

Kadari Gopa Vs. State of A.P., Rep., by Its Public Prose

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Court : Andhra Pradesh

Decided On : Sep-13-2013

Judge : The Hon'Ble the Chief Justice Sri Kalyan Jyoti Sengupta and

Appellant : Kadari Gopa

Respondent : State of A.P., Rep., by Its Public Prose

Advocate for Def. : Ms. Ammaji Nettam. Counsel

Judgement :

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA AND THE HON'BLE SRI K.C. BHANU CRIMINAL APPEAL No.464 OF2009 Dated 13-09-2013 Kadari Gopal Rao Appellant State of A.P., rep., by its Public Prosecutor, High Court of A.P., Hyderabad. ..Respondent Counsel for Appellant : Ms. Ammaji Nettam. Counsel for respondents: Public Prosecutor HEAD NOTE: ?.Cases referred 1.2006 (10) SCC681IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA AND THE HON'BLE SRI JUSTICE K.C. BHANU CRIMINAL APPEAL No.464 of 2009 DATE:

13. 09.2013 This Court made the following:

JUDGMENT

: (Per the Hon'ble Sri Justice K.C. Bhanu) This appeal is directed against the judgment, dated 26.03.2009, passed in S.C.No.484 of 2008 by the learned VI

Additional Sessions Judge (III-FTC), Warangal at Mahabubabad, whereunder and whereby the sole accused was found guilty of the offences punishable under Sections 302 and 309 of the Indian Penal Code, 1860 (for short, 'IPC') and accordingly convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- (Rupees Five Hundred only), in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 302 IPC, and further sentenced to undergo simple imprisonment for a period of five months for the offence punishable under Section 309 IPC and both the sentences were directed to run concurrently.

2. The brief facts that are necessary for disposal of the present appeal are as follows: PW.1 is the mother of Kadari Rajitha (hereinafter referred to as 'the deceased') and is residing at Lohita Village. On 29.03.2008, at about 10.30 a.m., PW.1 gave a report to the Mahabubabad Police Station about the incident. Kadari Gopal Rao (hereinafter referred to as 'the accused') and the deceased are the residents of Gundlapad village. PWs.3 to 5 are also the residents of the same village. PWs.6 and 8 are the residents of Dhabberpet village and they conducted a panchayat to settle the disputes between the accused and the deceased. PW.9, is the Assistant Surgeon in Government Hospital, Narsampet, who conducted autopsy over the dead body of the deceased. PW.11 is another doctor who examined the accused and issued wound certificate. It is alleged that about 10 years back, PW.1 performed the marriage of the deceased with the accused and at the time of marriage, she gave three tulas of gold and one lakh cash as dowry to the accused. The couple blessed with two children i.e., one daughter and one son. After marriage, they lived in Gundlapahad village for some days and later shifted to Narsampet and then to Hyderabad. Thereafter, as per the advise of the elders, the accused again shifted to Gundlapahad village where a panchayat was convened. On 29.03.2008, at about 7.30 a.m. one Sunitha, co-sister of the deceased, informed PW.1 about the death of the deceased. Immediately, PW.1 went to the house of the deceased and thereafter she lodged a complaint against the accused in the police station. Based on the complaint of PW.1, PW.12, Sub-Inspector of Police, Nallaballi Police Station, registered a case on the same day i.e., 29.03.2008 in Crime No.23 of 2008 for the offences punishable under Sections 498-A, 302 and 309 IPC. PW.13, Circle Inspector of Police, immediately

after receiving information from PW.12, visited the scene of offence at Gundlapad village; recorded the statements of PWs.1 to 7; conducted panchanama in the presence of PWs.10 and 12 under Ex.P.4; prepared a rough sketch of the scene of offence, which was marked as Ex.P.9; seized the blood stained cotton and knife, which were marked as M.Os.1 and 2 and conducted inquest panchnama over the dead body of the deceased and seized M.Os.3 and 5 from the dead body. Thereafter, PW.12 sent the dead body of the deceased to postmortem examination to the Government Hospital, Narsampet and the accused to MGM Hospital, Warangal. Subsequently, PW.13 arrested the accused on 28.04.2008 and sent him for judicial custody on 29.04.2008. He collected expert opinion, which was marked as Ex.P6. PW.11, Assistant Professor of MGM Hospital, examined the accused and found deep lacerated injury of 2 cms deep and 10 cm wide in front of the neck, repaired and sutured the wound. PW.9, Civil Assistant Surgeon, conducted postmortem examination on the dead body of the deceased and found 3 cut injuries over throat and opined that the cause of death is due to cut of trachea and major vessels on both sides of the neck. After receipt of postmortem examination report and after completion of investigation, PW.13 filed the charge sheet against the accused for the offences punishable under Sections 498-A, 302 and 309 IPC.

