

State of Karnataka Vs. Aravind Kumar

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Court : Karnataka

Decided On : Aug-20-2015

Judge : Mohan M. Shantanagoundar & R.B. Budihal

Appeal No. : Criminal Appeal No. 306 of 2012

Appellant : State of Karnataka

Respondent : Aravind Kumar

Judgement :

1. The judgment and order dated 26-3-2011 passed by the Presiding Officer, Fast Track Court-VI, Bangalore City in S.C. No.177 of 2010 is called in question in this appeal by the State.

By the impugned judgment, the Court below has acquitted the accused for the offences punishable under Sections 498-A and 307 of Indian Penal Code, 1860, but has convicted for the offence punishable under Section 324 of IPC. However the benefit of Section 4 of the Probation of Offenders Act, 1958 is extended to the accused after conviction.

2. Case of the prosecution in brief is that the accused is husband of the victim (P.W.3); their marriage was performed 10 years prior to the incident in question; out of the wedlock, three children are born; since three months prior to the incident in question, the deceased was working as a Supervisor in Gokuldas Garmentssituated near Silk Board Junction, Bangalore; The accused was not

looking after the family affairs; in that regard, there was misunderstanding between the accused and the victim; the victim used to come to house after finishing the work at Garments Factory after 7 p.m.; the accused used to suspect the fidelity of the victim without any valid reasons; though the parents of the victim as well as the relatives advised the accused not to suspect the fidelity of his wife and to have amicable living with his wife, the accused did not mend his conduct; on the date of the incident i.e., on 20-9-2009 the victim came to the house in the usual manner after finishing the work at 8 p.m.; the accused who was waiting for the victim in front of the house started quarrelling with her suspecting her character; he set her ablaze after pouring kerosene, consequent upon which, both the hands, both the legs and back of the victim was burnt to certain extent; the victim raised hue and cry and consequently, the parents and brother of the victim who were residing in the adjoining house rushed to the spot and extinguished fire; all of them shifted the injured to the hospital.

The complaint came to be lodged by the victim as per Ex.P.5 at 11.45 p.m. on 20-9-2009 before the Assistant Sub-Inspector of Police of Parappana Agrahara Police Station. The complaint came to be recorded by the ASI in the Anugrapha Hospital wherein the victim was taking treatment. The complaint came to be registered in Crime No.258 of 2009 for the offence punishable under Section 307 of IPC. The Police after investigation laid the charge-sheet.

3. The wound certificate of the victim is at Ex.P.1. The same discloses that the victim has sustained 20% second degree burns. The doctor who treated the victim has deposed before the Court as P.W.1. There is no cross-examination with regard to the injury sustained by the victim. The accused also does not dispute that the victim has sustained injuries in the incident that occurred at 9 p.m. on 20-9-2009. However the defence of the accused is that when the accused entered the house at about 8 to 8.30 p.m., the victim was found with one Mr. Chamru Sani; both were sitting on the cot in the bedroom of the house; The victim-P.W.3 was also having illicit relationship with one Mukund Kumar, Murali as well as Mohan prior to the incident in question and in that regard, quarrel used to take place between the accused and the victim; Despite repeated warnings and requests, the victim did not mend her conduct; On the date of the incident also, when the

accused saw the victim with one Chamru Sani, he quarreled with both the victim as well as Chamru Sani; The victim in order to commit suicide set herself ablaze by pouring kerosene. Thus practically the accused also does not dispute that the victim sustained burn injuries at the time and on the date of the incident in question.

4. Before proceeding further, it would be relevant to note the deposition of each of the witnesses in brief.

P.W.1 is the Medical Officer who examined the injured and issued the wound certificate as per Ex.P.1.

P.W.2 is the Assistant Director of the Forensic Science Laboratory. He has issued the report as per Ex.P.3.

P.W.3 is the prosecutrix/victim. She is the wife of the accused. She has suffered 20% burn injuries in the incident.

P.Ws.4, 5 and 10 are father, brother and mother of the victim respectively. They were residing near the matrimonial house of the accused and the victim at the relevant point of time. After hearing the cries on the relevant day, P.Ws.4, 5 and 10 rushed to the spot and took the victim to the hospital for treatment.

P.Ws.6, 8, 9 and 11 are the Police witnesses, who have participated during the course of investigation.

P.W.7 is the witness for scene of offence panchanama-Ex.P.7.

