

The State of Karnataka Vs. Narasimhaiah

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Court : Karnataka

Decided On : Jul-09-2018

Judge : Budihal R.B. and B.a.Patil

Appeal No. : CRL.A 339/2012

Appellant : The State of Karnataka

Respondent : Narasimhaiah

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 9TH DAY OF JULY 2018 PRESENT THE HONBLE MR. JUSTICE BUDIHALL R.B. AND THE HON'BLE MR. JUSTICE B.A.PATIL CRIMINAL APPEAL NO.339/2012 C/W CRIMINAL APPEAL NO.1062/2014 IN CRL.A. NO.339/2012 BETWEEN: THE STATE OF KARNATAKA REPRESENTED BY THE DODDABALLAPURA RURAL POLICE (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP.) AND:

1. NARASIMHAIAH S/O LATE BALAPPA AGED ABOUT 65 YEARS R/O BILLAVALAHALLI GOWRIBIDANUR TALUK CHIKKABALLAPUR DISTRICT. APPELLANT
2. NINGAMMA W/O NARASIMHAIAH AGED ABOUT 60 YEARS R/O BILLAVALAHALLI GOWRIBIDANUR TALUK CHIKKABALLAPUR DISTRICT. ...RESPONDENTS (BY SRI B.V.PINTO, AMICUS CURIAE) - ACQUITTING THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) & (3) OF CR.P.C., PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE

JUDGMENT
AND

ORDER

OF ACQUITTAL DATED 28.2.2011 PASSED IN S.C.NO.86/2010 BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTC-VII, DODDABALLAPURA THE RESPONDENTS/ACCUSED FOR THE OFFENCES P/U/S498A AND 304B OF IPC AND SEC.3 & 4 OF DOWRY PROHIBITION ACT. IN CRL.A.NO.1062/2014 BETWEEN: THE STATE OF KARNATAKA REPRESENTED BY THE DODDABALLAPURA RURAL POLICE - 561 203. (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP.) AND: NARAYANASWAMY S/O NARASIMHAPPA AGED ABOUT 30 YEARS RESIDENT OF BELLAVALAHALLI NAGAREGERE HOBLI GOWRIBIDANUR TALUK APPELLANT 3 CHIKKABALLAPUR DISTRICT - 562 101. RESPONDENT (BY SRI B.V.PINTO, AMICUS CURIAE) THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) & (3) OF CR.P.C., PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE

JUDGMENT
AND

ORDER

OF ACQUITTAL DATED 28.2.2011 PASSED BY THE PRESIDING OFFICER, FTC-VII, DODDABALLAPURA IN S.C.NO.263/2009 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES P/U/S498A AND 304B OF IPC AND SEC.3 & 4 OF DOWRY PROHIBITION ACT. THESE CRIMINAL APPEALS COMING ON FOR HEARING THIS DAY, BUDIHALLI R.B. J., DELIVERED THE FOLLOWING:

JUDGMENT

These two appeals are by the State being aggrieved by the judgment and order of acquittal dated 28.2.2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No.VII, Doddaballapur in S.C.No.86/2010 and S.C.No.263/2009 respectively acquitting accused Nos.2 and 3 and accused No.1

for the offences punishable under Sections 498-A, 304-B of IPC and Sections 3 and 4 of the Dowry Prohibition Act. In both the appeals, the State has challenged the legality and correctness of the judgment and order of acquittal passed 4 by the Court below on the grounds as mentioned in the memorandum of both the appeals.

2. Brief facts of the prosecution case as per the statement of deceased Shobha, W/o Narayanaswamy given under Ex.P11 are, she is residing along with her husband accused No.1- Narayanaswamy since two months and about four years prior to the incident, she got married accused No.1 and it was a love marriage. From the date of marriage even though her husband was not looking after her properly, she was adjusting herself with him. He was not allowing her to go to her parents place, as such, her parents used to visit her to see her. He was not giving proper food and clothing to her. And about two months prior to the incident accused No.1 started to work in the poultry farm of one Srinivasareddy of Doddaballapur and a labour shed was given to them to stay in the said poultry farm. She is not having any issues, for which she had taken treatment in the hospitals. On 20.4.2009 herself and her husband went to her parental place to see her parents. At that time her parents took her to the hospital for treatment for not having any issues. They stayed in her parents house for a period of one week and on 27.4.2009 5 they came back to Vaddarahalli and around 8.30 a.m. in the morning her husband again picked up quarrel with her telling that she has to die either by hanging or by pouring kerosene and that he do not want her and so abusing, he went outside. Because of the abusive words, she felt very bad and thinking that she cannot be happy with her husband forever, at about 3.30 p.m. she poured kerosene on herself and lit fire to her. At that time her husband and neighbours came and extinguished the fire and then immediately shifted her to Doddaballapur Government hospital wherein the doctors advised to shift her to Victoria hospital, Bangalore and accordingly, in the ambulance of the said hospital she was shifted to Victoria hospital. There she was getting the treatment. She has alleged that the physical and mental harassment given by her husband is the main reason for her to pour kerosene and set fire to herself. Even earlier also he had picked up quarrel with her and sent her to her parental place insisting her to bring dowry amount and gave ill-treatment in that connection. A panchayath was also

