

State Of Karnataka Vs. A V Krishnamurthy

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Court : Karnataka

Decided On : Jun-24-2022

Judge : K.Somashekar and P.N.Desai

Appeal No. : CRL.A 1003/2015

Appellant : State Of Karnataka

Respondent : A V Krishnamurthy

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF JUNE, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE P.N.DESAI CRIMINAL APPEAL No.573 OF 2015 CONNECTED WITH CRIMINAL APPEAL NO.1003 OF 2015 IN CRL.A.NO.573/2015 BETWEEN: K. Shanthamma W/o Late H.J.

Ramaiah Aged about 51 years R/at Gowthama Badavane 3rd Cross, Gutlur Road Mandya District - 571401. ...Appellant (By Sri. Vishnumurthy - Advocate) AND:

1. A.V. Krishnamurthy S/o. Venkateshaiah Aged about 27 years 2. Venkateshaiah S/o. Late Yalavaiah Aged about 67 years 2 (vide order dated 22.07.2021 Appeal against accused No.2 is Dismissed as abated) 3. Yashodamma W/o Venkateshaiah Aged about 55 years All R/at Apparagere Village Channapatna Taluk Ramanagar District.

4. State of Karnataka By Channapatna Rural P.S. ...Respondents (By Sri. N. Udayakumar - Advocate for R-1 & R-3; Vide order dated 22.07.2021, appeal against Accused No.2 is dismissed as abated) This Criminal Appeal filed under Sec.372 of Criminal Procedure Code, praying to, set aside the acquit judgment passed by the learned I-Addl. District and Sessions Judge, Ramanagara, in S.C.No.81/2008 vide dated 11.02.2015; and convict the respondents No.1 to 3 for an offence under Sections 498A, 304B of IPC and Sections 3 & 4 of D.P.Act. IN CRL.A.NO.1003/2015 BETWEEN: State of Karnataka Represented by Channapatna Rural Police Station Ramanagara - 571501. ...Appellant (By Smt. Rashmi Jadhav - HCGP) 3 AND:

1. A.V. Krishnamurthy S/o. Venkateshaiah Aged about 34 years R/at Apparagere Village Channapatna Taluk Ramanagar District-571501.

2. Venkateshaiah S/o. Late Yalanaiah Aged about 70 years R/at Apparagere Village & Post Channapatna Taluk Ramanagar District-571501. (vide order dated 22.07.2021 Appeal against accused No.2 is Dismissed as abated) 3. Yashodamma W/o Venkateshaiah Aged about 62 years R/at Apparagere Village & Post Channapatna Taluk Ramanagar District-571501. ...Respondents (By Sri. N. Udayakumar - Advocate for R-1 & R-3; Vide order dated 22.07.2021, appeal against Accused No.2 is dismissed as abated) This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, praying to (a) grant leave to appeal against the judgment and order of acquittal dated 11.02.2015 in S.C.No.81/2008 passed by the learned I-Addl. District and Sessions Judge, Ramanagara for the 4 offences punishable under Sections 498(A), 304(B), 306 r/w 34 of IPC and 3, 4 and 6 of D.P. Act; (b) set aside the judgment and order of acquittal dated 11.02.2015 in S.C.No.81/2008 passed by the learned I-Addl. District and Sessions Judge, Ramanagara acquitting the accused - respondents for the offences punishable under Sections 498(A), 304(B), 306 r/w 34 of IPC and 3, 4, and 6 of D.P. Act and convict and sentence the accused - respondents for the offences punishable under Sections 498(A), 304(B), 306 r/w 34 of IPC and 3, 4, and 6 of DP Act. These criminal appeals coming on for further hearing this day, K. Somashekar .J delivered the following: COMMON

JUDGMENT

The case in CrI.A.No.573/2015 is preferred by Smt.K.Shantamma by challenging the judgment of acquittal rendered by the trial Court in S.C.No.81/2008 dated 11.02.2015 whereby seeking intervention of acquittal judgment rendered by the trial Court by considering the grounds as urged therein whereby the case against the accused has been ended in acquittal for the offence under Sections 498A, 304B, 306 r/w 34 of IPC and Sections 3, 4 and 6 of D.P.Act and to convict the accused for the aforesaid offences. 5

2. The case in CrI.A.No.1003/2015 is preferred by the State challenging the acquittal judgment rendered by the trial Court in S.C.No.81/2008 dated 11.02.2015 for the offences which reflected in the operative portion of the order and whereby in this appeal seeking intervention and setting aside the judgment of acquittal rendered by the trial Court and to convict the accused for the aforesaid offences.