3. On appearance of the accused, the trial Court framed the following charges: ".Firstly: That you being the husband of Kadari Rajitha (deceased) after two years of your marriage with the deceased, at your house at Gandhinagar, H/o. Gundlapad village subjected her to cruelty of harassing both mentally and physically whenever she refuses to give money for consuming liquor and that you thereby committed an offence punishable under Section 498-A of Indian Penal Code and within the cognizance of Court of Sessions. Secondly: That you on 28/29th day of March, 2008 in night time in your house at Gandhinagar, H/o. Gundlapad village intentionally and knowingly committed the murder of your wife Kadari Rajitha (deceased) by cutting her throat with a knife due to quarrel and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of Court of Sessions. Lastly: That you on the same day, time and place as mentioned supra in the second charge after committing the murder of your wife, attempted to commit suicide and did an act

namely cut your throat with the knife towards the commission of it and you thereby committed an offence punishable under Section 309 of Indian Penal Code and within the cognizance of Court of Sessions.". The above charges framed against the accused were read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined PWs. 1 to 13 and got marked Exs. P-1 to P-12, besides case properties as M.Os. 1 to 5.

5. After closure of the prosecution evidence, the accused was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to explain the incriminating circumstances appearing against him in the evidence of prosecution witnesses. The accused denied the same and stated that he had no defence evidence.

6. The trial court, on appreciation of the oral and documentary evidence, found the accused guilty of the offences punishable under Sections 302 and 309 IPC and accordingly convicted and sentenced him as stated above. However, the trial Court found him not guilty of the offence punishable under Section 498-A IPC, as there was no evidence of cruelty or harassment for demand of dowry, and accordingly acquitted him. Challenging the convictions and sentences, the present appeal is filed by the accused.

7. Now the points that arise for determination are whether the prosecution is able to bring home the guilt of the accused for the charges leveled against him beyond all reasonable doubt and whether convictions and sentences recorded by the trial Court are liable to be confirmed or modified?.

8. Learned counsel appearing for the appellant contended that PWs.3 to 5 are not reliable witnesses as they did not speak about the finding of the blood stains at the entrance of the door; that the police have not seized the clothes of the children as well as the accused, which contain blood stains; that one Sunitha, who informed PW.1 about the occurrence of the incident, was not examined; that by invoking Section 106 of the Indian Evidence Act, 1872 (for short 'the Act') the trial Court has convicted the accused and that one of the circumstances with regard to the

information given by Sunitha to PW.1 has not been put to the accused under 313 Cr.P.C. examination and that except the last seen circumstances, there is no evidence to say that the accused has committed the murder of the deceased. Therefore, she prays to set aside the convictions and sentences recorded against the accused.

9. On the other hand, the learned Additional Public Prosecutor contended that PWs. 3 to 5 are the natural witnesses to be present at the scene of occurrence and their evidence would clearly go to show that on hearing the cries from the house of the accused, they knocked the door of the house, in which the deceased and the accused were alone residing along with their small kids and that the accused woke up and opened the door and that they found the clothes of the accused stained with blood and they also found the dead body of the deceased in a pool of blood; that the doctor, who conducted autopsy, opined that the deceased died as a result of cut of trachea and major vessels on both sides of his neck ; that there is no other reason for PWs.3 to 5 to speak falsehood against the accused. That the trial Court, upon consideration of the entire evidence on record, rightly convicted and sentenced the accused and that there are no grounds to interfere with the same. POINTS:

10. It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy the following tests: (i) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established, (ii) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, (iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with in all human probability the crime was committed by the accused and none else.

11. The death of the deceased is not in dispute. PW.9, the doctor, who conducted autopsy over the dead body of the deceased, found the following injuries: ".1. Cut throat trachea 10 inch long 2 inch deep, 4 inches wide.

2. Cut of carotidies on both sides.

3. Cut of two Jugular on both sides.". Ex.P3 is the Postmortem report. The cause of death of the deceased as spoken to, by the doctor and the recitals in Ex.P3 - Postmortem report remained unchallenged. PW.10, is one of the inquest mediators for inquest, deposed that PW.13 conducted inquest over the dead body of the deceased and seized M.Os. 1 to 5. Panchas opined that the deceased died as a result of cut injuries on neck. The scene of offence is not in dispute and it is at the house of PW.3, who is the owner of the house. The accused and the deceased are husband and wife, who took the house of PW.3 on rent 15 or 20 days prior to the occurrence and started residing there. PW.4 is the son of PW.3 and PW.5 is the neighbour of the accused. Therefore, these three witnesses are natural witnesses who were present at the scene of offence. These witnesses have no grudge or enmity against the accused so as to implicate him falsely in a case of this nature. It is not in dispute that the accused also sustained injuries. PW.11, the doctor, who examined the accused, found deep lacerated injury of 2 cms depth and 10 cms width in front of the neck.

