

Sharnappa Vs. The State of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Apr-03-2017

Judge : The Honourable Mr. Jusitce B.A. Patil

Appeal No. : Criminal Appeal No. 3560 of 2011

Appellant : Sharnappa

Respondent : The State of Karnataka

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to call for records in S.C.No.225/2008 for perusal and allow this appeal by setting aside the judgment and order of conviction and sentence dated 25.2.2011 and 1.3.2011 respectively passed by the II Addl. Sessions Judge, Gulbarga and consequently acquit the appellant of the charge leveled against him).

1. This appeal is preferred by the accused No.1/appellant assailing judgment of conviction dated 25.2.2011 passed by II Additional Sessions Judge, Gulbarga in SC No.225/2008 where under accused No.1 was convicted for the offences punishable under Sec.498-A and 306 of IPC and accused No.2 and 3 were acquitted of the charges leveled against them.

2. The case of the prosecution in brief as per the complaint are that, about 13 years back the younger sister of the complainant Smt. Devaki was given in marriage to the accused No.1-Sharanappa. Thereafter, they have begotten four

children. It is further alleged that at the time of marriage as per the custom, they gave gold, silver and cash. It is further alleged that after the marriage both his sister and her husband went to Mumbai and Bangalore for their livelihood. It is further contended in the complaint that the accused No.1 about three years back addicted to bad vices and used to beat the deceased, the said fact used to be informed by the deceased to the complainant whenever she used to visit the parental house. It is further alleged in the complaint that the complainant and other advised accused No. 1 and deceased was sent along with him. It is further alleged about 5 months prior to the incident, deceased along with her three children came to Alloalli village, at that time accused No.1 also came and while going back he told that she and her children want to go to hospital as accused No.1 has not given any money for their treatment. To which accused No.1 became angry and started abusing the deceased in filthy language and also tried to assault her with grinding stone on her head. By seeing the same, complainant and his parents rescued the deceased, but accused No.1 kicked the deceased on her stomach and also thrown the table fan towards the deceased, as a result of the same she sustained injuries. After the alleged incident, complainant and his parents advised, the accused No.1 and sent back. Thereafter, after 15 days again deceased came to the parental house and complained about the conduct of the accused No.1. She also informed that the parents-in-law also abused and asked her to stay in the parental house. It is further alleged in the complaint that about two months prior to the incident, accused No.1 came to Allolli village and requested to send the deceased, deceased told him that getting herself cured she will come. On hearing the same, accused No.1 assaulted her and threatened her. Thereafter, villagers held the panchayat, they advised accused No.1 to leave his bad vices and to lead the happy life. Though, accused assured, but after going to Gundugurti, he telephoned to the deceased and that time also he used to ill-treat and harass her. In that light, on 16.6.2008 at about 6:00 PM when complainant was in Allolli village, his son Devappa informed the complainant that his sister deceased Devaki fell into the well along with children. Immediately, the same was informed to the mother-in-law. Thereafter, a complaint was lodged. Thereafter, after investigation the charge sheet was laid against the accused No.1 to 3.

3. After filing the charge sheet the committal court on following the procedure laid down under sec.207 of Cr.P.C committed the case to the Sessions Court. The Sessions Court after taking the cognizance secured the presence of accused, after hearing, charge came to be framed. Since, accused denied the charges and claimed to be tried, as such the trial was fixed.

4. In order to prove the case, the prosecution in all examined P.Ws. 1 to 32 and got marked Ex.P-1 to 39 and also got marked M.O.1 to 14 and during the course of cross-examination Ex.D-1 to 3 were also got marked by the defence counsel. After closure of the prosecution case, the statement of the accused was recorded under Sec. 313 of Cr.P.C by putting the incriminating materials as against the accused, which they denied and they have not led any evidence on their behalf.

5. Thereafter, on hearing the arguments of both the counsel, the impugned judgment came to be passed, whereunder accused No.1 was convicted for the offences punishable under Sections 498-A and 306. Assailing the said judgment and order, the accused is before this Court.

