

State Of Karnataka Vs. Suresha

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Court : Karnataka

Decided On : Nov-17-2021

Judge : K.Somashekar and Pradeep Singh Yerur

Appeal No. : CRL.A 1095/2016

Appellant : State Of Karnataka

Respondent : Suresha

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE17H DAY OF NOVEMBER, 2021 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE PRADEEP SINGH YERUR CRIMINAL APPEAL No.1095 OF 2016 BETWEEN: State of Karnataka By H.D. Kote Police Station Mysuru District Represented by State Public Prosecutor High Court Building Bengaluru - 571114. ...Appellant (By Sri. Rahul Rai K - HCGP) AND: Suresha S/o Somanaika @ Chennanaika @ Thopanaika Age:

53. years Auto Driver R/at Jinnahalli Village H.D. Kote Taluk - 571114. ...Respondent (By Sri. P. Nataraju - Advocate) 2 This Criminal Appeal is filed under Sec.378(1) and (3) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment and order of acquittal dated 20.02.2016 passed by the I-Addl. Sessions Judge at Mysuru in S.C.No.338/2012 thereby acquitting accused / Respondent for the offence punishable under Section

302 of IPC. This criminal appeal coming on for further hearing this day, K. SOMASHEKAR J., delivered the following:

JUDGMENT

This appeal is directed against the judgment rendered by the Trial Court in S.C.No.338/2012 dated 20.02.2016 acquitting the respondent / accused for offences punishable under Section 302 of the Indian Penal Code, 1860 (for short IPC). The State has filed this appeal seeking to set aside the acquittal judgment rendered by the Trial Court and consequently to convict the accused for offences under Section 302 of the IPC, 1860, considering the grounds urged therein.

2. We have heard the arguments advanced by the learned HCGP for the State and so also the learned counsel Shri P. Nataraju for the respondent / accused, 3 who are present before court physically. Perused the judgment of acquittal rendered by the Trial Court in S.C.No.338/2012.

3. It transpires from the case of the prosecution that the deceased Manja @ Manjunatha is none other than the son of Chowdamma / PW-4 who is the complainant who had filed a missing complaint as per Exhibit P12. Based upon her missing complaint, an FIR at Exhibit P-26 was recorded by the police having jurisdiction. Subsequent to recovery of the dead body of Manja @ Manjunatha, she had again lodged another complaint as per P-13. Exhibit P-27 is the further FIR which was filed, to which PW-14 / M.B. Thippegowda, the PSI of H.D. Kote Police Station has subscribed his signature. The criminal law was set into motion in view of the complaint report filed by the complainant and after recording FIR, the Investigating Officer / PW-16 had taken up the case for investigation and laid a 4 charge-sheet against the accused for the offence punishable under Section 302 IPC. However, the accused pleaded not guilty and claimed to be tried. During trial, the prosecution subjected to examination several witnesses namely PW-1 to PW-16 and so also got marked several documents at Exhibits P1 to P40 inclusive of material objects MO-1 to MO-7. Subsequent to closure of the evidence of the prosecution, incriminating statement of the accused as contemplated under Section 313 of the Cr.P.C. was recorded, whereby the accused had denied the truth of the evidence of the prosecution. Further, he did not come forward to

adduce any defence evidence as contemplated under Section 233 Cr.P.C. Subsequently, the Trial Court, on hearing the arguments advanced by the learned counsel for both the parties, had framed the points that arose for its consideration and answered point No.1 in the negative and point No.2 as per the final order and thereby acquitted the accused / 5 respondent herein. It is this acquittal judgment which is under challenge in the present appeal by urging various grounds.

4. It is narrated in the complaint filed by the gravamen of the incident that the deceased / Manja @ Manjunatha and accused / Suresha were friends. That deceased was working under PW-10 namely Ismail who was running Shamiyana business. But it is stated that deceased Manja had borrowed a loan of Rs.25,000/- from the accused Suresha. In view of monetary transaction between the deceased and accused, and due to the fact that the deceased was dodging re-payment of the loan borrowed, differences had arisen between the two friends. It is stated that accused Suresha was insisting the deceased Manja to repay the loan amount, but Manja was dodging the same on one pretext or the other. On 08.04.2012 at around 10.00 p.m., the accused with an intention to recover the loan amount of Rs.25,000/-, had gone to the house of the deceased and thereafter took the deceased along with him in his passenger auto saying that there was some urgent work as Manja's boss, namely PW-10 / Ismail had called him. Saying so, he took the deceased in his passenger auto bearing No.KL-10/K-5249 to Hommaragalli and insisted him to repay the loan amount. It is further stated that deceased Manja @ Manjunath took the accused to Shakthi Wine Stores wherein deceased and accused who were good friends, consumed wine and also had taken parcel of a quarter bottle of wine for consuming it later. Thereafter, they had proceeded towards Kapila Bridge, Hullahalli where also it is stated that they had again consumed wine and accused Suresha had once again insisted the deceased to repay the loan amount of Rs.25,000/-. But deceased had assured him that he would repay the same on the next day. The accused being frustrated by the reply of the deceased, is said to have hatched a criminal conspiracy to kill him. 7 Accordingly, the accused had taken the deceased to the middle part of the Kapila Bridge and is said to have pushed him into the river and murdered him. On the next day morning, i.e., on 09.04.2012 when the search of Chowdamma for her son went in vain, she lodged a complaint at around 1.45 p.m. In pursuance of the