3. These appeals arise out of judgment of acquittal rendered by the trial Court in S.C.NO.81/2008 dated 11.02.20215. Therefore, these appeals are disposed through this common judgment.

4. Heard learned counsel Sri Vishnumurthy for the appellant in CrI.A.No.573/2015 and so also, learned HCGP for State in CrI.A.No.1003/2015 and learned counsel Sri N.Udayakumar for respondent Nos.1 and 3 / accused No.1 and 3. The appeal against Accused No.2 stood abated vide order dated 22.07.2021. Perused the judgment of acquittal 6 rendered by the trial Court in S.C.No.81/2008 whereby consisting the evidence of PWs.1 to 21 and so also, several documents at Exs.P1 to P26 inclusive of contradictory statements of PW.1, PW.8 and PW.2 at Exs.D1 to D3 respectively.

5. The factual matrix of these appeals are as under: It is transpired in the case of the prosecution that complainant namely K.Shanthamma who is none other than the mother of deceased H.N.Roopa had given her daughter in marriage to accused No.1 - Krishnamurthy and their marriage was performed as per the customs prevailing in their society on 02.02.2006 at Balaji Kalyana Mantapa, Channapatna in the presence of elders. Subsequent to her marriage she had been to her husbands house wherein she was residing with her husband and his family. But accused No.3 Yashodamma after two months was insisting her to bring dowry

from her parents house. Accused No.1 - Krishnamurthy being a 7 very doubtful person suspected the fidelity of H.N.Roopa and used to assault her and used to harass physically and mentally and so also, by her in-laws. The deceased became pregnant and she was directed to deliver a son and for all petty matters they were harassing her very much and she delivered a baby girl, they neither made expenses nor came to meet her. However, they were giving mental and physical harassment and even used to quarrel with her for silly matters like naming ceremony or performing first birthday of the child. Subsequent to her marriage with Krishnamurthy she meted out with physical as well mental harassment from her husband and so also, in-laws because of that reason on 18.02.2007 at 5.30 p.m. she committed suicide and lost her breath within a span of 7 years from the date of her marriage. By giving her mental and physical torture on 18.12.2007 at 5.30 p.m. she feeling that it is impossible for her to suffer any more in terms of harassment, she hanged herself with means of saree to the ceiling fan. It is further stated that during her 8 marriage as per marriage talks on both the side, the accused persons demanded Rs.1,50,000/-, one vehicle, gold chain, ring, watch and clothes and 250 gms gold for the deceased. Later at the time of marriage, cash of Rs.1,00,000/-, 300 gms gold and on 3.7.2005 engagement took place at Kunthrudoddi where Rs.1,00,000/- was given as dowry, one gold ring and at the time of marriage one gold chain and five pairs of clothes and also gold jewels to the bride. After her death on 18.12.2007 at 5.30 p.m. accused persons did not return the items received. After death of deceased, on receipt of complaint filed by PW.1 crime came to be registered and criminal law was set into motion by registering FIR for the offence under Sections 498A, 304B, 306 r/w 34 of IPC, 1860 beside Sections 3, 4 and 6 of DP Act, 1961.

6. Subsequent to filing of charge sheet by the investigating agency, the case was committed to the Sessions Court whereby S.C.81/2008 was registered and 9 accused persons were secured for facing of trial. On hearing of arguments of learned Public Prosecutor and the defense counsel relating to framing of charge against the accused for the aforesaid offences, the charges were read over to the accused whereby the accused did not pleaded guilty and claimed to be tried and accordingly, it is tried.