12. In view of the fact that the presence of PWs. 3 to 5 is found to be natural and probable, there is no other reason to doubt their testimony. Their evidence is clear that they went to the house of accused, when the door was not opened, they knocked the door where the deceased and accused were residing together. After knocking the door for some time, the accused came out from the house and fell down unconscious and thereafter the accused was shifted to MGM Hospital, Warangal and was treated for about one month. So, from the evidence of these witnesses, it is established, beyond all reasonable doubt, that except the accused, deceased and the small children aged about 3 or 4 years, no other person was present in the house. There was absolutely no possibility of third person to enter into the house to commit the murder of the deceased. The door of the house was bolted from inside and when it was unbolted by accused, then only these witnesses entered into the house and saw the dead body of the deceased lying in a pool of blood. The blood stains and clothes of the deceased and the weapon used in commission of the offence were sent to the Forensic Science Laboratory where the expert found human blood on all the items. In Trimukh Maroti Kirkan vs. State of Maharashtra¹, it is held: ".21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which

must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. (See *State of T.N. vs. Rajendran* (1999) 8 SCC679Para 6); *State of U.P. vs. Dr. Ravindra Prakash Mittal* (1992) 3 SCC300Para 39); *State of Maharashtra vs. Suresh* (2000) 1 SCC471Para 27); *Ganesh Lal vs. State of Rajasthan* (2002) 1 SCC731Para 15); and *Gulab Chand vs. State of M.P.* (1995) 3 SCC574Para 4).

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* (1972) 2 SCC80it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with ".Khukhri". and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal vs. State of Maharashtra* (1992) 3 SCC106the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* (1992) 3 SCC300the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-

treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime." In this case also there is clear evidence that accused and deceased were alone residing in the rental house of PW.3. As the door of the house bolted from inside, there was no possibility to third person to enter into the house. As a matter of fact, it is the accused who unbolted the door and opened. From the prosecution evidence, it is established beyond all reasonable doubt that this offence must have been committed by accused and none else. The accused has not given any explanation as to under what circumstances the death of the deceased has taken place. When the circumstance is exclusively within the knowledge of the accused, he has to give an explanation as required under Section 106 of the Act. No doubt, that burden will come into play only after the prosecution establishes its case beyond all reasonable doubt. In view of the fact that the prosecution established its case beyond all reasonable doubt and the accused has not given any explanation, non-giving of explanation by the accused as required under Section 106 of the Act can be taken as additional link to support the case of the prosecution. So, therefore, there is no possibility for any third person to commit the murder of the deceased. If the circumstances are taken, it can be presumed that about 15 or 20 days prior to the incident the accused and the deceased took the house of PW.3 on rental basis and as the deceased has not come out from the house, PWs.3 to 5 knocked the doors and after unbolted the door, the accused has come out. Deceased was lying

in a pool of blood. Clothes of accused stained with blood. The circumstantial evidence in order to sustain conviction must be complete and incapable of being reasonably explained than that of the guilt of the accused. The accused also attempted to commit suicide and PW.11, the doctor, who examined the accused, categorically stated that the injuries on the accused can be possible by self-infliction and the weapon of offence sent to Forensic Science Laboratory contains human blood. So all the circumstances led towards the guilt of the accused and none else. Therefore, the trial Court upon consideration of the entire evidence on record rightly found the accused - appellant guilty for the offences punishable under Sections 302 and 309 IPC. There are no grounds to interfere with the convictions and sentences recorded by the Court below.

13. With regard to the non-examination of Sunitha, who is not an eye-witness to the incident, her examination would not help to the case of the prosecution and it is not a case of willful suppression of material evidence.

14. With regard to the non-seizure of blood stained clothes of the children and the accused are concerned, they are not at all relevant for the purpose of proving the case because even assuming for a moment that they are relevant, some technical illegalities committed by the investigating officer cannot be taken advantage by the accused so as to doubt the veracity of the prosecution case, especially when the case rests upon three important witnesses, whose presence at the time of incident is established beyond all reasonable doubt, and who have no enmity against the accused to implicate him falsely. Therefore, the contentions raised by the learned counsel for the appellant are totally devoid of merit and untenable.

15. Hence, after perusing the evidence and having gone through the judgment under challenge, we do not find any infirmity in it calling for interference by this Court.

16. Hence, the appeal is devoid of merit and the same is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed confirming the convictions and sentences recorded by the trial Court in its judgment dated 26.03.2009 in S.C.No.484 of 2008. _____ K.J.

SENGUPTA, CJ _____ K. C. BHANU, J Date:

13. 09-2013

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