

**State Of Karnataka Vs. Siddaraju**

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**Court :** Karnataka

**Decided On :** Mar-09-2021

**Judge :** Ashok G.Nijagannavar

**Appeal No. :** CRL.A 883/2011

**Appellant :** State Of Karnataka

**Respondent :** Siddaraju

**Judgement :**

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE09H DAY OF MARCH, 2021 BEFORE THE HON'BLE MR. JUSTICE ASHOK G.NIJAGANNAVAR CRIMINAL APPEAL NO.883 OF2011(A) BETWEEN: STATE OF KARNATAKA, BY INDIRANAGAR POLICE, BANGALORE. ...APPELLANT (BY SRI RAHUL RAI K, HCGP) AND:

1. SIDDARAJU, S/O LATE RAMAIAH, AGED ABOUT27YEARS, 2. LINGAMMA, W/O LATE RAMAIAHA, AGED ABOUT54YEARS, (NOTE A-3 IS DEAD) A1 AND A2 ARE R/AT NO.151, 2ND CROSS, 2ND MAIN, OLD THIPPASANDRA, HAL II STAGE, INDIRANAGAR, BANGALORE. RESPONDENTS (BY SRI A.N.RADHAKRISHNA, ADVOCATE) \*\*\*\* 2 THIS CRIMINAL APPEAL IS FILED UNDER SECTION3781) AND (3) CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT DT:20.04.2011 PASSED BY THE XLV ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN S.C.NO.587/2007 -

ACQUITTING THE RESPONDENT FOR THE OFFENCE P/U/S498A) AND 306 R/W OF IPC. THIS APPEAL COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING THROUGH PHYSICAL HEARING:

## JUDGMENT

This appeal has arisen out of the judgment of acquittal dated 20.04.2011 in S.C. No.587/2007 passed by the XLV Additional City Civil & Sessions Judge, Bengaluru (CCH-46) for the offence punishable under Section 498A and 306 read with Section 34 IPC.

2. The prosecution case in nutshell is that the marriage of complainant's sister was performed on 30.10.2005 with accused No.1 Siddaraju. After the marriage, the couple was leading happy marital life for about 1 month. Thereafter, the accused No.1, his mother - accused No.2 and his brother - accused No.3 started causing harassment to Venkatalakshmi physically and mentally on the 3 reasons that she does not know cooking or doing household work and she was also harassed to get additional dowry and gold ornaments. On 05.02.2006 morning at 8.30 a.m., the victim Venkatalakshmi committed suicide in the house of the accused by pouring kerosene and setting herself ablaze.

3. On registering the case, the police have conducted the investigation and filed chargesheet for the offence punishable under Section 498A and 306 read with Section 34 IPC. Subsequent to filing of the chargesheet, the accused No.3 has expired.

4. After committal of the case, the accused have appeared. The charges were framed, but the accused have denied the same and have claimed to be tried. The prosecution has examined 13 witnesses as PW1 to PW13. The documents are marked as Exhibits-P1 to P21. The material objects are marked as M.O. Nos.1 to 6. The statement under Section 313 Cr PC was recorded and the accused have denied the incriminating circumstances. 4

5. On appreciating the oral and documentary evidence placed on record, the trial Court has acquitted the accused Nos.1 and 2 for the offence punishable under Section 498A and 306 r/w Section 34 IPC. Being aggrieved by the order of

acquittal, the State has preferred the appeal.

6. Heard learned High Court Government Pleader for the State and learned counsel for the respondents - accused. Perused the prosecution records and the impugned judgment of acquittal.

