a rich family it is inconceivable that they would make a demand for money and gold. The trial court was further of the view that since the evidence on record established that the deceased was allowed to visit her maternal home and that the appellant and his father visited her maternal home, the allegation that the deceased was ill-treated in the house is not true. The trial court in the circumstances held that demand was not proved and that it cannot be said that the deceased committed suicide because she was ill-treated by the accused.

6. Being aggrieved by the judgment of acquittal, the State of Karnataka preferred an appeal before the Karnataka High Court. The High Court held that PW2 had stated in his evidence that the appellant and the deceased were staying in another house belonging to the accused. The evidence also shows that effort was made by PWs.1 and 2 to open that house to find out whether the deceased was in that house. The High Court observed that therefore the possibility of the deceased staying with the appellant in that house at least for major part of the day cannot be ruled out and hence though the other accused can be given benefit of doubt, the appellant cannot escape the liability. The High Court observed that it is more so because the appellant kept mum after the disappearance of the deceased for a long time. The High Court relied upon evidence of PWs.1, 2 & 5 and by the impugned judgment partly allowed the appeal. The acquittal of the appellant of the offence under Section 304-B of the IPC was set

aside. Instead he was convicted for offence punishable under Section 306 of the IPC and sentenced to undergo rigorous imprisonment for three years. The acquittal of the other accused was confirmed. The High Court held that they must be given benefit of doubt. Being aggrieved by his conviction, the appellant has approached this Court.

7. We have heard at some length Mr. P. Vishwanath Shetty, learned counsel appearing for the appellant. He submitted that the High Court erred in disturbing the acquittal of the appellant. He submitted that the trial court's view was a reasonably possible view. It was not a perverse view warranting interference from the High Court. In support of this submission counsel relied on Shyamal Saha & Anr. v. State of West Bengal[1]. Counsel submitted that all the witnesses examined by the prosecution are interested witnesses and, therefore, the High Court ought not to have placed reliance on them. Their evidence is not corroborated by the other evidence on record. Counsel submitted that there is nothing on record to suggest that the appellant demanded dowry, in fact, the High Court has acquitted the appellant of the offence punishable under Section 304-B of the IPC. There is no cogent evidence to establish that the deceased was subjected to cruelty by the appellant which led her to commit suicide. Counsel pointed out that the evidence of PW1, brother of the deceased, shows that the deceased was regularly visiting her parents' house. Therefore, cruelty or ill-treatment is not established. Counsel submitted that there is a vague allegation of demand for money and gold ornaments in the FIR. The demand is not specified in the complaint. Whereas PW1 and PW2 the brothers of the deceased have tried to give particulars of the demand PW5, the wife of PW2, has omitted to do so. The prosecution witnesses have improved their version in court. There is no evidence to establish that the appellant abetted the suicide of the deceased. In the circumstances, the impugned order deserves to be set aside.

8. Mr. K. Parameshwar, learned counsel for the State of Karnataka, on the other hand, submitted that the prosecution has proved it's case beyond reasonable doubt. The brothers and sister-in-law of the deceased have clearly stated that she was subjected to cruelty. Moreover, the deceased was staying in the matrimonial house. She was in the custody of the appellant. The bodies of the deceased and her daughter Jyoti were found in Malaprabha river near Khanapur. It was incumbent upon the appellant to explain how the deceased and her daughter Jyoti died in suspicious circumstances. Counsel submitted that Section 106 of the Indian Evidence Act, 1872 ('Evidence Act', for short) is clearly attracted to this case. In support of his submissions counsel relied

on K. Prema S. Rao & Anr. v. Yadla Srinivasa Rao & Ors.[2], Thanu Ram v. State of Madhya Pradesh[3], Narwinder Singh v. State of Punjab[4], Rakhal Devnath v. State of West of Bengal[5], Gurnaib Singh v. State of Punjab[6] and Babu @ Balasubramaniam & Anr. v. State of Tamil Nadu[7].

9. Since we are dealing with a case involving reversal of acquittal order by the High Court, it is necessary to see the principles laid down by this Court in that behalf. After adverting to several judgments of this court in Ganpat v. State of Haryana & Ors.[8], this Court reformulated the principles as under:

> "(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.
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> (ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.
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> (iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.
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> (iv) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.
>
> (v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. (Vide Madan Lal v. State of J&K(1997) 7 SCC 677, Ghurey Lal v. State of U.P. (2008) 10 SCC 450, Chandra Mohan Tiwari v. State of M.P. (1992) 2 SCC 105 and Jaswant Singh v. State of Haryana(2000) 4 SCC 484."

10. In Shyamal Saha this Court referred to Ganpat and observed that it is the obligation of the High Court to consider and identify the error in the decision of the trial court and then decide whether the error is gross enough to warrant interference.

The High Court is not expected merely to substitute its opinion for that of the trial court because it has power to do so – it has to correct an error of law or fact significant enough to necessitate overturning the verdict of the trial court. This Court further observed that the High Court has to exercise its discretion keeping in mind the acquittal of the accused and the rights of the victim (who may or may not be before it). We shall proceed to deal with this case keeping these principles in mind.