5. The evidence of P.Ws.4, 5 and 10 i.e., father, brother and mother of the victim may not be relevant to prove the actual incident which occurred at about 9 p.m. on 20-9-2009. However they have deposed about the motive for commission of the offence. All of them have deposed that they came to the spot after hearing the cries and by then, the victim has already suffered burn injuries and thereafter they have shifted the injured to the hospital. They have further deposed that the accused was suspecting the fidelity of the victim repeatedly; despite repeated requests by the parents of the victim, the accused did not stop suspecting the

character of the victim. The sum and substance of evidence of these witnesses as well as the case of the prosecutrix with regard to the motive for commission of the offence is that the accused was suspecting the fidelity of his wife (victim) and in that regard, he took law into his hands. The aspect of motive as put forth by the prosecution is also supported by the stand taken by the defence that even at the time of incident also, the victim was found along with Mr. Chamru Sani in the bedroom of house of the accused and therefore quarrel ensued between the accused and the victim.

6. The evidence of P.W.3-prosecutrix however discloses the details of the incident in question. According to her, she came to her house after finishing her work in Garments Factory at about 7.30 p.m. on 20-9-2009 and at that point of time, the accused was standing in front of the house; the accused once again suspecting her character, in heat of passion, poured kerosene on her and set her ablaze; She raised hue and cry and immediately, her parents and brother came and took her to the hospital. She deposed about lodging of the complaint as per Ex.P.5. It is specified by P.W.3 in the examination-in-chief itself that she was wearing night dress when the incident took place. During the course of cross-examination, number of suggestions were made to her by the defence suggesting that she was of loose character; she had illicit relationship with Mohan, Mukundkumar and Murali earlier to the incident in question and on the date of the incident, she (victim) was with Mr. Chamru Sani in the bedroom etc. However all such suggestions are denied by the victim.

In the cross-examination, P.W.3 has further deposed that Chamru Sani is brother of her mother i.e., brother of P.W.10 and he is also from the same village; Mukund Kumar also was known to her inasmuch as he was working along with her father (P.W.4); however she denies the suggestion that she knew Murali or Mohan. This version as deposed by P.W.3 is directly contradictory to the versions of P.Ws.4 and 10. P.W.3 specifically admits before Court that she had worn night gown at the time of incident, but what is seized is the chudidar and not the night gown. Number of improvements are found in the evidence of P.W.3.

7. P.W.4 has admitted in the cross-examination that Chamru Sani is known to him since 10 to 12 years prior to the incident in question and he is from the backward community; he knew Mukund Kumar since 10 to 15 years; and Mr. Murali is living in front of his house and said Mr. Murali used to come and go to the house of the victim. P.W.4 pleads ignorance about the relationship between Murali and victim; he also pleads ignorance about the presence of Chamru Sani on the scene of offence during the relevant point of time. From the evidence of P.W.4, it is clear that the victim knew very well Murali, Mukund Kumar as well as Chamru Sani and they used to visit the house of the victim very often. By the time, he and his wife (P.W.10) entered the house of the victim, the incident was already over; he did not know as to how P.W.3 sustained burn injuries; he did not know as to whether Mr. Chamru Sani was present, when the incident took place. He also did not deny specifically, but merely pleads ignorance about the frequent quarrels between accused and the deceased in the matter of the aforementioned persons frequenting with their visits to the house of the deceased, in the absence of accused.

8. P.W.10-mother of the victim has admitted in her cross-examination that she does not know as to who is Chamru Sani and Mukund Kumar, but she knew Murali since he was staying in front of their house. P.W.3, as aforementioned has stated that Chamru Sani is brother of her mother i.e., brother of P.W.10, whereas P.W.10 herself has deposed that she does not know who is Chamru Sani. Per contra, P.W.4-father of the victim has deposed that Chamru Sani was known to him since 10 to 12 years and that he also knows Mukund Kumar apart from Murali. P.W.10 also did not know as to how the injured sustained burn injuries.

9. Looking to such contradictory versions with regard to the relationship between the victim and Chamru Sani, victim and Mukund Kumar, victim and Murali etc., we find that the defence taken by the accused appears to be a plausible defence. The defence of the accused appears to be nearer to the facts and circumstances of the case. In view of the same, it seems the Trial Court has taken lenient view and consequently extended the benefit of the provisions of Section 4 of the Probation of Offenders Act in favour of the accused. The Trial Court has assigned detailed reasons for coming to the conclusion. We agree with the same.

Hence we do not find any ground to interfere in the judgment and order passed by the Trial Court convicting the accused for the offence under Section 324 of IPC as well as extending the benefit of the provisions of Section 4 of the Probation of Offenders Act in favour of the accused. Looking to the totality of facts and circumstances of the case, we are also of the opinion that the view taken by the Trial Court while extending the benefit of the Probation of Offenders Act may be one of the two possible views which could have been taken in the matter. Since the view taken by the Trial Court cannot be said to be erroneous, we do not propose to interfere with such discretionary order made by the Trial Court extending the benefit of the provisions of the Probation of Offenders Act. Hence no interference is called for.

Appeal fails and the same stands dismissed.

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