7. Subsequent to framing of charges, the prosecution put on trial by subjecting to examination of witnesses PWs.1 to 21 and so also got marked several documents at Exs.P1 to P26 and got marked M.O.1 to M.O.20 and the contradictory statements of PW.1, PW.8 and PW.2 were marked as per Exs.D1 to D3.

8. Subsequent to closure of evidence on the part of the prosecution whereby the accused were subjected to examination. The incriminating statement as under Section 313 of Cr.P.C. was recorded whereby accused declined the evidence of the prosecution adduced so far. Accordingly, it is recorded. Subsequently, the trial Court 10 called upon the accused to enter into any defense evidence as contemplated as under Section 233 of Cr.P.C. but the accused did not come forward to adduce any defense evidence. Accordingly, it was recorded.

9. Subsequent to closure of the evidence on the part of the prosecution, the trial Court heard the arguments advanced by learned Public Prosecutor and so also, the defense counsel and whereby the contention was made by the prosecution relating to the dowry harassment to the deceased and also insisted her to bring dowry in terms of cash and gold jewellerys even though receipt of considerable dowry during the marriage of the deceased. There are some contradictions and omissions which was noticed by the trial Court even by appreciating the evidence of PW.4 - Mangalagowri and so also, evidence of PW.8 - Kishore. But this PW.4 - Mangalagowri who is the cousin sister of deceased Roopa who contended she got jewels. According to their version they got some jewels 11 from Sarathi jewelers and Utham jewelers. Her version is only after one month of the wedding they were given. She admitted that she has not handed over any estimate receipt to the investigating officer and she does not know the mobile number of Roopa. Several omissions were also secured. But the evidence of PW.8 - Kishore who is the younger brother of deceased denied all the suggestions made. He denied the suggestion that Roopa was quarreling and his version is that nobody was in the house when they went there on receipt of information of receipt of death of Roopa. In this case there was also some suggestion by the defense counsel wherein it is observed that all the family members deposed similarly and for all the contentions raised no documents are forthcoming. The contradictions and omissions are such that it goes to the very root of the case of the prosecution. The version of

prosecution is full of surmises and conjunctures. Moreover the evidence of PW.1 - Shantamma who is the author of complaint at Ex.P1 and being the mother of deceased who subscribed 12 her signature at Ex.P1(a). PW.5 - Srinivasa who has subscribed his signature at Ex.P2 - Seizure mahazar and Ex.P3 - Seizure mahazar which is conducted by the investigating agency in the presence of PW.7. PWs.5 and 6 have given evidence but their statements were got marked at Exs.P4 and P5 inclusive of PWs.10 and 11 at Exs.P6 and P7. PW.18 is the Doctor who conducted autopsy over the dead body of deceased and opinion of the Doctor at Ex.P13 relating to the cause of death. FIR is at Ex.P14 which bears the signature of PW.19. All these evidence has been analyzed by the trial Court and so also, the evidence of PWs.1, 8 and 2 and whereby these witnesses did not support the case of the prosecution. Therefore, their statements were got it marked at Exs.D1, D2 and D3. The trial Court had appreciated the evidence of these witnesses. But in totality of evidence of the prosecution and inclusive of evidence of PWs.1, 2 and 8 who are the material witnesses on the part of the prosecution and their evidence as well as evidence of PW.1 - Shantamma which 13 runs contrary to the evidence of investigating officer who has done the entire investigation and conducted the seizure mahazar and so also, securing the PM report and so also, drew the seizure mahazar. These are all the evidence which has been appreciated by the trial Court and rendering the acquittal judgment on the premise that the prosecution has miserably failed to prove the guilt of the accused by facilitating the worthwhile evidence.

10. In Crl.A.No.573/2015 the impugned judgment has been challenged by Shantamma being the complainant by urging various grounds. Similarly the State has filed Crl.A.No.1003/2015 challenging the impugned judgment. But the contentions made by the State and so also, the complainant in these appeals are one and the same seeking intervention by urging various grounds.

