

Ravi Alias Battery Ravi Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-07-2018

Judge : Ravi Malimath and K.Somashekar

Appeal No. : CRL.A 1364/2012

Appellant : Ravi Alias Battery Ravi

Respondent : State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE07H DAY OF FEBRUARY, 2018 PRESENT THE HONBLE MR.JUSTICE RAVI MALIMATH AND THE HONBLE MR.JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.1364 of 2012 BETWEEN: RAVI ALIAS BATTERY RAVI AGED ABOUT28YEARS, S/O PUTTARAJU, R/AT SARASWATHIPURAM COLONY, HUNSUR TOWN, MYSURU - 571 105. (BY SRI. P. NATARAJU, ADVOCATE) AND: STATE OF KARNATAKA BY HUNSUR TOWN POLICE STATION REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDING, BENGALURU - 560 001. ... APPELLANT (BY SMT. B.G. NAMITHA MAHESH, HCGP) --- ... RESPONDENT2THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE

ORDER

DATED 26.09.2012 PASSED BY THE PRESIDING OFFICER, FAST TRACK COURT, HUNSUR IN S.C.No.248 OF 2011- CONVICTING THE APPELLANT-ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND THE APPELLANT- ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND DIRECTED THAT HE SHALL NOT BE RELEASED TILL REST OF HIS LIFE. THIS CRIMINAL APPEAL COMING ON FOR HEARING J., DELIVERED THE THIS DAY, K. SOMASHEKAR FOLLOWING:

JUDGMENT

This appeal is directed against the impugned judgment of conviction and sentence passed by the Presiding Officer, Fast Track Court, Hunsur, in S.C.No.248 of 2011 dated 27.09.2012 convicting the accused for offences punishable under Section 302 IPC and sentencing him to undergo imprisonment for life and directing that he shall not be released till the rest of his life.

2. The factual matrix of the appeal is as under: On 16.06.2011, at about 10.00 a.m., the accused is said to have taken his second child, namely Nishor from 3 the maternal house of the complainant situated at Saraswathipuram Extension, Hunsur under the guise of purchasing eatables to the child. The accused had taken his son Nishor as well as his sister-in-laws son Shishya to Maratha Community Hall which was under construction near Shanimahatma temple, Hunsur, and suspecting that his child Nishor aged 1 year 4 months was not born through him, made the child drink the water mixed with Zidovudine, Lamivudine and Nevirapine tablets, as a result of which the child died. Pursuant to the act of the accused, on filing of a complaint by the complainant, the crime came to be registered by the police against the accused. Subsequently, the case was taken up for investigation by the Investigating Officer who laid a charge-sheet against the accused for the offences punishable under Section 302 of IPC. The Trial Court had framed the charges against the accused wherein the accused did not plead guilty but claimed to be tried. In order to substantiate the case against the accused, the prosecution in all examined PW-1 to PW-21 and got 4 marked several documents as Exhibits P-1 to P-14, apart from getting marked material objects namely, MO-1 and MO-2. Subsequently, the statement of the accused was

recorded under Section 313 Cr.P.C., where the accused had denied the incriminating evidence that appeared against him. He also did not lead defence evidence and had not adduced any documents for his defence.

3. The Trial Court, on hearing the arguments advanced by the counsel for the prosecutor and the learned counsel for the accused and on evaluating the entire evidence on record, had come to the conclusion that the prosecution had proved the guilt of the accused and convicted the accused for the offences under Section 302 IPC and sentenced him to undergo imprisonment for life and with a condition that he shall not be released till the rest of his life. It is this judgment which is under challenge in this appeal urging various grounds. 5 4. Heard the learned counsel for the appellant and so also the learned Additional State Public Prosecutor for the State.

5. On hearing the counsel for the parties, the point that arises for consideration in this appeal is, Whether the Trial Court was justified in convicting the accused for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with a condition that he shall not be released till the rest of his life?. 6. The learned counsel for the appellant contends that the judgment of conviction and sentence passed by the Court below against the appellant for the offence punishable under Section 302 of IPC is contrary to law, facts and evidence on record and the same suffers from infirmities and illegalities. The judgment has been passed relying on inconsistent, interested and unreliable testimony of the prosecution witnesses. The Court below had erred in convicting the appellant though the prosecution has failed to prove that the appellant was responsible for the 6 death of the deceased. It is the further contention of the learned counsel that the prosecution has improved the case during the course of the trial. It is the further contention of the learned counsel that the Court below has failed to notice that the prosecution has not proved the motive alleged against the appellant for committing the alleged offence. Further, it has failed to properly consider the fact that the seizure mahazar has not been proved in accordance with law. Hence, it has failed to properly consider the commissions and contradictions in the evidence of the prosecution witnesses. Further, when the entire evidence placed on record by the prosecution is taken on its face value, the prosecution has not made out a

case to convict the appellant for the alleged offence. The Judgment and order of conviction passed by the court below is only on assumptions and presumptions and not on the basis of proper appreciation of evidence on record, in its proper perspective. Hence, the learned counsel for the appellant prays for allowing the appeal and consequently to acquit 7 the accused for the offences alleged, since the same has not been proved beyond all reasonable doubt.