complaint report, criminal law was set into motion by recording an FIR and thereafter PW-16 / Investigating Officer had taken up the case for investigation and he conducted investigation thoroughly by conducting spot mahazar at Exhibit P1 and drew the rough sketch of scene of crime as per Exhibit P-29 and also subjected to photographs of the dead body as at Exhibits P-14 to PW-21 and the dead body of Manja had been sent to the Government Hospital, H.D. Kote in order to conduct post-mortem over the dead body. Thereafter, PW-16 / I.O. had seized the clothes, slippers and the belt found on the body of the deceased and conducted seizure mahazar at Exhibit P3 in the presence of panch 8 witnesses and so also recorded the statement of witnesses.

5. The learned HCGP for the State contends that based upon the missing complaint filed by PW-4 / Chowdamma, a missing FIR was registered by the police and thereafter they had proceeded to search her missing son Manja @ Manjunath. But PW-13 / Borashetty, the ASI had registered the case based upon the missing complaint as per Exhibit P12 and PW-14 / M.B. Thippegowda is the PSI who recorded an FIR as per Exhibit P13 and thereafter criminal law was set into motion by recording an FIR. PW-16 / Investigating Officer thoroughly conducted investigation and laid the charge-sheet against the accused. Accused and deceased were friends and both of them were last seen together, as revealed from the evidence of witnesses namely PWs 6, 7 , 8 and 9. However, it is contended that the said evidence has not been properly appreciated by the Trial Court while 9 acquitting the accused. It is contended by the learned HCGP that merely because some witnesses did not support the case of the prosecution relating to last seen theory, it cannot be a ground to acquit the accused. It is also contended that the Trial Court has not properly appreciated the evidence of PWs 5 and 11 with regard to subsequent conduct of the accused in absconding. Hence, he contends that intervention is required in this appeal by re-appreciating the evidence in view of the fact that the Trial Court has misdirected itself in acquitting the accused. The Trial Court has referred to several reliances facilitated by the prosecution namely, i) 2015 (1) Crimes 74 SC, Raghuvendra vs. State of M.P; ii) ILR 1998 KAR3918 Ramesh Purdappa Ambannavar & others vs. State of Karnataka; iii) (2001) 1 SCC652 State Govt. of NCT of Delhi vs. Sunil and another; 10 iv) (2003) 1 SCC534 Sahadevan Alias Sagadevan vs. State represented by Inspector of

Police, Chennai; v) 2009 (1) Crimes 377 (SC) Raju vs. The State by Inspector of Police; vi) 2006 (2) Crimes 55 (SC), State of U.P. vs. Desh Ra; vii) 2012 (1) Crimes 32 (SC), State of Rajasthan Th. Secy. Home Dept. vs. Abdul Mannan; viii) 2001(1) Crimes 34 (SC) Gura Singh vs. The State of Rajasthan; ix) ILR 2004 KAR2531 Boraiah @ Pujari Boraiah vs. State of Thalak Police; x) 2010 (4) Crimes 41 (SC), G. Parshwanath vs. State of Karnataka. Though several reliances had been placed by the learned Public Prosecutor for the State before the Trial Court, but the Trial Court has misdirected the evidence facilitated by the prosecution and more so, not properly evaluated the evidence in acquitting the accused. 11 Therefore, learned HCGP contends that in this appeal, it requires for re-appreciation of the evidence wherein the appeal is a continuation of the proceedings. Therefore, the learned HCGP for the State seeks for consideration of the grounds urged in this appeal and thereby to set aside the judgment rendered by the Trial Court and consequently to convict the accused for offences punishable under Section 302 of the IPC, 1860.