11. There is no dispute about the fact that the bodies of the deceased and her daughter Jyoti were recovered from Malaprabha river near Khanapur on 11/12/1987. In the complaint dated 11/12/1987 PW1 Bhavakanna stated that the deceased was treated well in her matrimonial house for 4 to 5 months after her marriage, thereafter, she was subjected to harassment. She was asked to bring money and gold from her parents for the business of her husband. It is further stated that during her visits to her parents' house the deceased used to complain about the harassment meted out to her. They used to console her and send her back. It is further stated that about 15 days back when the deceased had visited their house she complained about the demand for money and gold and the harassment meted out to her. The complaint further goes on to say that on 10/12/1987 the appellant came to the village and told them that the deceased had left their house along with her daughter Jyoti. The appellant enquired whether she was in their house. All of them rushed to the appellant's house where they were ill- treated and abused. They started searching for the deceased. They found the dead bodies of the deceased and her daughter Jyoti lying in Malaprabha river. The complaint ends with the apprehension expressed by PW1 that there was some foul-play.

12. In his evidence PW1-Bhavakanna reiterated the same story. He stated that during marriage they had given 2½ tolas gold Mangalsutra and 2½ tolas gold Laxmihar to the deceased. About 4 to 5 months after her marriage, the appellant and the members of his family started harassing her. They asked her to get 5 tolas of gold and cash of Rs.10,000/- from her parents house. They were making the deceased work for the whole day. They were not giving her food. She used to convey her woes to her brothers whenever she visited their house. Even after birth of the child, the appellant continued to ill-treat her. Fifteen days prior to her death, the deceased had visited her parents house and told them that if 5 tolas of gold and cash of Rs.10,000/- were not given to her in-laws she would be murdered. She refused to go to her matrimonial house, but, they told her that after the draught is over they may think of meeting the

demands of the appellant. After consoling her they took her to her matrimonial house and left her there. On 10/12/1987 the appellant came to their house and asked them whether the deceased had come there. The appellant told them that she had left the house with the child on 9/12/1987. Thereafter, he along with his brother PW2-Balram went to Nandgad. They searched for the deceased but could not find her. On 11/12/1987 they again went in search of the deceased and her daughter Jyoti. They found their bodies lying in Malaprabha river. PW1 then, went to Khanapur police station and lodged the FIR, Ex.P-1.

13. In the cross-examination PW1 has stuck to the same story. This witness comes across as a truthful witness. He admitted that the appellant is a leading merchant in Nandgad. He admitted that for her first delivery the deceased came to their house and after the child was born the appellant and her father-in-law came to their house to see the child. He also admitted that the deceased had been to their house to see PW-2 Balram, who was sick. It is argued that the evidence of this witness shows that the relations between both the families were cordial. It is submitted that the appellant is a rich merchant and, therefore, he could not have made any demand for money. It is not possible for us to accept this submission. It would be wrong to say that the poor are avaricious and not the rich. Many a murder are committed by the rich out of greed for money. Besides, merely because the appellant and his father visited the maternal house of the deceased it cannot be presumed that both the families maintained cordial relationship and, therefore, the deceased must not have been ill- treated. The trial court has wrongly come to this conclusion, despite there being cogent evidence on record to establish the demand. PW1 Bhavakanna's evidence establishes this case of the prosecution. His evidence becomes more acceptable because of the honesty displayed by him. There is no reason to disbelieve his statement that whenever the deceased used to come to their house she used to tell them about the demand for money and gold and the harassment meted out to her in her matrimonial home in that connection. It is argued that, whereas in the evidence, PW1 stated that the appellant made demand for 5 tolas of gold and cash of Rs.10,000/-, it is not so mentioned in the complaint. This is hardly a significant omission. The fact that the deceased was asked to bring money and gold from her parents' house and she was harassed for that is stated in the complaint. The specific details of the demand are given in the evidence. PW1 must have been in a great shock when he saw the dead bodies of his sister and niece lying in Malprabha river. He could not have therefore given details of the demand made by the appellant and other particulars of harassment to which the

deceased was subjected, in his complaint. In any case, it cannot be said that he has completely omitted to say anything about the demand. The trial court wrongly gave importance to absence of such details in the FIR. It is not necessary for us to repeat that the FIR is not expected to be a treatise.

14. PW2-Balram, the other brother of the deceased, has supported PW1- Bhavakanna. PW2 explained why their family had not disclosed the ill- treatment meted out to the deceased to anyone. He stated that they felt that if these facts are disclosed to people, the ill-treatment of the deceased may increase. This reaction is normal and the fear appears to be genuine. He also stated that the deceased was not given food in the house and she was made to work for the whole day. Both PW1 and PW2 stated that the deceased was asked to bring money and gold from her parents' house and was given dire threats. Both these witnesses have been cross-examined at length. The cross-examiner could not make any dent in their evidence. PW5 Babita wife of PW2 Balram has supported PW1 and PW2. PW5's evidence cannot be overlooked because she has not verbatim repeated the version of PW1 and PW2. Being wife of PW2 her presence in the house is natural and her evidence can be safely relied upon. In our opinion, on the basis of evidence of PWs 1, 2 and 5, the High Court has rightly concluded that the deceased committed suicide and the suicide was abetted by the appellant.