7. Per contra, the learned Additional State Public Prosecutor has taken us through the judgment of conviction and sentence held by the Trial Court in S.C.No.248 of 2011 including the evidence on record and so also the documents which were got marked in order to prove the guilt of the accused where the accused had committed the murder of his own son Nishor by administering him antiviral drugs. He submits that the court below has appreciated the evidence adduced in a proper perspective and has rightly convicted the accused and hence the impugned order passed by the court below does not call for interference. In order to substantiate the same, he submits as follows: PW-1, the complainant who is the mother of the deceased Nishor had deposed to the effect that the accused is her husband and she had two children namely, elder son Kishor and younger son Nishor. When she was 8 pregnant with her second son Nishor, she was not keeping well and was admitted to Jayadeva Hospital, Bangalore, for treatment. The Doctor there had diagnosed that she had a hole in her heart. Hence, she was taking treatment for the same. Due to her ill health, the accused -appellant had left her company. Hence, she started staying in her parental house in Hunsur town. The accused also though was residing in Hunsur, he never visited her parental house to meet her. When she was pregnant with her second son added to suffering heart ailment, the accused had abandoned her. Thereafter, she had given birth to her second son i.e., Nishor in the Government Hospital, Hunsur. When the child was 1 year 4 months, by that time the complainant had recovered from her health problem. At that time, the accused started insisting the elders of the village to send her with him. Accordingly, Panchayath was constituted two to three times and both the parties were conciliated and finally it was decided to send the complainant with the accused. However, the complainant was still residing in her parental home. 9 When things stood thus, on 15.06.2011, the accused had gone to her parental house and took her second son Nishor on the pretext of purchasing him eatables

and had then brought him back. Again on the next day morning, i.e., on 16.06.2011 at about 9.30 a.m. to 10.00 a.m. the accused had taken her second son Nishor as well as her sisters son Shishya along with him on the pretext of purchasing them eatables. On the same day at about 12.30 p.m., he had brought back Nishor and Shishya and had left both of them in her parental home. As soon as the accused brought the children, the complainant noticed that Nishor was frothing, on which she became nervous and immediately herself and her mother had taken Nishor to the Government Hospital, Hunsur. The Doctor on examining him had advised them to take Nishor to the Mysuru K.R. Hospital. Hence, they had at once rushed him to K.R. Hospital. But however, her son Nishor died. After Nishors death, the complainant had questioned her husband as well as her sisters son Shishya who is examined as PW-8 who had told her that the accused had 10 purchased them eatables and juice and then had taken both the children inside the Maratha community hall near the Shanimahatma temple, Hunsur, where he powdered a tablet and dissolved it with water in a stainless steel container and had made the child Nishor to drink it. Accordingly, the said Nishor had drunk the solution. This had led to the death of the child. Since the accused was in the habit of frequently quarrelling with the complainant suspecting her fidelity as well as telling that Nishor was not born to the accused, she had realized that her husband must have been the cause of her sons death. Hence, after her sons death, she had filed the complaint before the police as per Exhibit P-1. In the cross-examination, she had stated that her marriage was performed with the accused about seven years prior to the incident. That her elder son was aged 3 years and that she could not say the date of birth of her second son Nishan. She has stated that her husband had dozed kerosene over her and had sent her to her parental house, in respect of which she is said to have given a 11 complaint before the Commissioner of Police. But, she could not say the date on which the complaint was filed by her. Further, there was a panchayath constituted thrice regarding difference of opinion in between her and her husband. The last panchayath had been constituted in respect of their differences, on 15.06.2011. In the Panchayath, it was decided that she must live along with her husband, in respect of which a bond paper was also executed by both of them. However, her husband did not take her to his house. She had specifically stated in her cross-examination that