6. Counter to the arguments advanced by the learned HCGP for the State, learned counsel Shri P. Natarajan has taken us through the material evidence, particularly the evidence of PW-1 to PW-4. PW-1 / Ahamed Shariff @ Babu who is a panch witness, has been secured by the Investigating Agency and in his presence, drew the spot mahazar at Exhibit P1 to which PW-1, PW-10, PW-11 and PW-16 had subscribed their signatures. Apart from that, the Investigating Officer has conducted inquest mahazar at Exhibit P2 whereby 12 PW-1, 10 and 11 had subscribed their signatures. The seizure mahazar at Exhibit P3 has been drawn by the Investigating Officer in the presence of PW-1, whereby PW-1, PW-10 and PW-16 had subscribed their signatures. Exhibit P4 is the spot mahazar which has been drawn by PW-16 / I.O. in the presence of PW-2 and PW-3 after obtaining the signature of accused at Exhibit P4. Exhibit P5 is the seizure mahazar relating to autorickshaw. This mahazar has been conducted in the presence of PW-2, PW-3 inclusive of PW-16 / I.O. who had subscribed their signatures inclusive of the accused. Another seizure mahazar Exhibit P6 relates to documents of autorickshaw in which accused had taken the deceased. This mahazar has been conducted by PW-16 in the presence of PWs 2 and 3 who have subscribed their signatures. Exhibit P7 is the seizure mahazar which is a delivery note. This

mahazar has been drawn by PW-16 / I.O. in the presence of PW-2 and PW-3. These are all the mahazars conducted by 13 PW-16 / I.O. who laid the charge-sheet against the accused. But merely because mahazar has been conducted in the presence of panch witnesses, it cannot be said that fulcrum of the aforesaid mahazars are gospel truth to arrive at the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt. This contention is taken by the learned counsel for the respondent in this appeal and more so, emphatically submits that in this appeal, even though acquittal judgment rendered by the Trial Court has been challenged by the State, it does not arise to call for any interference as there are no warranting circumstances even considering the evidence of PW-1 to PW-4 Chowdamma who is none other than the mother of the deceased. But PW-13 / Borashetty is the ASI who registered the case at Exhibit P12 relating to missing complaint filed by PW-4 / Chowdamma. But criminal law was set into motion based upon the complaint report whereby 14 PW-14 M.B. Thippegowda is the PSI who recorded an FIR as per Exhibit P-13. Subsequent to registration of the crime, criminal law was set into motion. But PW-15 / Nagaraju is the Police Constable who was deputed to apprehend the accused. Accordingly, he apprehended the accused. Subsequently, PW-16 / H. Govindaraju I.O. took up the case for investigation and conducted a thorough investigation and laid a charge-sheet against the accused. Merely because investigation has been done thoroughly by PW-16 and merely because of recording an FIR by filing a missing complaint whereby PW-8 and PW-9 are stated to have last seen the deceased and accused together, the same requires to be established by producing clinching evidence and also not to give any scope for doubt in the theory of the prosecution. But PW-8 and PW-9 have not at all withstood their statements had have turned hostile to the case of the prosecution. Therefore, the last seen theory does not have any bearing on the part of the 15 prosecution for seeking intervention in this appeal by considering the grounds urged, though heinous offence under Section 302 of the IPC has been leveled against the accused. The ingredients of Section 302 IPC and more so, the motive and intention and preparation and in terms of mens rea and actus rea have not been properly established by the prosecution by producing cogent and corroborative evidence in order to seek intervention in this appeal to set aside the judgment of acquittal rendered by the Trial Court in