7. The learned High Court Government Pleader relying on the evidence of \*prosecution witnesses submitted that the complainant - PW1 - brother of the deceased, PW4 and PW5 - brothers of the deceased and PW3 - sister of the deceased have consistently stated about the harassment caused by the accused to the victim Venkatalakshmi to get dowry, gold ornaments and also for other reasons, thereby, they have compelled her to commit suicide. Their evidence cannot be discarded only on the reason that they are the close relatives of the deceased victim. Even though PW2 and \*Corrected vide chamber order dated:

31. 03.2021. 5 two other witnesses have stated that the victim was short tempered and she was not knowing cooking or household works, that should not be the reason for causing harassment to the victim. It is only on account of the cruelty meted out by the accused, the victim has committed suicide. There is ample evidence to prove the instigation done by the accused in committal of suicide by the victim. The trial Court has failed to consider the relevant evidence placed on record which has resulted in miscarriage of justice. Thus, the order of acquittal passed by the trial court is liable to be set aside.

8. Per contra, the learned counsel for the respondents - accused submits that there are material contradictions and discrepancies in the evidence of PW1, PW3, PW5 and PW2 & PW4. Admittedly, the victim has committed suicide within a span of four months after the marriage. Majority of the witnesses have clearly stated that after marriage, both husband and wife have led marital life happily. There is no clinching evidence to show that the accused have caused harassment and have subjected the 6 victim to cruelty for getting either dowry or for any other reason. There are material omissions in the evidence of PW1, PW3 and PW5. The evidence of prosecution witnesses do not make out a case of harassment or instigation done by the accused or to compel the victim to commit suicide. Thus, the accused are not responsible for the death of the deceased. There are no valid

grounds to interfere with the judgment of acquittal passed by the trial Court. In support of the said contentions, the learned counsel for the respondents - accused has relied on following decisions: i. In the case of Gangula Mohan Reddy vs State of Andhra Pradesh reported in (2010) 1 SCC (Cri) 917. ii. In the case of Bhagwan Das vs Kartar Singh and others reported in (2008) 1 SCC (Cri) 664. iii. In the case of Assoo vs. State of Madhya Pradesh reported in 2012 CrI.L.J.

658. iv. In the case of Arulvelu and another vs State and another reported in (2010) 1 SCC (Cri) 288. 7 v. In the case of Mankamma vs State of Kerala reported in (2010) 1 SCC (Cri) 281. vi. Judgment dated 02.01.2020 passed in Criminal Appeal No.49/2018 of High Court of Karnataka.

9. In view of submission of learned High Court Government Pleader for the State and learned counsel for the respondents - accused, the only point that would arise for consideration by this Court is: Whether the trial Court was justified in acquitting the accused?.

10. The present appeal is against the order of acquittal. The law is well settled that in an appeal against acquittal, unless the judgment of the trial Court is perverse, the appellate Court would not be justified in substituting its own view and reversing the judgment of acquittal. The High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. In other words, the High Court should not interfere with the order of acquittal merely because two views <sup>8</sup> are possible. It is only where the appreciation of evidence of the trial Court is capricious or its conclusions are without evidence, in such cases, the High Court may reverse the order of acquittal. The interference will be justified only when the order of acquittal is not in accordance with law.

11. In a decision reported in 2007 (4) SCC415 in the case of Chandrappa vs State of Karnataka, the Honble Apex Court has observed that the appellate Court, however must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him in the fundamental principle of criminal jurisprudence that every person is presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly,

the accused having secured his acquittal, presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

12. In criminal cases, conviction can be sustained only if there is a clear evidence beyond reasonable doubt. The accused cannot be convicted only on the reason that in all probabilities, the accused might have committed the crime.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. In a decision reported in 2010 (1) Supreme Court Cases (Cri) 896 in the case of Amalendu Pal alias Jhantu vs. 10 State of West Bengal, the Apex Court relying on a decision reported in the case of Kishori Lal vs. State of M.P., has observed as under: 6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word instigate literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentionally aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. Abetted in Section 109 means the specific offence abetted. Therefore, the offence for the abetment 11 of which a person is charged with the

abetment is normally linked with the proved offence.