15. It is true that the appellant was not charged under Section 306 of the IPC. The charge was under Section 304-B of the IPC. It was, however, perfectly legal for the High Court to convict him for offence punishable under Section 306 of the IPC. In this connection, we may usefully refer to Narwinder Singh. In that case the accused was charged under Section 304-B of the IPC. The death had occurred within seven years of the marriage. The trial court convicted the accused for an offence punishable under Section 304-B of the IPC. Upon reconsideration of the entire evidence, the High Court came to the conclusion that the deceased had not committed suicide on account of demand for dowry, but, due to harassment caused by the husband in particular. The High Court acquitted the parents of the accused and converted the conviction of the accused from one under Section 304-B of the IPC to Section 306 of the IPC. This Court dismissed the appeal filed by the accused. It was observed that it is a settled proposition of law that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter

would fall within the purview of Sections 221(1) and (2) of the Code of Criminal Procedure, 1973. The relevant observations of this Court could be quoted:

> "21. The High Court upon meticulous scrutiny of the entire evidence on record rightly concluded that there was no evidence to indicate the commission of offence under Section 304-B IPC. It was also observed that the deceased had committed suicide due to harassment meted out to her by the appellant but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands. Thus, cruelty or harassment sans any dowry demands which drives the wife to commit suicide attracts the offence of "abetment of suicide" under Section 306 IPC and not Section 304-B IPC which defines the offence and punishment for "dowry death"."

16. Moreover, admittedly the deceased committed suicide within a period of seven years from the date of her marriage. Section 113-A of the Evidence Act is, therefore, clearly attracted to this case. Presumption contemplated therein must spring in action. This provision was introduced by Criminal Law Second Amendment Act, 1983 to resolve the difficulty of proof where married women are forced to commit suicide but incriminating evidence is difficult to get as it is usually available within the four walls of the matrimonial home. Section 113-A reads as under:

> "113A- Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
>
> Explanation.-- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)."
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> In this case the prosecution has led evidence to establish cruelty or harassment caused to the deceased, which is rightly taken into account by the High Court. Thus, the foundation for the presumption exists. The appellant, however, has led

no evidence to rebut the presumption. Therefore, it can be safely concluded in the facts of this case that the appellant abetted the suicide of the deceased.

17. There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them. As to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the court to draw a different inference. The burden of proving those facts was on the appellant as per Section 106 of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him (See: Tulshiram Sahadu Suryawanshi & Anr. v. State of Maharashtra[9] and Babu alias Balasubramaniam)

18. In our opinion, the trial court erred in giving undue importance to trivial matters. The trial court missed the core of the prosecution case which is established by the straightforward and honest evidence of the brothers of the deceased. The trial court should have seen that when a woman is harassed and ill-treated in her matrimonial house, it is not possible to get independent witnesses to depose about the harassment. No doubt, the brothers of the deceased are interested witnesses. It is, therefore, necessary to scrutinize their evidence carefully. Keeping this caution in mind if the evidence of the brothers is examined, the conclusion is irresistible that it inspires confidence and bears out the prosecution case. The trial court should have taken note of the callous and indifferent attitude of the appellant. It should have taken into account the fact that there is nothing on record to suggest that the deceased was schizophrenic or was insane. That is not even the case of the defence. It is also not the case of the defence that the death was accidental. When a married woman jumps in a river along with her small child that too within seven years of marriage and when the prosecution leads reliable evidence to establish harassment caused to her in her

matrimonial house in connection with demand of money for her husband's business and the accused-husband leads no evidence to prove to the contrary the logical and legal conclusion that must follow is that she committed suicide and her suicide was abetted by her husband.

19. Undoubtedly, the High Court should not interfere with an order of acquittal because it has power to do so and just because some other view is also possible. The High Court must locate some gross error of law or fact and must feel impelled to interfere with the order of acquittal to rectify it. The purpose behind such interference is obviously to prevent miscarriage of justice. If in a given case the High Court feels that the trial court could never have taken the view it has taken and that it is a perverse view which may result in gross miscarriage of justice, it is not only its legal obligation but duty to interfere with such order of acquittal.

20. Applying the above principles, we have no hesitation in recording that the trial court's order acquitting the appellant is replete with gross errors of facts resulting in miscarriage of justice. The High Court has rightly held that the other members of the appellant's family can be given benefit of doubt, but the appellant cannot escape the liability. We concur with the High Court. We see no reason to interfere with the impugned judgment of the High Court. The appeal is, therefore, dismissed. The appellant is on bail. He is directed to surrender forthwith. His bail bond stands cancelled.

[1] 2014 (2) SCALE 690
[2] (2003) 1 SCC 217
[3] (2010) 10 SCC 353
[4] (2011) 2 SCC 47
[5] (2012) 11 SCC 347
[6] (2013) 7 SCC 108
[7] (2013) 8 SCC 60
[8] (2010) 12 SCC 59
[9] (2012) 10 SCC 373