S.C.No.338/2012 and thereby to convict the accused. But in the criminal justice delivery system, the domain is vested with the prosecution to prove the guilt of the accused beyond all reasonable doubt. There should not be any doubt crept in the mind of the Trial Court. Unless fortified evidence is facilitated by the prosecution, it cannot arise for the Trial Court to convict the Accused. 16 But in the instant case, the Trial Court has appreciated the evidence of PW-1 to PW-4 relating to the spot mahazar, inquest mahazar and seizure mahazar and even the evidence of PW-8 and PW-9 relating to the last seen theory, while acquitting the accused. The motive behind committing murder of the deceased relates to a quarrel in view of loan of Rs.25,000/- borrowed by the deceased which remained unpaid by him. But no material has been produced by PW-4 / Chowdamma as regards the alleged loan. Further, Chowdamma in her cross-examination has admitted that her son Manja did not have any financial transaction with anybody and has further admitted that accused and the deceased were good friends and there was no ill will between them. Even the prosecution did not venture to secure material documents relating to the said loan transaction, during the course of investigation. When there is no material document to show that there was a loan transaction of Rs.25,000/- 17 in between the accused and deceased, or as regards any conflict between the two, it cannot be held that the accused had motive behind committing the murder of the deceased by pushing him into the river from the Kapila bridge in the limits of H.D. Kote Taluk, by taking the deceased along with him in his auto-rickshaw. However, from the scene of crime whereby accused is alleged to have pushed the deceased from Kapila bridge and committed the murder, the dead body of Manja @ Manjunatha had been recovered. PW-12 / Doctor had conducted autopsy and issued PM report as per Exhibit P-24 stating that the death was due to asphyxia as a result of drowning. Even on the basis of the said post- mortem report, the acquittal judgment rendered by the Trial Court cannot be reversed without there being any clinching evidence to prove the guilt of the accused that he had committed the murder of the deceased. But the Trial Court has rightly appreciated the evidence on record and has rightly come to the conclusion that the 18 prosecution has miserably failed to prove the guilt of the accused by facilitating worthwhile evidence in terms of consistent, corroborative and positive evidence to probabalise that the accused had committed the murder of the deceased being his

friend. On all these premise, learned counsel for the respondent / accused prays for dismissal of this appeal and thereby to confirm the judgment of acquittal rendered by the Trial Court in S.C.No.338/2012.

7. In the backdrop of the contentions taken by the learned HCGP for the State and so also the counter arguments of the counsel for the respondent / accused, we find it relevant to command the last seen theory set up by the prosecution. The prosecution had mainly relied on the evidence of PW-6, 7, 8 and 9, who are the prime witnesses on the part of the prosecution relating to last seen theory set up, where the accused and deceased both were friends. But PW-8 and PW-9 are 19 employees of Shakthi Wine Stores where accused and deceased had drunk as well as purchased wine by way of parcel as well. These witnesses have specifically stated on the part of the prosecution that they did not know the accused. They have stated that they have not at all seen the accused and deceased coming to their bar and consuming liquor. More so, they have specifically stated that they did not know about the murder of Manja @ Manjunath. Further, the police have not made any enquiry nor recorded their statements even though heinous offences of Section 302 IPC has been lodged against the accused. But PW-8 and PW-9 have turned hostile and they have given a go-by to the versions of their statements. However, the learned Public Prosecutor before the Trial Court has subjected to cross-examination PW-8 and PW-9 at length. However, nothing worthwhile has been elicited for consideration on the part of the prosecution to prove the last seen theory set up. Hence, the Trial Court has concluded that no worthwhile evidence has been facilitated by the prosecution. PW-6 and PW-7 are the neighbours of PW-4 / Chowdamma. These witnesses though have stated that they had seen the accused come to the house of Chowdamma and about taking the deceased Manja @ Manjunath in an autorickshaw, but both of those witnesses were residing close the house of PW-4 / Chowdamma. In the cross-examination, PW-6 has stated that he was by avocation an agriculturist and he used to wake up at 5.00 a.m. in the morning and he would proceed from home early to do his agricultural work and he would be tired in the evening and would go to bed at around 8.00 to 8.30 p.m. Therefore, he did not know who had come to the house of PW-4 / Chowdamma in the autorickshaw. More so, PW-7 has been subjected to cross-examination. He has specifically

stated in his evidence that he did not know 21 the number of the autorickshaw allegedly used by the accused to carry the deceased and also its colour. More so, he did not know the cause for the death of the deceased Manja @ Manjunath. These evidence have been considered by the Trial Court to arrive at the conclusion that the prosecution has miserably failed to prove the guilt of the accused by facilitating worthwhile evidence to secure conviction. Further, the prosecution has also relied on the evidence of PW-5 and PW-11 to prove the guilt of the accused. But PW-5 is the relative of PW-4 / Chowdamma and PW-11 was of the same caste of Chowdamma. Hence, these witnesses are interested witnesses to the case of the prosecution. Even at a cursory glance of the evidence of these material witnesses, doubt regarding credit-worthiness would arise on the part of the prosecution. PW-5 who stood for cross-examination has admitted that accused and his parents are coolies to eke out their livelihood and 22 generally people doing coolie work will lock their houses while going for work. But accused and his parents doing coolie work to eke out their livelihood, it is natural to lock their houses. But it is curious to see that neither PW-5 nor PW-11 had informed the village leaders that they had searched for the deceased in the house of the accused and that the house of the accused was locked. The evidence of these witnesses have also been considered by the Trial Court to arrive at the conclusion that the prosecution did not facilitate worthwhile evidence or corroborative evidence to convict the accused for the offences under Section 302 of the IPC.