15. Further, relying on a decision reported in the case of Kishangiri Mangalgiri Goswami vs. State of Gujarat, wherein it is observed that the Court has consistently taken the view that before holding as accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her/his life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. 12

16. In Rajesh v. State of Haryana; 2019 (1) RCR (Criminal) 9 of 16 847, it has been observed in para 8 as under: -

"8. Conviction under section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under section 306 IPC.

17. In Gurcharan Singh v. State of Punjab; 2017 (1) RCR (Criminal) 118, Hon'ble Supreme Court has observed in para 28 to 30 as under : - 13

"28. The pith and purport of Section 306 I.P.C. has since been enunciated by this Court in Randhir Singh v. State of Punjab 2004(4) R.C.R.(Criminal) 740 : (2004)13 SCC129 and the relevant excerpts therefrom are set out hereunder.

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve 10 of 16 that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 I.P.C.

13. In State of W.B. v. Orilal Jaiswal, 1994(3) R.C.R. (Criminal) 186 : (1994) 1 SCC73 this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim 14 committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

18. In order to ascertain whether the finding given by the trial court in passing the order of acquittal is correct and justified, this Court has re-examined the entire case by having cursory look at the evidence of prosecution witnesses.

19. In the present case, the prosecution version is that the victim has committed suicide by latching the door from inside and by pouring kerosene and setting herself ablaze. The evidence placed on record confirms the same.

20. PW1 is the complainant who is the brother of the deceased; PW2 is the mother of the deceased; PW3 is the sister of the deceased; PW4 and PW5 are the brothers of the 15 deceased. PW6 is the neighbour of the accused and witness to Exhibit-P2 - Mahazar. PW7 is the neighbour of the complainant and witness to inquest mahazar. PW8 is the neighbour of the accused. PW9 is the brother-in-law of the accused. PW10 is the lady constable who arrested accused No.2. PW11 - the Investigating Officer has conducted the investigation and submitted chargesheet. PW12 - the Medical Officer has conducted postmortem examination

and submitted report as per Exhibit-P20. PW13 is the police constable who arrested accused Nos.1 and 3.

21. PW1 has stated about the harassment caused by accused Nos.1 to 3 on the reason that the victim does not know cooking or doing household work. He has also stated that the accused have also abused the victim to end her life by committing suicide. The evidence of PW1 reveals that the marriage of his sister - Venkatalakshmi was performed on 30.10.2005. Immediately after marriage, she stayed in the house of her husband for only one week and returned to her parents house and complained about the harassment caused 16 by accused No.2 - Lingamma on the reason that she does not know cooking or household works. Once again after 15 days i.e., in the month of January 2006, his sister came back to her parents house and complained about the harassment on the same reasons. Thereafter, on 05.02.2006, she has committed suicide. Thus, it is evident that within a span of four months, she had come to her parents house three or four times. The evidence of PW1 indicates that his sister was hyper sensitive, she was frequently coming to her parents house on one or the other pretext and also complained about domestic problems.

22. In the cross-examination, he has stated that all accused and police were present at the house of accused before his arrival at the said spot. He has denied the suggestions that on the date of the incident, the accused No.1 had taken his mother - accused No.2 to the hospital for treatment and all accused were in the hospital, as such, the victim being alone at home has poured kerosene on her body and set herself ablaze. As per his evidence, the accused were 17 not in the house when the victim committed suicide, but they came there after the incident.

23. PW2 is the mother of the victim. She has stated in her evidence that there was a cordial relationship between her daughter and accused No.1 for about one month. Thereafter, they have started harassing the victim. Further, she has stated that her daughter has committed suicide within 7 days after going to the house of her husband. In the cross-examination, she has admitted that her daughter had adjusted to the family of the accused, but she was short tempered. She has denied the suggestion about the statement given before the Executive Magistrate

as per Exhibit-D1.