11. Whereas learned counsel namely Sri Vishnumurthy for the appellant in Crl.A.No.573/2015 whereby he has taken contention that the trial Court was 14 rendering the acquittal judgment even though there was some material evidence on the part of the prosecution relating to dowry harassment to the deceased despite of receipt of dowry during the marriage with accused No.1 - Krishnamurthy

and even marriage was performed by the parents of the deceased, but the trial Court did not appreciate the evidence of prosecution witnesses and also did not give more credentiality to the evidence of PW.1 relating to the complaint at Ex.P1 and so also, evidence of PW.4 - Mangalagowri. Even though the investigation has been done by investigating officer who conducted several mahazars and secured PM report but PWs.1 to 4 are the material witnesses and their evidence has not been considered by the trial Court. On all these premises, seeking for intervention, if not, certainly there shall be some miscarriage of justice.

12. Whereas learned HCGP for State in Crl.A.No.1003/2015 has taken contention that the 15 criminal law was set into motion by recording FIR as per Ex.P14 on the complaint filed by PW.1 - Shantamma who is none other than the mother of deceased. Based upon the complaint filed by her wherein the incident has been narrated relating to the death of her daughter. Mere because there are some contradictions and omissions which is noticed in the evidence of PWs.1, 2 and 8 the trial Court could not have rendered the acquittal judgment relating to the aforesaid charges leveled against the accused persons. Despite of receipt of considerable dowry in terms of cash, gold jewellerys during the marriage, but the accused persons have caused the death of deceased and the same could be seen from the evidence facilitated by the prosecution. The material witnesses have stated in their evidence relating to the death of Roopa due to harassment meted out by her from the hands of her husband and also her in-laws. The contention was also taken that Roopa was demanding for house hold articles and she also wanted to lead luxurious life as her sister 16 Lolakshini. But in the totality of the facts and circumstances of the case, a prudent man can infer that the accused persons had caused the death of deceased and the death occurred within a span of 7 years from the date of marriage. These are all the contentions made by learned HCGP for State seeking intervention, if not, certainly there shall be miscarriage of justice to the case of the prosecution and in turn to PW.1 - complainant - Shantamma who is none other than the mother of deceased.

13. In this background of the contention made by the counsel for the complainant in Crl.A.No.573/2015 and the learned HCGP for State in Crl.A.No.1003/2015 and so also, Sri Udaya Kumar, learned counsel for the accused, but in the light of the

aforesaid discussion akin to the evidence of PW.1 who is the complainant and evidence of PW.4 - Mangalagowri who is the cousin sister of deceased - Roopa and PW.8 Kishore who is the younger brother of deceased - Roopa but all these witnesses have been subjected to examination on the part of prosecution and even though they have given the evidence on par with their statement and even in the cross-examination of PW.1 it indicates their financial condition was not comfortable even though there was some suggestion made that the marriage ceremony of deceased - Roopa was performed with accused No.1 - Krishnamurthy in the native of accused persons who are of their caste. PW.2 - Lolakshi is the sister of deceased and also stood in the cross-examination but admitted that deceased and accused No.1- Krishnamurthy were visiting their house in Kunthrudoddi as well as in their house at Mandya. According to her version she used to visit her as and when occasion raised. Marking of jewels show that deceased was given jewels. Several omissions were suggested. PW.4 - Ramachandra who is the elder brother of PW.1 and father of Radhakrishna in the cross-examination denied that they were in love with each other. But Exs.D1, D2 and 18 D3 are the contradictory statements of PW.1, PW.8 and PW.2. It indicates that wedding of Roopa was performed within 5 days after the death of her father since all arrangements were made. But there was a suggestion made on the part of the defense that deceased - Roopa and accused were loving each other and coming to know about the same, the wedding was performed. The statement it indicates that one month after the marriage but Ex.D1 portion is marked. Relating to the naming ceremony in the choultry she committed suicide is not accepted is the contention of the prosecution, but in fact the testimony of the witnesses who are the family members among themselves there are serious allegations. The allegations were such that even when she comes to parental home, accused No.1 was not allowing her to mingle with her family members and her sister and he used to keep her in the room. At a cursory glance of evidence of prosecution witnesses such as evidence of PW.1, 4 and 8. But it is relevant to refer Section 134 of Indian Evidence Act. In the 19 criminal justice delivery system, the quality of evidence is an important aspect, it must be quality of evidence and not the quantity of the evidence which required to be judged by the Court to place statement of witnesses. But it is the domain vested with the trial Court which has to appreciate