8. Lastly, we have to look into the evidence of PW- 16 / Investigating Officer and so also the evidence of official witnesses. But the prosecution has relied upon the voluntary statements of the accused and the autorickshaw alleged to have been used by the accused was seized by drawing a mahazar at Exhibit P5 by PW- 23 16 in the presence of panch witnesses. Documents relating to the said autorickshaw were also seized by drawing mahazars at Exhibit P6 and P7. Exhibits P8, P9, P10 P12 are the documents subjected to photographs relating to the autorickshaw seized by the Investigating Authority bearing Registration No.KL-10/K-5249. These are all the evidence adduced by the prosecution in order to prove the guilt of the accused. But the mahazars for having seized the autorickshaw and connecting documents have not been duly proved by the prosecution by facilitating worthwhile evidence. Section 3 of the Indian Evidence

Act, 1872 as regards the concept of proving a fact, states that, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. 24 Further, Section 3 of the Indian Evidence Act, 1872 as regards the concept of disproving a fact, states that, a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non- existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. Further, Section 3 of the Indian Evidence Act, 1872 as regards the concept of a fact not proved, states that, a fact is said not to be proved when it is neither proved nor disproved. But, keeping in view Section 3 of the Indian Evidence Act, the domain is vested with the prosecution as well as the defence also, but the last seen theory requires corroboration. Accused person cannot be convicted solely on the evidence of last seen together 25 with the deceased. ((see Navaneethakrishnan vs. State by Inspector of Police (AIR 2018 SC2027). Further, minor contradictions and inconsistencies in testimony of injured eye-witness does not make him untrustworthy and unreliable witness (see Mukesh vs. State of NCT of Delhi (AIR 2017 SC2161. Further, it is relevant to refer to Section 134 of the Indian Evidence Act, 1872. No particular number of witnesses shall in any case be required for the proof of any fact. It is well-known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. Therefore, the domain is vested with the prosecution to prove the guilt of the accused by facilitating worthwhile evidence, which should not give any room for doubt in the theory put forth by the prosecution for convicting the accused. 26 Whereas, it is the quality of evidence and not the quantity of evidence which is required to be judged by the court to place credence on the statements of witnesses and material evidence facilitated, in order to prove the guilt of the accused. But the plurality of witnesses in the matter of appreciation of evidence of witnesses is the domain vested with the Trial Court alone. It is not the number of witnesses but the quality of their evidence which is an important, as there is no requirement in law of evidence that any particular number of witnesses are to be examined to prove /

disprove a fact. The evidence must be weighed and not counted. Further, the test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. Whereas the legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is the quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Indian Evidence Act, 1872. Therefore, it is said that the domain is vested with the prosecution to prove the guilt of the accused by facilitating worthwhile evidence. If worthwhile evidence is not produced and doubt arises in the case put forth by the prosecution, it is well-settled principles of law in criminal justice delivery system that benefit of doubt is always in favour of the accused alone.

9. Whereas in the instant case, even though an appeal has been preferred by the State by challenging the acquittal judgment whereby the accused had faced trial for offences under Section 302 of the IPC, but the requirement as to number of witnesses and this aspect is concerned, the law of evidence does not require any particular number of witnesses to be examined in order to prove a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely, i) wholly reliable, ii) wholly unreliable and iii) neither wholly reliable nor wholly unreliable. In the first two categories, there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. The prosecution had subjected to examination PW-8 / Madesha and PW-9 / Sundar. But both of them have turned hostile to the case of the prosecution and they did not withstand the versions of their own statements. Therefore, in the instant case, the prosecution has miserably failed to facilitate positive, corroborative and acceptable evidence to secure conviction. Therefore, the Trial Court has rightly come to the conclusion by appreciating the evidence of PW-1 to PW-16 and several documents at Exhibits P1 to P40 inclusive of MO-1 to MO-7. On appreciating the evidence on record, we find that there are no warranting circumstances under this appeal for seeking intervention of the acquittal judgment

challenged by the State / appellant.

10. In view of the aforesaid reasons and findings, we are of the opinion that there is no worthwhile evidence or any sound reasons or justifiable grounds urged in this appeal to seek intervention. Consequently, the appeal deserves to be rejected. Accordingly, we proceed to pass the following:

ORDER

The appeal preferred by the appellant / State under Section 378 (1) and (3) of the Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the Trial Court in S.C.No.338/2012 dated 20.02.2016 is hereby confirmed. Sd/-
JUDGE Sd/- JUDGE KS

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