24. The evidence of PW1, PW4 and PW5 is contrary to the evidence of PW2. It is pertinent to note that PW1, PW3 and PW5 have stated about the harassment caused by the accused, but whereas PW2 has stated in her evidence that the accused were advising her daughter to learn the household work and cooking. It is also in her evidence that her 18 daughter being short tempered was getting impatient whenever the advice was given by the accused persons. She has also admitted that one day her daughter namely the victim had gone to the house of her brother on the pretext of getting milk, later her elder son advised and brought her to the house of the accused.

25. PW3 is the elder sister of the victim. She has stated that after the marriage, they were living happily for about 20 days, thereafter, the accused have started causing harassment. When her sister had come to her parents house during Sankranti festival, she had told about the harassment caused by the accused. Later, she got information that accused have set fire to her sister by pouring kerosene. In the cross-examination, she has denied the suggestion about the statement given before the Executive Magistrate as per Exhibit-D2.

26. PW4 who is the brother of the victim has not supported the prosecution version and has not stated about any harassment caused by the accused to his sister (victim). 19 This witness was treated as hostile. In the cross- examination, he has denied the suggestion about the statement given as per Exhibit-D5.

27. PW5 is only a hearsay witness. According to him, the deceased victim had told about the harassment before her sister and other brothers.

28. PW6 and PW8 are independent witnesses and neighbours of accused, but they have not stated about any harassment caused by the accused. They have not supported the case of the prosecution. Even in cross-examination, nothing is elicited to prove the harassment or instigation by the accused.

29. PW7 is the neighbour of the complainant and also the witness for inquest mahazar, but he has not stated about any harassment caused by the accused to

the victim.

30. PW9 is the brother-in-law of accused No.1 and brother of accused No.2. He has not stated as per Exhibit-P9. PW7 and PW9 are treated as hostile and cross-examined by 20 the prosecution, but nothing is elicited to prove the prosecution version.

31. The testimony of PW10 - lady police constable is contrary to the evidence of PW1. PW10 has stated that accused No.2 was arrested near the bus stand. According to the version of PW1, the accused were there at the house when the police and the complainant had gone there. Under such circumstances, PW10 arresting accused No.2 near the bus-stand does not arise.

32. PW11 - Investigating Officer has stated about the entire investigation done by him. In the cross-examination, he has stated about the complaint recorded on 05.02.2006 as per the oral statement given by PW1. He has admitted that at the time of victim committing suicide, the accused were not present in their house and has also stated that on 05.02.2006 when he had gone to the spot, the accused were present there. According to the prosecution case, the accused were arrested on 07.02.2006. But, as per the evidence of PW1 and PW2, accused had come to their house 21 after the incident and when the police had come to the spot. Thus, there is a clear contradiction in the evidence of PW1 and PW2 & PW10. PW11 has also admitted in the cross- examination that PW8 - Sindhu has narrated in her statement about the advice given by her to accused No.2 - Ningamma to train her to do household work and also to Venkatalakshmi to learn household work and cooking. PW11 has also mentioned about certain omissions in the statement given by PW5 and PW1.

33. The trial Court on analyzing the entire prosecution witnesses, has given factual finding that there is no satisfactory evidence to prove that the accused have caused physical and mental harassment. On reappraisal of the evidence placed on record, this Court is of the view that the evidence placed on record is short of the required standard of proof. The trial Court has properly appreciated the evidence. The evidence of prosecution witnesses on record does not demonstrate the unqualified clarity and conviction any role played by the accused

in causing harassment to the victim or 22 inducement or instigation so as to persistently provoke or compel the deceased to commit suicide.

34. For the foregoing reasons, I am of the opinion that the prosecution has not succeeded in proving the ingredients of Section 498A and 306 IPC. There are no valid grounds to interfere with the findings given by the trial Court for acquittal of the accused. Accordingly, I pass the following:

**ORDER**

The Criminal Appeal is dismissed. Sd/- JUDGE SJ

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