the evidence. It is not the number of witnesses but only quality of their evidence it is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. It is the quality and not quantity, which determines the adequacy of evidence. These are all the issues has been extensively addressed by the Honble Supreme Court in a judgment of Laxmibai (Dead) through LRs v. Bhagwantbura (Dead) through LRs (AIR 2013 SC1204. 20

14. Keeping in view the evidence of those witnesses and so also, the totality of circumstances of the witnesses on the part of the prosecution and whereby challenging the judgment of acquittal rendered by the trial Court , the case in Crl.A.No.573/2015 preferred by the complainant who is the gravamen of the incident namely Shantamma who is no other than the mother of the deceased and she is challenging the acquittal judgment rendered by the trial Court by urging various grounds by securing the services of counsel namely Sri Vishnumurthy. Similarly the State has also preferred an appeal by challenging the acquittal judgment rendered by the trial whereby the deceased last her breath within the span of 7 years from the date of her marriage it is in terms of dowry death and also insisting her to bring dowry from her parents house. Therefore, there was some physical as well as mental harassment meted out from the hands of her husband in assistance with the in-laws. But it is relevant to refer the judgment of Lalit Kumar Sharma And Ors. vs Superintendent and 21 Remembrancer (AIR 1989 SC2139) whereas in this reliance power of an appellate Court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. But under these appeals challenging the acquittal judgment by urging various grounds. But in criminal justice delivery system, it is the domain vested with the prosecution to facilitate worthwhile evidence to secure the conviction. Merely because death occurred within a span of 7 years from the date of the marriage with accused No.1, it cannot be the ground for securing the conviction unless there shall be some worthwhile evidence in terms of cogent, corroborative, consistent

and positive evidence to probabilise that the accused persons have caused the death of deceased. But in the instant case, even though it would be revisiting the judgment of acquittal rendered by the trial Court in 22 entirety and also re-appreciation that too be the evidence of PW.1 - Shantamma, PW-4 - Mangalagowri and PW.8 - Kishore but in the totality of evidence of witnesses of prosecution there is no worthwhile evidence for consideration of grounds which is urged in these appeals. Therefore, for the aforesaid reasons, we are of the opinion that both appeals are required to be rejected being devoid of merits. However, it is appropriate to state that there is no perversity, absurdity or infirmities that were noticed in the judgment of acquittal rendered by the trial Court. Consequently, these appeals deserves to be rejected. Accordingly, we proceed to pass the following:

ORDER

Crl.A.No.573/2015 preferred by the appellant/ complainant under Section 372 of Cr.P.C. and Crl.A.No.1003/2015 preferred by the State under Section 378(1) and (3) of Cr.P.C. are hereby rejected. Consequently, 23 the judgment of acquittal rendered by the trial Court in S.C.No.81/2008 dated 11.02.2015 is hereby confirmed. In pursuance of the disposal of these appeals, it is deemed appropriate for passing suitable orders relating to the material objects such as M.Os.2 to 14 - gold jewellerys and M.O.15 and 16 two wrist watches. Keeping in view the operative portion of the order passed by the trial Court in S.C.No.81/2008 and so also, the disposal of these appeals, it is hereby ordered that M.Os.2 to 14, 15 and 16, respectively shall be released in favour of PW.1 - Shantamma being the complainant on due identification. The aforesaid PW.1 - Shantamma is the mother of deceased Roopa and the deceased was blessed with daughter namely - Roshini Priya.K.R. being aged of 15 years and she is in care and custody of her grand mother PW.1 - Shantamma and the aforesaid material objects which are ordered to be released in favour of PW.1 shall be 24 to the benefit of grand daughter Roshini Priya.K.R. being a minor. Accordingly made an observation. Sd/- JUDGE Sd/- JUDGE Dkb