6. Heard the learned counsel for the appellant and the learned High Court Govt. Pleader on behalf of the State.

7. The learned counsel for the accused No.1/appellant Sri. Mahantesh Desai, would contend that there is no sufficient evidence either under Sec.498-A or 306 of IPC to prove that the accused has ill treated and harassed so as to drove her to commit suicide, the trial Court without proper appreciation has come to a wrong conclusion and has convicted the accused No.1. He would further contend that there is no evidence to show that accused abetted the deceased to commit suicide. He would also contend that without a positive act on the part of accused to instigate or aid in committing suicide, conviction cannot be directed and the same is not sustainable. In order to substantiate his contention he relied upon a decision reported in 2016 Cr.R. 423 (KAR) in the case of Sikandar @ Gouraba Vs. State of Karnataka. He would further contend that except general statement that the accused used to consume the alcohol and used to quarrel with the deceased. But, there is no specific allegations either in the complaint or in evidence led by the prosecution before the Court. In that light, accused is entitled to acquittal. In order

to substantiate the said fact he relied upon a decision in the case of Iswarachari @ Eshwanna Vs. State of Karnataka reported in 2011 Cr.R 579 (KAR). He would further contend that mere threat or abuse will not constitute an abetment to commit suicide. In that light, he relied upon a decision reported in 2012 Cr.R.773 (KAR) in the case of Imitaz Pasha and others Vs. State of Karnataka by Home Town P.S., Chikkamagalur. He would further contend that the evidence which has been led by the prosecution is only interested and related witnesses they have made lot of improvements and contradictions, these aspects have not been considered and appreciated by the Trial Court. The trial Court by considering the evidence ought to have acquitted accused No.1 also. On these grounds, he prayed for allowing the appeal.

8. Per contra, the learned High Court Govt. Pleader supporting the judgment and order of the trial Court contend that there is corroboration in the evidence of all the witnesses, merely because the witnesses are relatives their evidence cannot be discarded. He would also contend that when once the prosecution establishes ill-treatment and harassment then the Court can presume that the death is because of the ill-treatment and harassment caused by the accused. Trial Court taking into consideration all these aspects has rightly come to a right conclusion and has convicted the accused No.1. The accused No.1-appellant has not made out any good grounds so as to interfere with the order of the trial Court. He prayed to dismiss the appeal.

9. In order to prove the case of the prosecution, prosecution has got examined P.Ws.1 to 32.

10. P.W.1 is the inquest mahazar pancha to Ex.P-1 and P-2. P.W.2 and 3 are inquest mahazar pancha to Ex.P-3 and 4. P.W.4 to 6 are the spot mahazars pancha to Ex.P-5. P.W.6 is also a co-pancha to Ex.P-1 and 2. All these witnesses have not supported the case of the prosecution and have turned hostile. Even during the course of cross-examination nothing has been elicited so as to support the case of the prosecution.

11. P.W.7 is the brother of the deceased and the complainant he has deposed by reiterating the contents of the complaint that the accused was addicted to bad

vices and used to assault the deceased and she used to tell the same to him. He further deposed that he advised accused many times. He further deposed that the accused No.1 also quarreled in his presence and even tried to assault her. He has further deposed that one Eshwar and Siddappa Pujar also advised the accused and a panchayat was also held in this behalf. Though this witness was cross-examined in length, but nothing has been elicited so as to discard his evidence.

12. P.W.8 is a co-pancha to Ex.P-1, he has supported the case of prosecution. P.W.9 is also a co-pancha to Ex.P-3 and 4, he has also supported the case of prosecution. P.W.10 and 11 are the neighbours, they have not supported the case of prosecution and they have been treated as hostile witnesses. P.W.12 and 13 are the parents of the deceased. They also have reiterated the evidence of P.W.7, P.W.14, 19, 22, 23 are witnesses who were present at the time of holding panchayat, in their evidence they have deposed that about 2 years prior to the incident accused has come to the village for a fair along with his wife at that time accused No.1 assaulted and abused the deceased and at that time they were called to hold the Panchayat and they along with others held the panchayat and advised him properly and sent the deceased along with accused.