she had not kept any of her tablets which she was taking for her heart ailment in the reach of Nishor, and that all her tablets were kept locked in the almirah. Hence, the child could not have consumed any tablet due to her negligence. Further, she had also clarified that she was not suffering from AIDS as the accused had alleged and that she had been suffering from only heart ailment for which she was under medication. In this case, PW-2 and PW-3 panch witnesses had been secured by the Investigating Officer and held inquest 12 over the dead body of Nishor as per Exhibit P2, wherein they have stated in their evidence that Exhibit P2 was held in their presence by the Police Inspector of Hunsur Circle in Crime No.125 of 2011. On verification of the dead body of Nishor, this mahazar had been conducted in the presence of PW-1 complainant Sumithra and the spot mahazar had also been conducted in the presence of panch witnesses. Exhibit P4 is the spot mahazar which had been conducted by the PSI of Hunsur Town Police Station in Crime No.125 of 2011 in the presence of panch witnesses. PW-4 is the witness for having secured the spot mahazar, who has supported the case of the prosecution version of the mahazar at Exhibit P-4. PW-4 and PW-5 are the seizure panch witnesses secured by the Investigating Officer during the course of investigation in whose presence the mahazar has been conducted and also for having seized MO-1 - plastic bottle, MO-2 - stainless steel glass which was used to mix the tablet. 13 Though these witnesses had been subjected to cross-examination by the counsel for the accused, nothing worthwhile has been elicited and the same has been seen in their evidence itself. Therefore, there is no infirmity in the impugned judgment relating to acceptance of the evidence of these panch witnesses secured by the Investigating Officer in order to conduct the mahazar as per exhibits. PW-7 is the mother of the complainant who has filed a complaint as per Exhibit P1. She has also supported the averments in the complaint and her evidence also corroborates with the evidence of the complainant PW-1. PW-8 is the child witness Shishya who is the sisters son of the complainant, who had also supported the case of the prosecution. He had deposed that the accused Ravi had bought them biscuits, snacks and juice. Then, he had taken Shishya and Nishor to the Maratha Community Hall and in the said hall, had powdered some tablet and dissolved the same in water in a steel glass and had made Nishor to drink it. This is the clinching evidence to prove 14 that it

was the accused who had administered the antiviral tablets to the child Nishor which had caused his death. PW-13 is the Doctor who had conducted autopsy over the dead body of Nishor. He had opined that the cause of death was due to cardio respiratory failure as a result of Antiviral drugs poisoning. PW-14 is another Doctor one B. Shivanna, a retired Administrative Medical Officer who was working in Government Hospital, Hunsur, who has deposed in respect of the father of the deceased by name Puttaraju that he was suffering from AIDS and also in respect of giving him treatment by way of Anti Retro Viral Therapy tablets. PW-18, the Investigating Officer who had conducted the investigation of the case had deposed that the accused himself had taken him to the Marata Community Hall and had told that his parents who were ill, were working as coolies in the said community hall and they were consuming some tablets for their illness. Then he had taken the Investigating Officer near a window in the said community hall and had showed him a box containing 15 tablets that his parents consumed and had also showed him a steel glass which was kept near the pill box. The accused had given statement before the said Investigating Officer that he had powdered the tablet found in the said box and had then dissolved it with water using the said steel glass and had made Nishor drink it. PW-6 though had partially turned hostile, in his examination-in-chief he had deposed that MO-1 and MO-2 were seized from the Marata community Hall in his presence, which was also not disputed by the accused. Further PW-5 and PW-6 had specifically identified the antiviral tablets for HIV Positive patients kept in MO-1 and also had witnessed the smeared contents of the same in MO-2. PW-18 had further deposed that from the contents of the voluntary statement of the accused, he had gathered that the father of the accused Puttaraju was suffering from AIDS disease, for which Anti Retro Viral drugs were prescribed for him by the Doctor. Since Puttaraju was working as a coolie in the said Maratha Community Hall, 16 he had kept the said tablets as well as the steel glass near the window. The said tablets were said to be consumed by the said Puttaraju regularly. It is this tablet which had been administered to Nishor by the accused by powdering the same and dissolving it with water using the steel glass. Though in his defence the accused had stated that the complainant was suffering from AIDS and it is due to her carelessness that the child Nishor had swallowed the said tablet by mistake, the complainant had made it clear in her cross-

examination that she was only suffering from heart ailment and moreover, she was very careful about her tablets that she always locked the same in the almirah and it was always kept out of reach of the child and there was no question of the child having swallowed the tablet due to her carelessness.

8. Hence, the learned Additional SPP submits that it is clear from the evidence of the witnesses for the prosecution that Anti Retro Viral drug was administered by the accused to his son Nishor, which has led to the child's death. The motive for killing his own son is that the 17 accused believed that Nishor was not born to him. Hence, suspecting the fidelity of his wife Sumithra, the accused had committed the heinous act of murdering his own son by administering HIV drug to the child. Hence, he submits that the judgment of conviction and sentence passed by the Trial Court needs no interference.