held by her parents in this regard wherein the accused was advised not to harass the deceased. Accused Nos.2 and 3 being the father-in-law and mother-in-law of the deceased were also instigating 6 accused No.1 and used to poison the mind of accused No.1 and they were also giving ill-treatment to her. Being unable to bear the physical and mental harassment, she poured kerosene on herself and lit fire. Therefore, alleging that her husband and her in-laws are responsible for the extreme step she has taken, she has sought that proper action may be taken against them.

3. On the basis of the said statement, case came to be registered in Crime No.154/2009 for the offences punishable under Section 498-A and also under the provisions of the Dowry Prohibition Act r/w Section 34 of IPC. Subsequently, after her demise in the hospital, the offence under Section 304-B of IPC was also inserted in the case. After completing the investigation, the Investigating Officer filed the charge sheet against the accused persons for the offences punishable under Sections 498-A, 304-B of IPC and also under Sections 3 and 4 of the Dowry Prohibition Act r/w Section 34 of IPC.

4. The learned Fast Track Judge after hearing both sides, prepared charge as against accused Nos.1 to 3. When the 7 charge was read over and explained to the accused, they pleaded not guilty and claimed to be tried and accordingly, charge were framed and plea was recorded and matter was posted for trial.

5. The prosecution in order to prove its case has examined 27 witnesses and got marked 24 documents and also 4 material objects. Thereafter, the accused were examined under Section 313 of Cr.P.C. On the side of the defence, neither any witnesses were examined nor any documents were got marked.

6. The learned Fast Track Court Judge after hearing the arguments on both sides and on considering the materials placed on record, both oral and documentary, held that the prosecution has failed to prove the charges and accordingly, acquitted the accused persons from all the charges. Being aggrieved by the judgment and order of acquittal, the State has preferred the present two appeals, one against accused No.1 and another against accused Nos.2 and 3. The State has challenged the legality and correctness of judgments of the Fast Track 8 Court

on the grounds as mentioned in the respective memorandum of appeals.

7. We heard the arguments of the learned Additional SPP for the appellant-State and the learned Amicus Curiae for the respondents-accused in respect of both the appeals.

8. While hearing the appeals, the learned Amicus Sri B.V. Pinto brought to our notice that the original judgment in respect of accused Nos.2 and 3 in S.C.No.86/2010 is not signed by the concerned Presiding Officer. He also drew our attention to the statement recorded under Section 313 of Cr.P.C. in respect of all the three accused persons and made the submission that in the answer column to all the questions except at question No.1, the answers given by the accused persons is not mentioned and the said place is left blank. However, at the answer column to question No.1, it is typed as yes. Therefore, looking to this aspect of the matter and before going to discuss the merits of the appeals, we noticed on all such pages the thumb impression at the foot of the 313 statements pertaining to accused Nos.2 and 3. Even there is no mention that the thumb impression belongs to whom. Even the concerned Presiding Officer of the Fast Track Court, Doddaballapur, has not put his signature to the said statement. Looking to the 313 statement pertaining to accused No.1 also, though at the foot of the said statement of each page, it is signed by one Narayanswamy i.e., accused No.1, but all the answer columns left blank except the answer column of the first question wherein it is typed as yes and nothing is mentioned in the other answer columns as to what is stated by accused No.1 and at the end of the said statement also, it is not signed by the Presiding Officer of the Fast Track Court, Doddaballapur. Therefore, looking to these aspects, at this stage, this Court is not able to make out what answers were given by the accused at the time of examination. Putting the incriminating material framed in the form of the questionnaire as against the accused, answer columns are left blank. The examination of the accused under Section 313 of Cr.P.C. is a right which is given in the statute and it is important right of the accused to answer to the incriminating material before the arguments are heard in the said matter. No doubt, in these cases, the impugned judgment is the acquittal of all the three 10 accused persons and it can be said that there is no prejudice caused to the accused because of their acquittal.