13. P.W.24 is the constable who produced the clothes of the deceased before I.O. P.W.25 is the Head Constable who registered the case he has also produced the clothes of deceased Revansiddappa as per Ex.P-25. P.W.26 is a Head Constable who seized the clothes and gold articles found on the body of the deceased Devaki as per Ex.P-26 and so also the clothes of deceased Ambika and Revansidappa as per Ex.P-27 and 28. P.W.27 is the ASI, who conducted the inquest over the dead body of deceased Sangeeta. P.W.28 is the son of the deceased who has not supported the case of prosecution. P.W.29 is the Police Constable who carried the FIR to the jurisdictional Court. P.W.30 is the PSI who recorded the statement of the complainant as per Ex.P-6 and thereafter he registered the case and issued the FIR and thereafter he has also conducted part of the investigation. P.W.31 is the CPI who took the further investigation and after investigation he filed the charge-sheet against the accused. P.W.32 is the doctor who conducted autopsy over the body of the deceased Devaki, Revansidda, Kum. Sangeeta.

14. From the above evidence the Trial Court has convicted the accused No.1/appellant. The only point which arises for my consideration is that whether the order of conviction is sustainable in law. As could be seen from the evidence adduced by the prosecution the witnesses who have been examined have consistently deposed that the accused No.1 was addicted to alcohol and he used to abuse and beat the deceased Devaki many a times and even when she has come to the parental house for the purpose of taking the treatment at that time also he came there and there also he abused and tried to assault on the deceased Devaki with grinding stone. The same has been pacified by the complainant and his mother and thereafter the panchayat was also held by calling the elders of the village and they have also advised accused to lead happy life by taking the deceased to his house. In this behalf, all the materials witnesses have consistently deposed about the conduct and behavior of the accused. Even the evidence of P.W.7 is corroborated with the contents of Ex.P-6. Admittedly, accused is also a relative who has got married the deceased and thereafter started ill-treating and harassing by consuming the alcohol. The conduct of the accused was considered to be harsh and unbearable to the deceased. Even she has also told the complainant that accused was not giving any money even to take treatment to herself and to her children. Though the learned counsel for appellant contended that the accused and deceased were residing in Mumbai for their livelihood, but what happened at that place no evidence has been produced by the prosecution. In that light, the evidence of P.W.12 and 13 is not reliable. But, by going through the evidence of P.W.12 and 13 they have consistently deposed that the deceased used to tell whenever she visited their house about the ill-treatment and harassment. Be that as it may, when the deceased has come to the house of complainant and in his presence he abused and assaulted and kicked on her stomach and thereby ill treated and harassed. In this behalf P.W.7 is an eye witness to the alleged incident. When the accused himself has assaulted in the presence of P.W.7 and her mother P.W.12 then under such circumstances even though no evidence has been produced to show that what happened in Mumbai when accused and deceased were staying. But, the remaining evidence will support the case of the prosecution to prove that the accused no.1 used to ill-treat and harass by consuming the alcohol. In this behalf, the prosecution evidence is

consistent and corroborated. There are no good grounds so as to discard their evidence in toto.

15. The meaning of cruelty under Sec. 498-A consist of two clauses. Firstly, it must be established that the cruelty or harassment to the wife was to force her to cause grave bodily injury to herself or to commit suicide or the harassment to compel her to fulfill illegal demand for dowry. Even the cruelty includes both mental or physical. Keeping in view the above said definition, on perusal of the evidence on record it indicates that the accused used to ill-treat and harass and also used to assault by consuming the alcohol and thereby he used to ill-treat both physically and mentally. That itself amounts to nothing but cruelty. Though the learned counsel for the appellant would contend that earlier also the accused used to consume alcohol and has assaulted her that has not driven her to commit suicide and as such it will not amount to harassment and cruelty. But, the consistent act of the accused by consuming the alcohol and abusing and assaulting would create mental pain and suffering and would make it not possible for her to live with the others. The said cruelty meted out by the accused was such in nature that the deceased was reasonably expected not to live with him. Only because of the advise made in the Panchayat she went along with the accused. The cruelty is such an element that it cannot be specifically stated whether the said act amounts to cruelty or not. But, it all depends upon how the person who has been treated with cruelty takes it has to be taken note of. Even the evidence also indicates that the deceased because of the cruelty was suffering with ill-health and fragile. No mother will take a drastic steps to put an end to her life and the life of the children without any just cause. When she is having husband like accused No.1 who used to consume alcohol and used to assault because of the said unbearable ill-treatment and harassment the deceased has taken drastic step of putting an end to the life of herself as well as children. In this background, if the evidence is analysed then under such circumstances, it can be safely held that there was ill-treatment and harassment by the accused No.1 to the deceased.