9. On a careful consideration of the contentions of the learned counsel for the appellant as well as the learned Additional SPP and on an evaluation of the records, the following things are gathered. On 16.06.2011, at about 10.00 a.m., the accused is said to have taken his second child, namely Nishor from the maternal house of the complainant situated at Saraswathipuram Extension, Hunsur under the guise of purchasing eatables to the child. The accused had taken his son Nishor as well as his sister-in-law's son Shishya to Maratha Community Hall which was under construction near Shanimahatma temple, Hunsur, and suspecting that his child Nishor aged 1 year 4 months was not born through him, made the child drink the water mixed with 18 Zidovudine, Lamivudine and Nevirapine tablets as a result of which the child died. The accused was suspecting that the child Nishor was not born through him. This is established by the fact that he was frequently quarrelling with his wife - the complainant. Further, when she was pregnant with her second child Nishor, she was diagnosed to be suffering from heart ailment. Hence, she was taking treatment for her heart ailment when carrying her second child. During the crucial moment when she was ill as well as pregnant, he had been quarrelling with her frequently and thereby abandoned her. Hence, she was forced to go and live in her parental home. The witnesses who have been examined for the prosecution have corroborated the above facts. Only when she recovered, the accused had approached the elders in

the village to send her along with him, after which there was a panchayath held and both of them were reconciliated. He had not even taken her to his house. Since both the complainant and the accused had conciliated and were ready to live together, the accused 19 had started visiting her house. The complainant was not aware of the evil intention of the accused that he had a plan to take away the life of the child. Hence, she had not objected to when he had taken the child from her parental home. He had then proceeded to administer antiviral drugs, which had caused his death. The above facts clearly prove that the accused was suspecting that the boy Nishor was not born to him. This was the intention for him to commit the murder of Nishor by administering him HIV tablets. The motive of the accused to commit the murder, is evident from the above discussion. Further, the evidence of PW-8, the child witness Shishya is the direct eye-witness to connect the accused. The accused while taking his son Nishor with him, had also taken his sister-in-laws son Shishya. The said Shishya had deposed to the effect that his uncle (accused) had taken him and Nishor to the bakery and had got them biscuits, juice and eatables and that he had further taken them to Maratha Community Hall near Shanimahatma Temple, Hunsur. In the said Hall, that the accused had 20 powdered some tablet and dissolved the same with water in a steel glass and made his son Nishor drink the said solution. This is the clinching evidence placed by the prosecution to prove the guilt of the accused. The evidence of the Investigating Officer PW-18 also proves the fact that it is the accused and the accused alone who had been the cause for the death of his son Nishor. His evidence reveals as to how the accused came into possession of the Anti Retro Viral drugs prescribed for a person suffering from AIDS, which he had administered to the child Nishor to kill him. The accused had given voluntary statement before the Investigating Officer, that his father Puttaraju and his mother were working as coolies in the Maratha Convention Hall in Hunsur and that they were suffering from some ailment for which the Doctor had prescribed drugs and that they were taking the tablets for their ailment regularly. The accused after giving his voluntary statement, had personally taken the Investigating Officer to the Maratha Convention Hall and had showed him the place near the window where a pill 21 box and a steel glass was found. The same were duly seized under a mahazar in the presence of panch witnesses PW-5 and PW-6. He had told the

Investigating Officer that he had powdered the pill which was found in the said pill box and using the steel glass he had dissolved the same in water and had administered it to his son Nishor. Thereafter, the Investigating Officer had sent the steel glass and the pill box for chemical examination. The result revealed that it was an antiviral pill which contained Zidovudine, Lamivudine and Nevirapine and was prescribed for a person suffering from AIDS. Subsequently, PW-14, Doctor had been examined who had stated that he was treating Puttaraju, the father of the accused who was an AIDS positive patient and that he had prescribed the said drugs to Puttaraju, though he is now dead. The accused thus came into possession of the said tablets and had used the same to cause the death of his son Nishor. Though there may be some discrepancies in the evidence of some of the witnesses who had been treated 22 hostile, the evidence of the complainant PW-1, child witness PW-8, Investigating Officer, PW-18, seizure panch witnesses PW-5 and PW-6, Doctor who conducted autopsy PW-13 and the retired Doctor PW-14 are all clinching evidences for the prosecution which proves the guilt of the accused beyond all reasonable doubt. Hence, the Trial Court has rightly come to the conclusion that it was the accused who had caused the death of his son Nishor. Due to the heinous act of having caused the death of an innocent 1 year 4 month old child, that too his own son, the Trial Court had viewed it very seriously and had convicted him and had imposed the punishment of life imprisonment with the condition that he shall not be released till the rest of his life. Hence, we find that the said sentence imposed by the Trial Court is just and reasonable, which does not call for any interference. Therefore, we have no hesitation to uphold the conviction held by the Trial Court in respect of the accused, as we find that there is no infirmity in the impugned judgment of the Trial Court. Accordingly, we pass the following order:

23. The point framed in this appeal is answered in the positive and the appeal is accordingly dismissed. Consequently, the judgment of conviction and sentence passed by the Presiding Officer, Fast Track Court, Hunsur, in S.C.No.248 of 2011 dated 27.09.2012 is hereby Sd/- JUDGE confirmed. Sd/- JUDGE KS