9. But this is the first appellate Court to consider the fact and law as well, the statement of the accused made under Section 313 of Cr.P.C., can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. If this Court re-consider the fact and comes to a different conclusion, then under such circumstances, non recording of the statement of the accused person amounts to fundamental breach and ipso facto, vitiates the entire proceedings. Accused must show what explanation he has as regards the circumstances established against him which have been put in the form of question. The scope of Sec.313 of Cr.P.C. is wide and it is not a empty formality. On close reading of Sec. 313 of Cr.P.C., a benefit has been given to the accused in the trial as it fixes what the court deems to be incriminating material which the accused should answer. The answers by an accused are of relevance for finding out the truth and examining the veracity of the case of prosecution. Even the statement of the accused can be used to test the veracity of the exculpatory nature of 11 admission, if any made by the accused. Though while recording the statement under Section 313 of Cr.P.C., no oath is administered to the accused, but answers given can be treated as part of evidence in the case. This preposition of law has been laid down by the Honble Apex Court in the case of KHAIRUDDIN AND ANOTHER Vs. STATE OF WEST BENGAL reported in (2013)5 SCC753 Paragraph Nos.14 to 18 are relevant in this regard. They read as under: 14. That brings us to the cases of three other appellants viz. Monglu, Hafijuddin and Motilal Motin. None of them admittedly was named in the FIR, which was lodged by PW-1 Budhu Md. who was present on the spot and claims to have witnessed the occurrence. Absence of the names of these three appellants from the FIR which gave details of the incident and named several others who were allegedly participating in the occurrence assumes importance and would require a cautious approach towards the evidence. That is because omission of the names of those who are alleged to have participated in the commission of the crime would be a significant circumstance which cannot be lightly ignored. Possible false implication by subsequent deliberations and consultations to cast the net wider 12 and accuse even those who may not have been actually present on the spot, cannot be ruled out. No explanation is in any case coming forth from the witnesses for the omission of the names of these appellants-accused-. Having said that, we cannot

ignore the fact that out of these three appellants, appellant Monglu Md. has in his statement under Section 313 answered question No.14, as under : I am also a Pattadar. A few days (4/5) before I had sown Tisi in my lands. On the day of the occurrence I heard that the gang of Akalu was ploughing our land. Then Isa Haque, myself, Hafij, Kusrat and Tamij went. We asked them not to do so. There began fighting. I was assaulted on my finger. Darbaru, Betu and Sudhu were ploughing. Kusrat (my elder brother) had a great fighting with Darbaru. Then I also hit Darbaru. Then I fled away. The above, shows that appellant Monglu Md. was present on the spot at the time of the occurrence according to his own admission. Not only that, he had according to his own statement, participated in the incident and even assaulted the deceased Dabaru, before fleeing from the spot. 13 15. That the statement of an accused made under Section 313 Cr.P.C. can be taken into consideration is not in dispute; not only because of what Section 313 (4) of the Code provides but also because of the law laid down by this court in several pronouncements. We may in this regard refer to the decision of this Court in Sanatan Naskar and Anr.. v. State of West Bengal, where this Court observed: 21. The answers by an accused under Section 313 Cr.P.C are of relevance for finding out the truth and examining the veracity of the case of the prosecution. 22. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can 14 be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or

trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. 15 24. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 Cr.PC as it cannot be regarded as a substantive piece of evidence.. To the same effect is the decision of this Court in Ashok Kumar v. State of Haryana.

10. Reference may also be made to the decision of this Court in Brajendrasingh v. State of Madhya Pradesh where this Court said : (SCC p. 279, para

15) 15. It is a settled principle of law that the statement of an accused under section 313 Cr.P.C can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under section 313 Cr.P.C simpliciter normally cannot be made the basis for conviction of the accused. But where the statement of the accused under section 313 Cr.P.C is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced. 16 17. Time now to examine whether Monglus participation in the crime is proved by the prosecution evidence adduced at the trial. PW-4 Samsul has in his deposition specifically stated that Monglu was one of those who had assaulted deceased-Darbaru. Similarly, PW5Monglu Md., an injured witness, has also implicated Appellant no.16, and stated Darbaru was assaulted by Yusuf, Bhaka, Monglu and Jabbar. I also stated to the I.O. the fact regarding assault of Darbaru PW-6 Lal Khan is yet another injured witness who incriminates Appellant no.16-Monglu. He stated, At first Jabbar, Yusuf Amin and Monglu assaulted Darbaru with a dagger, ballam etc. who sustained multiple injuries on his person and succumbed to such injuries PW-17 Bholu Md. is also an injured witness who corroborated the version given by the other eye- witnesses and stated Sabdul, Khairuddin, Ishahaque, Nasiruddin, Monglu and others