16. When all the witnesses have consistently said about the act of the accused and nothing has been brought on record to disbelieve their evidence. Under such circumstances, it can be safely held that the prosecution has established beyond

all reasonable doubt that the accused subjected the deceased-Devaki with cruelty. As such, the finding recorded by the trial Court in this behalf does not call for any interference and the same is liable to be confirmed.

17. The second aspect which has been urged by the learned counsel for the appellant is that without a positive act on the part of the accused No.1 to instigate or aid in committing suicide the conviction under Sec.306 of IPC is not sustainable. But, he would further contend that there must be a clear mens rea to commit such offence and it also requires an active act or direct act to lead deceased to commit suicide. In order to substantiate his contention he relied upon decisions stated supra and also in the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh reported in (2010) 1 SCC 750.

18. I have gone through the above said decisions cautiously and carefully, though, in the above decisions it has been observed that without any positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be directed but before holding an accused guilty for the offence under Sec. 306 of IPC the Court must scrupulously examine the facts and circumstances and also assess the evidence adduced before it and thereafter find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but put an end to her life. By close scrutiny of evidence even though there is no direct evidence to show that the accused has played an active role of instigation to the deceased to commit the suicide but the consistent ill treatment and harassment caused by the accused No.1 definitely drive her to commit suicide. Though the accused was called to be examined under Sec. 313 of Cr.P.C. by the trial Court and he has answered to question No.92 by saying that there was difference of opinion between the step mother and the deceased told him that her mother has asked him to bring her and as he did not heed the request the deceased told that she is going to die and because of that anger she jumped into the well and died. The said explanation of the accused does not probablise the case of the accused. If that being the case, then under such circumstances she alone could have jumped into the well not along with her children. The way in which the deceased has jumped into the well along with three children it itself indicates that there was lot of pain and sufferings with the deceased because of

the ill-treatment and harassment caused by the accused No.1. When the deceased has led the marital life along with the accused No.1 for a period of more than 13 years and has begotten four children, then under such circumstances she should not have put an end to her life the way in which she has done. Even the reason which is assigned by the accused No.1 is also not sounds to wise reasoning. Looking from any angle to the facts of the case on hand, the case of the prosecution is stronger in establishing the fact that deceased committed suicide only because of ill-treatment and harassment caused by accused No.1. Though the learned counsel for accused would contend that soon before the death there was no ill-treatment and harassment by the accused No.1, but soon before the death that does not mean immediately prior to the death. Even some times the continuous ill-treatment and harassment tolerated by a woman may culminate into taking a drastic step on a particular moment. In that light, if the evidence is looked into then the contention taken up by the learned counsel for the appellant also does not stands to any reason and it does not hold any water and liable to be brushed aside.

19. Though it is contended that there are some omission and improvements in the evidence of the prosecution but by overall consideration of the evidence of the prosecution the said omissions and improvements will not affect the case of the prosecution so as to discard the entire evidence. In that light, the contention of the learned counsel for the appellant does not hold any water.

20. For the reasons stated above and on perusal of the evidence on record the impugned judgment and order passed by the trial Court appears to be just and proper. There is no illegality or irregularity and erroneousness while appreciating the evidence produced by the prosecution. As such, the same is liable to be confirmed. Hence, I pass following;

ORDER

Appeal is hereby dismissed.