assaulted Darbaru severely. 18. It is evident from the above that the Appellant no.16- Monglus presence on the spot and participation in the commission of the offence is proved by the evidence led by the prosecution and supported by his own statement recorded under 17 Section 313 Cr.P.C. That is not, however, true about the remaining two appellants namely, Hafijuddin and Motilal who were neither named in the FIR nor is there any cogent evidence to suggest their complicity or participation in the commission of the offence. In the circumstances, therefore, while appeal filed by Monglu shall have to be dismissed, that filed by Hafijuddin and Motilal shall have to be allowed giving to the said two appellants also the benefit of doubt. It has been observed further by the Honble Apex Court in the case of JAI DEV Vs. STATE OF PUNJAB reported in AIR 1963 SC612at Paragraph No.21, which reads as follows: 21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr.Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat AIR 1953 SC468 In that case, this Court has no doubt referred to the fact that it was important to put the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to 18 suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under S.342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under S. 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under section 342 would be to enquire whether, having regard to all the

questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under S.

342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking for a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate as unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material. The above said preposition of law has been re-appreciated in the case of STATE OF PUNJAB Vs. HARI SINGH AND OTHER reported in (2009)4 SCC200 at para 18 to 20, which reads as follows: 18. When the accused was examined under Section 313 Cr.P.C., the essence of accusation was not brought to his notice, more particularly, that possession aspect, as was observed by this Court in Avtar Singh v. State of Punjab. The effect of such omission vitally affects the prosecution case. 20 19. Above being the position, we find no merit in this appeal which is, accordingly, dismissed. However, certain directions given by the High Court for initiation of action against some officials could not have been given while dealing with an appeal and, therefore, stand expunged. The appeal is dismissed except for a direction for expunction of the direction for initiation of departmental action. 10. By close attention to the preposition of law laid down by the Honble Apex Court in catena of decisions, it is clear that the intention of Sec.313 Cr.P.C. is not only to benefit the accused, but it is corolloms to benefit the Court in reaching the final conclusion. In that light, non-rendering of the statement of accused under Section 313 of Cr.P.C. is considered to be vital and it is not a empty formality.

11. When it has been brought to the notice of this Court that the statements given under Section 313 of Cr.P.C. by the accused have been kept blank then, the Court cannot close its eyes to such a patent irregularities and the illegality committed by

the learned Fast Track Court by treating the matter so casually. The materials show that the concerned Presiding Officer has no responsibility, duty consciousness and serious concern about these aspects that too when the Court is considering the right of a person about his life and death is concerned. The judgment was pronounced on 28.2.2011 i.e., 7 years back. Till today the original judgment in respect of accused Nos.2 and 3 is not at all signed by the concerned Presiding Officer, though the judgment is signed in respect of accused No.1. Therefore, perusing the materials, we are of the opinion that it is not only mere irregularity which can be cured under Section 465 of Cr.P.C. but it is the illegality committed by the learned Fast Track Court in treating the matter so casually. We are conscious of the fact that it is not a so serious aspect but the act of the Presiding Officer of Fast Track Court amounts to nothing but dereliction of duty which has to be viewed seriously.

12. As discussed above, we feel that the matter requires to be sent back to the trial Court. Therefore, the concerned Fast Track Court is directed to again examine the accused persons by putting incriminating material as against the accused 22 persons, then the matter is to be disposed of afresh in accordance with law.

13. In the result, we pass the following order: (i) The appeals are allowed and the judgments and order of acquittal passed by the learned Fast Track Court under the impugned judgment herein are set aside. (ii) Both the matters are remanded to the concerned Court with a direction to dispose of the same afresh after examining the accused persons as per the procedure contemplated under Section 313 of Cr.P.C. (iii) High Court Registry is directed to keep the original statement (with blank columns) of the accused persons recorded under Section 313 of Cr.P.C. and the judgments in respect of both the sessions cases disposed of by the learned Fast Track Court, in a sealed cover and in a safe custody after taking out the certified copy of them so as to send them to lower court for further action in the matter. Originals be kept with Registrar Judicial, till decision is taken in the matter by Honble the Chief Justice on the issue. 23 (iv) Copy of this judgment be sent to the concerned Presiding Officer, wherever he may be serving. (v) The Registrar General is directed to place the matter before the Honble Chief Justice for appropriate action in the matter. (vi) We place on record the valuable assistance

rendered by Sri B.V. Pinto, learned Amicus Curiae. Hence, the Registry is directed to pay Rs.10,000/- (Rupees Ten Thousand only) to learned Amicus Curiae, as Honararium. Sd/- JUDGE Sd/- JUDGE Bkp/Cs Ct:MHP

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